

***“This material is intended as a study guide, which is a support to the legislation and must be read together with the applicable legislation, which remains the principal source document”***



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## Section 4

### First Level Regulatory Examination: Representatives



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# Tasks

The material provided in this guide is based on the following tasks, as published in Government Gazette Board Notice 105 of 2008 and amended by Board Notice 60 of 2010:

1	Execute the required actions as a representative in terms of the FAIS Act
2	Contribute towards maintaining an FSP Licence
3	Adhere to specific obligations in terms of the relevant Code of conduct and other subordinate legislation
4	Apply knowledge of financial products
5	Awareness of consequences for representatives that have been found to act fraudulently or committed any other act that gives rise to debarment
6	Align execution of duties and actions with the compliance requirements
7	Carry out the proper record-keeping activities
8	Adhere to the requirements of FICA and other relevant anti-money laundering legislation, as it applies to the FSP

**Note:** Any reference to masculine gender may also imply the feminine. Singular may also refer to plural and vice versa.



# Glossary of terms

## **Advice**

Any recommendation, guidance or proposal of a financial nature furnished, by any means or medium, to any client or group of clients:

- in respect of the purchase of any financial product or in respect of the investment in any financial product, or
- on the conclusion of any other transaction, including a loan or cession, aimed at the incurring of any liability or the acquisition of any right or benefit in respect of any financial product, or
- on the variation of any term or condition applying to a financial product on the replacement of any such product, or the termination of any purchase of or investment in any such product, and irrespective of whether or not such advice:
  - is furnished in the course of or incidental to financial planning in connection with the affairs of the client; or
  - results in any such purchase, investment, transaction, variation, replacement or termination, as the case may be, being affected.

## **Credit system**

Each financial adviser needs to obtain a certain number of credits depending on the type of advice he provides. Credits refer to credits on the National Qualifications Framework (NQF) and are prescribed on a particular level.

## **Client**

“Client” means a specific person or group of persons, excluding the general public, who is or may become the subject to whom a financial service is rendered intentionally, or is the successor in title of such person or the beneficiary of such service.

## **Continuous professional development**

This is a process of learning and development with the aim of enabling a financial services provider, key individual, representative or compliance officer to maintain the competency to comply with the FAIS Act.

## **Complaint**

“Complaint” means, subject to Section 26(l)(a)(iii), a specific complaint relating to a financial service rendered by a financial services provider or representative to the complainant on or after the date of commencement of the FAIS Act, and in which complaint it is alleged that the provider or representative-

- a) has contravened or failed to comply with the provision of the Act and that as a result thereof the complainant has suffered or is likely to suffer financial prejudice or damage;
- b) has wilfully or negligently rendered a financial service to the complainant which has caused prejudice or damage to the complainant or which is likely to result in such prejudice or damage; or
- c) has treated the complainant unfairly;

## **Compliance officer**

The officer appointed by an FSP to oversee the provider's compliance function and to monitor compliance with the FAIS Act as well as to take responsibility for liaison with the Registrar.

## **Financial product includes, amongst others**

- securities and instruments, including:
  - shares in a company other than a ‘share block company’
  - debentures and securities debt
  - any money market instrument
  - any warrant, certificate and other instrument acknowledging, conferring or creating rights to subscribe to, acquire, dispose of, or convert securities and instruments referred to above
  - any securities as defined in Section 1 of the Financial Markets Act, 2012.
- a participatory interest in one or more collective investment schemes.
- a long-term or a short-term insurance contract or policy, referred to in the Long-term Insurance Act No. 52 of 1998 and the Short-term Insurance Act No. 53 of 1998, respectively.
- a benefit provided by a pension fund organisation or a friendly society (referred to in the Friendly Societies Act, 1956) to the members of the organisation by virtue of membership.
- a foreign currency-denominated investment instrument including a foreign currency deposit.
- a deposit as defined in Section 1 of the Banks Act, 1990

- a health service benefit provided by a medical scheme as defined in Section 1(1) of the Medical Schemes Act No. 131 of 1998.
- any other product similar in nature to any financial product referred to above declared by the Registrar by notice in the Gazette to be a financial product for the purposes of this Act.
- any combined product containing one or more of the financial products referred to above.
- any financial product issued by any foreign product supplier and marketed in the Republic and which in nature and character is essentially similar or corresponding to a financial product referred to above.

For the purposes of FAIS, a financial product does not include any financial product exempted from the provisions of the Act by the Registrar by notice in the Gazette, taking into consideration the extent to which the rendering of financial services in respect of the product is regulated by any other law.

### **Financial services provider**

“Financial services provider” means any person, other than a representative, who as a regular feature of the business of such a person:

- furnishes advice; or
- furnishes advice and renders any intermediary service; or
- renders an intermediary service.

### **Financial service**

“Financial service” means any of the services contemplated above. The FAIS Act regulates financial services in respect of deposits, up to and exceeding 12 months.

### **Fit and proper**

Financial services providers and their representatives need to be fit and proper. Fit and proper refers to the experience, qualifications and knowledge of the adviser, personal character qualities such as honesty and integrity as well as the meeting of continuous professional development requirements. Furthermore, the adviser needs to have the competence and operational ability to fulfil the responsibilities imposed by the FAIS Act.

The provider must meet the appropriate standards relating to operational ability and financial soundness.

## **Financial Services Board (FSB)**

The government-appointed regulator which is responsible for the implementation and monitoring of the FAIS Act; the FSB is established in terms of the Financial Services Board Act.

## **FAIS Act**

Financial Advisory Services and Intermediary Services Act 37 of 2002

## **The Ombud for Financial Services Providers**

The person appointed to resolve disputes between clients and financial service providers; often referred to as the FAIS Ombud.

## **FICA**

Financial Intelligence Centre Act

## **Intermediary services**

“Intermediary services” are defined as:

any act, other than the furnishing of advice, performed by a person for or on behalf of a client or product supplier –

- a) The result of which is that the client may enter into, offers to enter into or enters into any transaction in respect of a financial product with a product supplier; or
- b) With a view to –
  - i. Buying, selling or otherwise dealing in, managing, administering, keeping in safe custody, maintaining or servicing a financial product purchased by a client from a product supplier in which the client has invested; or
  - ii. Collecting or accounting for premiums or other moneys payable by the client to a product supplier in respect of a financial product; or
  - iii. Receiving, submitting or processing the claims of a client against a product supplier.

## **Key individuals**

Natural persons responsible for the managing or overseeing of, either alone or together with other people, the activities of a financial services provider and the representative/s

## **Official web site**

“Official web site” means a web site, as defined in Section 1 of the Electronic Communications and Transactions Act No. 25 of 2002, set up by the Board.

## **Product supplier**

Any person who issues a financial product

## **Person**

“Person” means any natural person, partnership or trust, and includes any state organ, any company and any body of persons, corporate or unincorporated. The term ‘natural person’ is used simply to distinguish a natural person from a legal person such as a trust or a company.

## **POCA**

The Prevention of Organised Crime Act

## **POCDATARA**

The Protection of Constitutional Democracy against Terrorism and Related Activities Act

## **Registrar**

The executive officer of the FSB is the Registrar of Financial Service Providers for purposes of the FAIS Act.

## **Representative**

Any person who renders a financial service for or on behalf of a financial services provider, in terms of conditions of employment or any other mandatory agreement, but excludes a person rendering clerical, technical, administrative, legal or accounting service, which service does not require judgment on the part of that person, or does not lead a client to any specific transaction in respect of a financial product in response to general enquiries.



## Topic

# 1

## Execute the required actions as a representative in terms of the FAIS Act

### 1.1 INTRODUCTION

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Before the introduction of FAIS, clients who received poor advice and service from insurance agents/brokers could only try to resolve their issues by going to court and in some instances there may have been relief through the Ombud. Many people never went to court because they did not have the money to do so or just simply because they did not want to go through the ordeal of a court hearing.

This topic tells you about the measures introduced by FAIS that have changed the financial services environment. Intermediaries and FSPs have to comply with specific requirements and consumers now enjoy protection in their dealings with financial services providers.

In this topic, you will gain knowledge in the following areas:

1. Describe the roles, responsibilities and requirements regarding representatives as defined in the FAIS Act.
  2. Describe the role and responsibilities of the key individual as defined in the FAIS Act.
  3. Explain the requirements for licensing by the FSB for the role of the representative.
  4. Explain when an individual is obliged to be registered as a representative in terms of FAIS.
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5. Explain the fit and proper requirements that apply to the representatives.
6. Discuss the purpose of the register of representatives.
7. Distinguish between advice and intermediary services in terms of the FAIS Act.
8. Explain when representatives can act under supervision.
9. Describe the implications if a representative does not meet all the requirements in terms of being fit and proper by the relevant date.
10. Explain the record-keeping requirements in terms of Section 18 of the FAIS Act and the General Code of Conduct.

The following skills criteria are related to the knowledge criteria listed above:

1. Apply knowledge of the role of the representative in terms of the FAIS Act.
2. Keep records in terms of the requirements of the Act and General Code of Conduct.

## 1.2 THE PURPOSE OF THE FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT NO. 37 OF 2002

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"The era of properly regulated financial services has dawned, which should banish the dark ages of non-disclosure, unreadable fine print, and mis-selling."

Trevor Manuel, Minister of Finance at the launch of the Ombud for Financial Services Providers (FAIS Ombud)

Before the introduction of the Financial Advisory and Intermediary Services Act (FAIS Act), clients who felt that they received inappropriate/poor advice from insurance agents/brokers had to seek recourse through the formal court system. The basis of a claim of this nature was the concept of delictual liability. The client had to prove on a balance of probabilities that the wrongful intentional/negligent act or omission of the adviser caused damage to the client. Very few clients had the financial means, the time and the knowledge to effectively access the court system. A gap existed for a more expeditious and cost-effective way of resolving consumer complaints.

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The situation was worsened by the fact that the different role-players and products in the financial industry were/are all governed and regulated by different Acts:

- Banks are regulated by the Banks Act No. 94 of 1990.
- Long-term insurers are regulated by the Long-term Insurance Act No. 52 of 1998.
- Short-term insurers are regulated by the Short-term Insurance Act No. 53 of 1998.
- Collective investment schemes are regulated by the Collective Investment Schemes Control Act No. 45 of 2002.
- Disclosures to clients were regulated by the Policyholder's Protection Rules, issued in terms of the Long-term Insurance Act No. 52 of 1998
- Retirement funds are regulated by the Pension Funds Act No. 24 of 1956
- Medical schemes are regulated by the Medical Schemes Act No. 131 of 1998.

These Acts regulate the institutions with regard to certain aspects, but their main purpose was never the protection of the consumer as far as advice is concerned. Where a financial services provider or one of its representatives provided advice relating to a financial product to a client, the field was wide open. Further confusion arose from the fact that many of these Acts created an Ombudsman or Adjudicator to assist clients with complaints. It was not always clear where a client should lodge a complaint against poor advice.

FAIS has addressed these problems with its definition of "financial services provider", which includes (see section below) almost the entire range of financial services providers, such as insurers, agents, brokers, banks, etc. In fact, any person who as a regular feature provides financial advice as covered by the FAIS Act is included. With the introduction of a single Ombud for Financial Services Providers (FAIS Ombud), the confusion is cleared, as the consumer now knows who to complain to regarding financial advice issues.

With the introduction of the FAIS Act, the net was tightened around South Africa's financial services providers, including financial advisers. Until the introduction of the Act, anyone, even a person without any relevant skills, knowledge or qualifications could enter the business of providing financial advice. The introduction of the Act followed on a long list of financial scandals such as the collapse of Masterbond. In the late 90s investors lost about R600 million in the Masterbond scam and the collapse of the scheme had a devastating effect on investors. The Nel Commission of Inquiry which followed

the Masterbond saga recommended that tough new legislation be put in place. The FAIS Act was created in response to that call, according to Charles Pillai, the first Ombud for Financial Services Providers.

FAIS became effective on 30 September 2004. The purpose of the Act is to regulate the rendering of all financial advisory and intermediary services to clients. Affected parties had until 15 June 2004 to register in order to be effective as from 30 September 2004 (the so-called Section 7 date).

The FAIS Act was also promulgated with the aim of changing the concept of financial broker to one of professional financial planner. To ensure that the financial planner shows reasonable care and skill when imparting financial advice to a client, the Act created the role of an Ombud to protect and advise the individual client.

The purpose of the Act therefore is to:

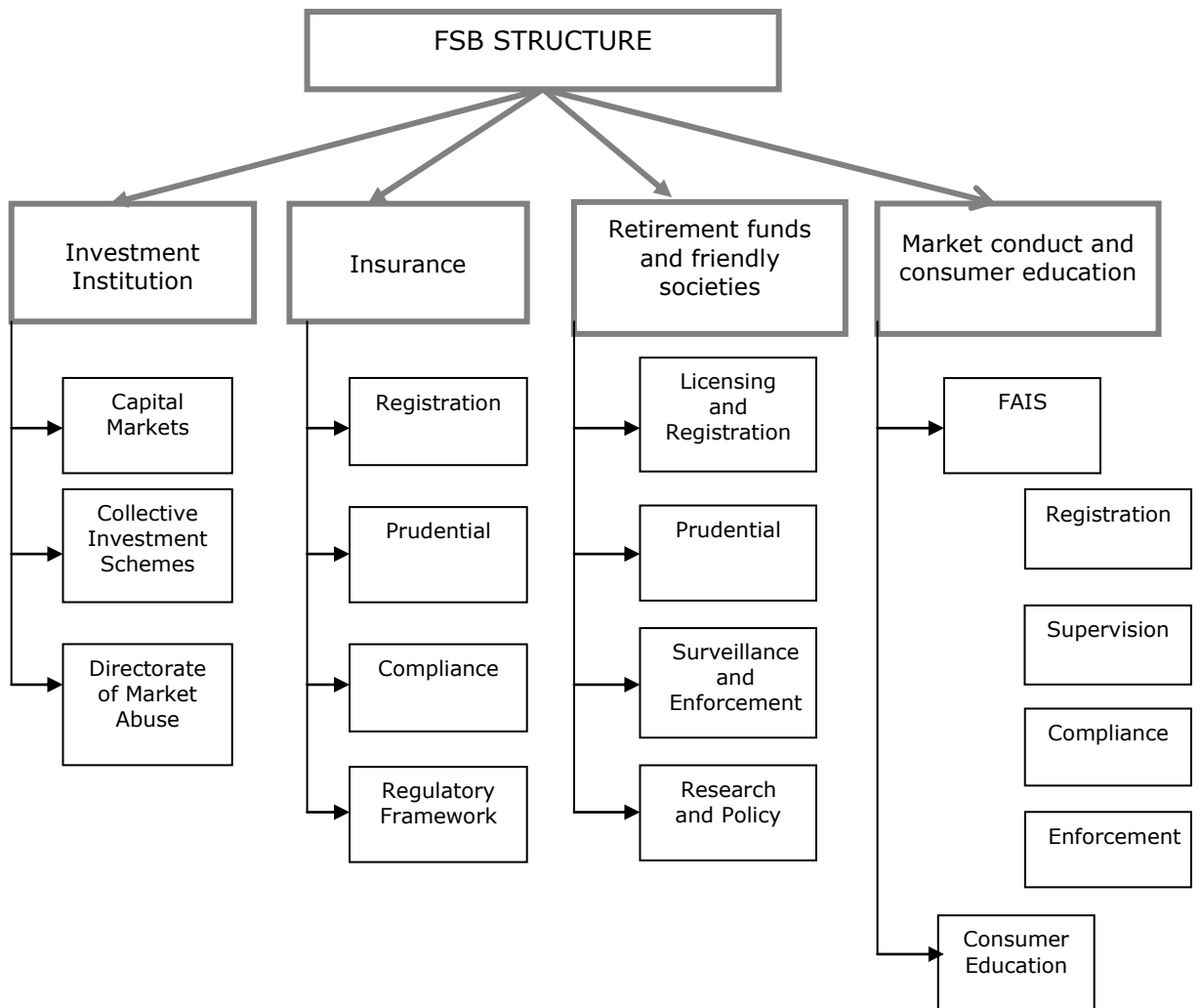
- regulate the rendering of certain financial advisory and intermediary services to clients.
- repeal or amend certain laws.
- provide for matters incidental thereto.

The regulation of advisory and intermediary services protects consumers and ensures that they are able to make informed decisions upon receipt of appropriate information.

### **Financial Services Board**

The FAIS Act states that the executive officer of the Financial Services Board is the Registrar of Financial Services Providers and the deputy executive officer of the board is the Deputy Registrar of Financial Services Providers. They have the powers and duties provided for, by or under this Act, which includes the duty to administer this Act. (Section 2) The Deputy Registrar acts under powers delegated by the Registrar.

The Financial Services Board is a unique independent institution established by statute to oversee the South African non-banking financial services industry in the public interest. The FSB is committed to promote and maintain a sound financial investment environment in South Africa.



**Figure 1.1**

(Source: [www.fsb.co.za](http://www.fsb.co.za))

### **Enforcement Committee and Board of Appeal**

The Enforcement Committee (EC) is an administrative body established to adjudicate on all alleged contraventions of legislation, regulations, codes of conduct, etc. administered by the Financial Services Board. The Committee may impose unlimited penalties, compensation orders and cost orders. Such orders are enforceable as if it was a judgment of the Supreme Court of South Africa.

The FSB has stipulated effective enforcement as an important factor in its strategic plan. To aid effective enforcement, the FSB Enforcement Committee (EC) was established by statute in the Financial Institutions (Protection of Funds) Act, 2001. The Committee considers cases of alleged contraventions of legislation administered by the FSB. The Committee is appointed by the Board of the FSB.

## **Which cases may be referred?**

If the Registrar is of the opinion that any provision of any Act administered by the FSB has been contravened, he may refer the case to the EC. However, if the Registrar himself is by law empowered to impose a penalty; such case may not be referred to the EC. In other words, the Registrar and the EC do not have dual jurisdiction.

In simple cases of late submissions and returns, the Registrar retains his authority to impose penalties. Every other case of non-compliance with FSB legislation (and subordinate legislation), may be referred to the EC.

## **Board of Appeal**

The Appeal Board first came into existence by virtue of Section 26 of the Financial Services Board Act No. 97 of 1990 (the FSB Act) and was re-established in expanded form and with amended procedures under the Financial Services Laws General Amendment Act No 22 of 2008. The latter Act introduced Sections 26A and 26B to the FSB Act which now deal with the Appeal Board, its panels and appeal proceedings.

The Appeal Board is an independent tribunal comprising members who are neither employees of the FSB nor active participants in the financial services industry.

(Source: [www.fsb.co.za](http://www.fsb.co.za))

## **1.3 THE ROLES, RESPONSIBILITIES AND REQUIREMENTS REGARDING REPRESENTATIVES IN TERMS OF FAIS**

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### **1.3.1 The role of a representative**

The role of an authorised representative is to provide financial services to clients for or on behalf of an FSP. In this role the representative could be an employee of the FSP. He could also provide this service in terms of any other mandatory agreement with the FSP.

This means that the representative may also be a consultant, an outsourced person or a temporary employee.

A “representative” is any person who renders a financial service for or on behalf of a financial services provider, in terms of conditions of employment or any other mandatory agreement, but excludes a person rendering clerical, technical, administrative, legal or accounting service, which service does not require judgment on the part of that person, or does not lead a client to any specific transaction in respect of a financial product in response to general enquiries.

The following examples explain the role of a representative in practical terms.

**Example 1:**

John is employed by Excel Life. This agreement authorises him to provide financial services for Excel Life to clients. John is a representative for Excel Life (the authorised FSP).

**Example 2:**

Jack is an independent broker. He has a mandate from Excel Life. This agreement authorises him to provide financial services on behalf of Excel Life to clients. Jack is a representative for Excel Life (the authorised FSP).

Persons who do not qualify as representatives in terms of FAIS are those that provide clerical, technical, administrative, legal and accounting services in a subordinate capacity, provided that their service either does not require judgement, or does not lead a client to a specific transaction in respect of a financial product in response to general enquiries.

**Example 1:**

Joan is a clerk in the admin department of Excel Life. She processes clients' applications for policies.

**Example 2:**

Wilfred captures claims submitted by clients. He does not process the claims, but merely captures them on the electronic system.

### 1.3.2 The requirements for representatives

The representative renders an intermediary service and/or gives advice to clients on behalf of an authorised (licensed) FSP.

As such, the representative does not act for him/herself, but for the FSP – even in the case of a sole proprietor FSP – the whole business may consist of only one person, but the person fulfils various roles and in different legal and regulatory 'persona'. Representatives are appointed by FSPs and the FSP takes responsibility for the actions (and omissions) of the representatives.

It is therefore very important that the FSP ensures that the representatives, who act on its behalf, meet all the regulatory requirements. Section 13 of the FAIS Act stipulates that only lawfully appointed representatives that are fit and proper are able to render financial services.

Representatives need to be able to provide proof at all times and prior to rendering a financial service, that they are authorised to act as representatives of the FSP. In addition, the FSP has to confirm that it accepts responsibility for the activities of its representatives.

FAIS requires that representatives meet specific requirements:

- A representative must confirm to clients (as certified by the FSP) that he has an **employment or mandate agreement with the FSP**, to represent the FSP and that the **FSP accepts responsibility for the activities of the representative** performed in terms of the agreement.
- If a representative was **debarred**, he can only operate as a representative again if the **procedures for reappointment of debarred representatives** have been followed
- A representative must be **fit and proper** as required by the FAIS Act. (We discuss this in more detail below.)
- A representative **may work under supervision** while obtaining the required experience requirements, subject to certain conditions.
- A representative must **comply with the FAIS Act** and other **relevant laws** which apply to the conduct of business. (We discuss compliance with the General Code in more detail below).
- If a representative also acts as a key individual, it follows that the representative will also have **those responsibilities**, in addition to the representative responsibilities.

### 1.3.3 The responsibilities of representatives

Section 16 of the FAIS Act requires that the Registrar must draft a Code of Conduct for authorised financial services providers. This has been done and the General Code of Conduct requires that financial service providers and their representatives fulfil the following responsibilities:

- They have to act honestly and fairly, and with due skill, care and diligence, in the interests of clients and the integrity of the financial services industry.
- When representations are made or information provided to a client, it must be factually correct; it must be provided in plain language; it should not be misleading; it must be adequate and appropriate given the level of knowledge of the client and it must be provided timeously so as to afford the client reasonably sufficient time to make an informed decision.
- They must have and effectively employ the resources, procedures and appropriate technological systems for the proper performance of professional activities.
- They should obtain appropriate and available information regarding clients' financial situation, financial product experience and objectives in connection with the financial service required.
- They have to act with caution and treat clients fairly in a situation of conflicting interests.

This Code of Conduct also contains particular responsibilities relating to:

- the making of adequate disclosures of material information, including disclosures of actual or potential own interests in relation to dealings with clients.
- adequate and appropriate record-keeping.
- avoidance of fraudulent and misleading advertising, canvassing and marketing
- proper safekeeping, separation and protection of funds and transaction documentation of clients.
- where appropriate, suitable guarantees or professional indemnity or fidelity insurance cover and mechanisms for adjustments of such guarantees or cover by the Registrar in any particular case; and
- any other matter that is necessary or expedient to be regulated in the code for the better achievement of the objects of the Act.

When giving advice (Section 8 of the General Code), representatives/FSPs must ensure that they:

- take reasonable steps to seek from the client appropriate and available information regarding the client's situation.
- conduct an analysis based on the information obtained.
- identify the financial product(s) that will be appropriate to the client's risk profile and needs.
- make adequate disclosures when replacing one product with another (fees, costs, consequences, special terms, etc.).
- take reasonable steps to ensure that the client understand the advice and that the client is in a position to make an informed decision.
- keep a record of advice and provide the client with a copy.

#### 1.4 THE REQUIREMENTS FOR LICENSING OF THE FSP FOR THE ROLE OF THE REPRESENTATIVE

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The Registrar authorises an FSP to act by issuing a licence to act as authorised financial services provider.

Representatives are appointed by the FSP, either through contract of employment or through another mandate agreement. A person may not act as a representative of an authorised financial service provider unless the person has been appointed as a representative of the FSP under Section 13 of the FAIS Act. Once appointed, the FSP will authorise the representative to act on the FSP's behalf.

Representatives act on behalf of the FSP and the FSP is responsible for the actions of the representative insofar as the representative provides a financial service in respect of financial products. As such, the FSP must maintain a register of all the representatives and key individuals employed or mandated by the FSP. This register must regularly be updated and be available to the Registrar for reference or inspection purposes. The register must contain every representative's or key individual's name, ID number and business address, as well as:

- state whether the representative acts for the provider as an employee or as mandatory;
  - indicate if the representative is working under supervision or not;
  - and specify the sub-categories in which such representatives are competent to render financial services.
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The FSP must notify the Registrar in writing of the removal of the names from the register within a period of 15 days from the date thereof or appointment.

The FAIS Registrar does not issue licences to representatives, nor does the Registrar 'approve' Representatives. The FSP appoints representatives and carries all the responsibilities in relation to ensuring that the representatives are fit and proper and comply with legislation and the FAIS subordinate legislation in particular (like the General Code).

The FAIS Act currently provides for the following categories of licences for FSPs:

Category I FSP

This category has 20 sub-categories; each has been categorised based on the types of financial products that financial services providers and their representatives may sell and deal with. Most FSPs fall within this category.

Category II Discretionary FSP

This category of FSP provides intermediary services of a discretionary nature, such as investment managers.

Category IIA Hedge fund FSP

This category of FSP provides intermediary services of a discretionary nature with regard to hedge funds.

Category III Administrative FSP

This category of FSP renders intermediary services of a discretionary nature through the method of bulking. The category includes LISPs, for example.

Category IV Assistance Business FSP

This category FSP renders intermediary service in relation to the administration of assistance policies (funeral policies) which means work performed by a person relating to the offsetting of claims, the processing of claims or the payment of fees or commission in respect of an assistance policy.

## Note

The categories of FSPs are then further subdivided into sub-categories, based on products, for example:

**Long-term Insurance Sub-category A** refers to assistance policies.

**Long-term Insurance Sub-category B** is split into two categories as follows:

**Long-term Insurance Sub-category B1** refers to disability, health and life policies as defined in the Long-term Insurance Act, which provide only risk benefits.

**Long-term Insurance Sub-category B2** refers to long-term policies as defined in Section 1 of the Long-term Insurance Act, 1998 which are:

- a) investment policies as defined in Part 5B of the Regulations under the Long-term Insurance Act, 1998, which guarantee a minimum return of any premium paid at a specific future date or dates, and where such minimum is ascertainable in Rand terms at inception;
- b) disability, health and life policies that provide risk benefits as contemplated in the Regulations under the Long-term Insurance Act, 1998, and have a guaranteed investment value or a materially equivalent value;
- c) annuities which guarantee a minimum annuity for the term of the policy which annuity is ascertainable in Rand terms at inception; or
- d) any policy which combines the policy features included in paragraphs (a) to (c), but excludes fund policies, fund member policies and policies referred to in the definitions of Long-term Insurance Sub-categories A, B1 and C;

[Definition of 'Long-term Insurance Sub-category B2' inserted by BN 60 of 12 May 2010]

**Long-term Insurance Sub-category C** refers to policies as defined in the Long-term Insurance Act, excluding fund member policies and retirement annuity policies, and policies issued to and/or in respect of preservation funds as well as policies specified in Long-term Insurance Sub-category A and B. Category C policies do not necessarily offer guarantees.

A full list of sub-categories appears under Section 1.4.3.

For ease of reference we have provided the definition of "long-term policy" from Section 1 of the Long-term Insurance Act below:

"Long-term policy" means an assistance policy, a disability policy, fund policy, health policy, life policy or sinking fund policy, or a contract comprising a combination of any of those policies; and includes a contract whereby any such contract is varied;

## 1.5 THE FIT AND PROPER REQUIREMENTS THAT APPLY TO REPRESENTATIVES

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Section 6A of the FAIS Act determines that the Registrar must determine fit and proper requirements for the key individuals, representatives, key individuals of representatives of providers and compliance officers for each category of providers. Fit and proper requirements may relate to personal character qualities of honesty and integrity; competence (experience, qualifications and knowledge tested through examinations determined by the Registrar); operational ability; financial soundness and continuous professional development.

Different fit and proper requirements may be determined for natural persons and for partnerships, trusts or corporate or unincorporated bodies. The Registrar may amend the fit and proper requirements from time to time.

Fit and proper requirements were published in the Government Gazette on 15 October 2008. The following documents together contain all the requirements and conditions to which authorised FSPs, key individuals and representatives must adhere. These are called Board Notices and they may be amended from time to time.

- Board Notice 103 of 2008 – Determination of **Continuous Professional Development (CPD) Requirements**, 2008
- Board Notice 104 of 2008 – the **Exemption in respect of services under supervision** in terms of Requirements and Conditions, 2008
- Board Notice 105 of 2008 – the Determination of **Qualifying Criteria and Qualifications** for Financial Services Providers, 2008; and
- Board Notice 106 of 2008 – the Determination of **Fit and Proper Requirements for Financial Services Providers**, 2008.
- Board Notice 60 of 2010 - **Amendment of Fit and Proper Requirements, exemption of services under supervision, continuous professional development and determination of qualifications and qualifying criteria.**

The table below provides a summary of the fit and proper requirements and how they apply to the different role-players.

**Table 1.1**

<b>'Fit &amp; proper' requirement</b>	<b>FSPs</b>	<b>FSPs (Sole proprietors)</b>	<b>Key individuals</b>	<b>Representatives</b>	<b>Compliance officers</b>
Honesty & integrity	Y (Director, member, etc.)	Y	Y	Y	Y
Competence: Experience requirements	N	Y	Y	Y	Y
Competence: Qualifications	N	Y	Y	Y	Y
Competence: Regulatory Examinations (RE Exams)	N	Y	Y	Y	Y
Competence: Continuous professional development (CPD)	N	Y	Y	Y	Y
Operational ability	Y	Y	Y	N	Y
Financial soundness	Y	Y	N	N	Y

For the purpose of this module we shall only discuss those fit and proper requirements that are applicable to representatives. These requirements can be summarised as follows:

### **Fit and proper requirements for representatives**

Any key individual and/or representative of an FSP must:

- be a person who is honest and has integrity.
- comply with the applicable minimum experience requirements.
- have the relevant qualification as prescribed.
- have successfully passed the relevant first and second level Regulatory Examinations.
- comply with the CPD requirements as set out.

### 1.5.1 Personal character qualities of honesty and integrity

A person who wants to be authorised as an FSP, key individual or representative has to show that he is an honest person who has integrity. In other words, he has to show that his behaviour is always uncorrupted, fair and upright. It is the responsibility of the FSP to confirm a person's honesty and integrity before he is appointed as a representative.

In determining whether an FSP, key individual or representative complies with this requirement, the Registrar may refer to **any** information in his possession or brought to his attention. The following factors constitute clear (*prima facie*) evidence that an FSP, key individual or representative does not qualify as a person who is honest and has integrity.

#### **Factor 1:**

If a person has, within a period of five years preceding the date of the application, been found guilty in any criminal or civil proceedings by a court of law (whether in the republic or elsewhere) of having acted fraudulently, dishonestly (e.g. having stolen money from an employer), unprofessionally, dishonourably or in breach of a fiduciary duty (breach of trust).

#### **Factor 2:**

If a person has, within a period of five years preceding the date of application, been found guilty by any professional or financial services industry body (whether in the Republic or elsewhere) recognised by the Board, of an act of negligence, dishonesty, incompetence or mismanagement.

#### **Factor 3:**

If a person has, within a period of five years, preceding the date of application, had a licence refused, suspended or withdrawn by any regulatory or supervisory body (e.g. the FSB) on account of an act of dishonesty, negligence, incompetence or mismanagement.

#### **Factor 4:**

If a person has, within a period of five years preceding the date of application, been refused admission to a statutory professional or voluntary body on account of dishonesty, negligence, incompetence or mismanagement

**Factor 5:**

If a person has, within a period of five years preceding the date of application, been found guilty by any regulatory or supervisory body (inside or outside the country) of an act of dishonesty, negligence, incompetence or mismanagement of sufficient importance

**Factor 6:**

If a person has at any time been disqualified or prohibited by any court of law from taking part in the management of any company irrespective of whether this disqualification has since been lifted or not.

What is the importance of being a person who is honest and has integrity? Think of the key role that a representative fulfils in advising clients on their financial matters. In the process the representative will also receive money from clients and has to complete forms on behalf of clients. Clients rely on representatives to guide them honestly in the process of providing appropriate financial services advice.

The following example, taken from the "Guide on Fit and Proper Requirements in Plain Language for Representatives" (downloaded from [www.fsb.co.za](http://www.fsb.co.za) on 20 October 2009) illustrates the importance of honesty and integrity.

**Example:**

A large financial services provider (FSP) initiated a disciplinary hearing against one of its representatives, after a forensic investigation revealed that the representative had copied clients' signatures and pasted them on the policy application forms.

The clients concerned confirmed that although the representative had contacted them regarding the insurance policies and that they had agreed to invest in the policies, they did not sign the application forms. One client also indicated that he had signed blank documentation given to him by the representative.

During the disciplinary hearing the representative admitted that he had taken a “short-cut” by reproducing the clients’ signatures by copying and pasting the signatures onto the application documents, as he was under severe financial pressure and needed to get business on the books to ensure that he received an income in the immediate future. He further stated that his actions were not malicious as the clients had agreed to invest in the policies and he had merely reproduced the clients’ signatures to save time.

The representative was found guilty of fraud and misrepresentation by the FSP. The FSP dismissed the representative and debarred him under Section 14 of the FAIS Act based on the fact that the representative did not comply with the honesty and integrity requirements. A consequence of his debarment is that he will, for at least 12 months from the date of debarment, not be able to be reappointed as a representative of another FSP.

Even after the 12-month period has lapsed, he will have to provide evidence that:

- a) the defect of character that led to him being debarred no longer exists.
- b) he has, inter alia, undergone a genuine, complete and permanent reform.
- c) if appointed as a representative, he will in future conduct himself honourably and will be someone who can be trusted to carry out the duties of a representative in a satisfactory manner as far as clients and members of the public are concerned.

Evidence of being an honest person and having integrity is not only a requirement on appointment as a representative, but it is an ongoing requirement. Representatives have a duty to report if anything has happened that may change their fit and proper status. FSPs have to conduct checks in this regard and report any changes to the Registrar. The FSP must also indicate to the Registrar what action they have taken in this regard.

### 1.5.2 Competency requirements

A representative must have the competence to correctly fulfil his responsibilities imposed by the FAIS Act. This means that the following requirements must be met:

- Comply with the minimum **experience** requirements.
- Have the relevant **qualifications**.

- Have successfully passed the relevant first and second level **Regulatory Examinations** as set by the Registrar.
- Ongoing compliance with **continuous professional development (CPD)** requirements.

#### **General competency requirements for representatives**

A representative must, at date of appointment by an FSP, comply with the following:

- The minimum experience requirements
- All the applicable required qualifications
- The relevant regulatory examinations

**Except if:**

The Registrar exempted a representative from any of the above while rendering a financial service under supervision.

### **Note**

When a person is a sole proprietor FSP he cannot work under supervision and therefore has to meet all the above mentioned requirements before a licence will be granted.

A health service representative must be accredited as a broker or apprentice broker if services are performed under supervision. Once all the qualifications, experience and regulatory examination requirements are met, the representative must complete CPD as required.

#### **1.5.3 Experience requirements**

A person has to have, or gain, hands-on experience in the category/categories for which he is appointed. This means that he acquires knowledge, skills and expertise in a practical way by actively rendering financial services in the sub-categories for which he seeks appointment.

Representatives may gain the experience whilst providing financial services under supervision and may therefore be exempted from compliance with the requirements when appointed (subject to the criteria and requirements for services under supervision). The specific experience requirements in respect of each sub-category is published in the subordinate legislation and shows the



number of months/years, in a table format, required for each sub-category, where applicable. Because of the nature of the business, Categories IIA and III do not have tables.

Let's look at the table applicable to Category I:

<b>Table A: Category I experience requirements for an FSP and representative</b>			
	<b>Sub-category</b>	<b>Advice: Minimum experience</b>	<b>Services: Minimum experience</b>
1.1	Long-term Insurance Sub-category A	6 months	2 months
1.2	Short-term Insurance Personal Lines	1 year	6 months
1.3	Long-term Insurance Sub-category B1	1 year	6 months
1.4	Long-term Insurance Sub-category C	1 year	6 months
1.5	Retail Pension Benefits	1 year	6 months
1.6	Short-term Insurance Commercial Lines	1 year	6 months
1.7	Pension Fund Benefits	1 year	6 months
1.8	Securities and Instruments: Shares	2 years	1 year
1.9	Securities and Instruments: Money market instruments	2 years	1 year
1.10	Securities and Instruments: Debentures and securitised debt	2 years	1 year
1.11	Securities and Instruments: Warrants, certificates and other instruments acknowledging debt	2 years	1 year
1.12	Securities and Instruments: Bonds	2 years	1 year
1.13	Securities and Instruments: Derivative instruments excluding warrants	2 years	1 year
1.14	Participatory Interests in one or more Collective Investment Schemes	1 year	1 year
1.15	Forex Investment Business	2 years	1 year
1.16	Health Service Benefits	2 years	2 years
1.17	Long-term Deposits	6 months	3 months
1.18	Short-term Deposits	6 months	3 months
1.19	Friendly Society Benefits	6 months	2 months
1.20	Long-term Insurance Sub-category B2	1 year	6 months

(Published in Board Notice 106/2008, amended by BN 151/2008 and BN 60/2010)

## Note

The Category I table was changed to 20 sub-categories in Board Notice 135 of 2012, where the qualifications are mapped. Sub-category 1.3 is now Long-term Insurance Sub-category B1. Sub-category 1.20 is now Long-term Insurance Sub-category B2.

Let's look at the table applicable to FSPs and representatives in Category II – Discretionary FSPs who render intermediary services of a discretionary nature; also known as investment managers

<b>Table B: Category II experience requirements for an FSP and representative</b>		
	<b>Sub-category</b>	<b>Minimum experience</b>
2.1	Long-term Insurance	
2.1.1	Sub-category B1	2 years
2.1.2	Sub-category B2	2 years
2.2	Long-term Insurance Sub-category C	2 years
2.3	Retail Pension Benefits	2 years
2.4	Pension Fund Benefits	2 years
2.5	Securities and Instruments: Shares	3 years
2.6	Securities and Instruments: Money market instruments	3 years
2.7	Securities and Instruments: Debentures and securitised debt	3 years
2.8	Securities and Instruments: Warrants, certificates and other instruments acknowledging debt	3 years
2.9	Securities and Instruments: Bonds	3 years
2.10	Securities and Instruments: Derivative instruments excluding warrants	3 years
2.11	Participatory Interests in one or more collective investment scheme	2 years
2.12	Forex Investment Business	3 years
2.13	Long-term deposits	1 year
2.14	Short-term deposits	1 year

(Published in Board Notice 106/2008, amended by BN 169/2009 and substituted by BN 60/2010)

## Note

The Category II and IIA table was amended in Board Notice 135 of 2012 to include 16 sub-categories with sub-category 2.1 being Long-term Insurance Sub-category B1, sub-category 15 being Category II Hedge Fund FSPs and sub-category 16 being Long-term Insurance Sub-category B2.

Let's look at the general experience requirements which apply to **all** representatives in **all** the categories.<sup>1</sup>

The representative must, on the date of appointment (by the FSP) meet the minimum experience required in the different sub-categories (as described in the relevant table).

- It must be practical experience gained in the rendering of financial services in the different categories and the sub-categories concerned, provided that the experience:
  - involved the active and ongoing gaining of knowledge, skills and expertise required in terms of the Act.
  - was obtained through active involvement in providing financial services and could have been gained while working under supervision for the minimum experience period.
  - could have been gained within or outside the borders of South Africa.
  - could have been gained in intermittent periods, not more than five years prior to the application, and includes experience gained prior to the implementation of the FAIS Act. The dates relating to the experience must be clearly stated.
  - could have been gained simultaneously in multiple sub-categories, provided that proof of such experience can be submitted.

Now we look at the experience requirements that apply specifically for representatives for each category.

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<sup>1</sup> Sections 4(1)(b), 4(2)(b), 4(3)(b), 4(4)(b), 4(5)(b) of BN 106

### Experience requirements for Category I representatives

- All the general experience requirements must be met in relation to Category I and the sub-categories concerned.
- In addition, if the licence changes to include other financial services or other sub-categories, the experience requirements of the other sub-categories must be met, provided that:
  - if the change includes additional financial service (advice and intermediary service), the representative must obtain 50% of the experience requirements applicable to the additional financial services (as indicated in the applicable table); and
  - if the change relates to an additional sub-category, the representative must obtain 100% of the experience requirements applicable to the additional sub-category (as indicated in the applicable table).

### Experience requirements for Category II representatives

- All the **general experience requirements** must be met in respect of Category II and the sub-categories concerned
- In addition:
  - the experience could have been gained **in a team environment where the person participated in the process of making investment decisions while working under supervision**; and
  - if the licence changes to include the financial services in other **sub-categories**, the **experience** requirements of the other **sub-categories** must be met.

### Experience requirements for Category IIA (Hedge Fund FSP) representatives

- All the general experience requirements must be met in respect of Category IIA.
- In addition, the representative must have three years' practical experience in the rendering of financial services in Category IIA.

### Experience requirements for Category III (Administrative FSP) representatives

- All the general experience requirements must be met in respect of Category III.
- In addition:
  - the representative must have three years' practical experience in the rendering of financial services in Category III;

- It must be practical experience gained in the rendering of financial services, as referred to in the definition of “administrative FSP”.

#### Experience requirements for Category IV (Assistance Business FSP) representatives

- All the general experience requirements must be met in respect of Category IV.
- In addition the representative must have **one year practical experience** in the rendering of **financial services**, as referred to in the **definition of “administration of assistance policies”** (*“administration of assistance policies” means work performed by a person relating to the offsetting of claims, processing of claims or payment of fees or commission in respect of an assistance policy.*)

#### Example:

Long-term Insurance Category A requires six months’ minimum experience with regard to intermediary services for the giving of advice and two months’ minimum experience with regard to intermediary services.

An individual can gain experience in different categories at the same time. The experience period differs per category or sub-category. Such experience could have been gained during intermittent periods but not more than five years prior to the application.

Representatives that have not gained the required experience yet may work under supervision until such time as they meet the requirements. Look at the following example of how this principle is applied:

#### Example:

Michelle worked as a representative within Category I Securities and Instruments (Sub-categories: Shares and Money Market Instruments) for the whole of 2002, thus gaining one year of appropriate experience.

She left work to have a baby at the beginning of 2003 and applied to return to her same company at the beginning of January 2009. Her application was approved subject to the requirement that she work under supervision from 1 January 2009 to 31 December 2010 to gain the required two years of experience for those sub-categories because her original experience took place more than five years prior to her application in 2009.

#### 1.5.4 Qualifications

In the fit and proper requirements, the relevance of qualifications is based on their coverage of qualifying criteria.

The qualifying criteria serve **two purposes**:

1. It is used to **evaluate** the **content of the qualifications**.
2. It is used to **set the standards** for the **regulatory examinations**.

The qualifying criteria describe what a person must know (knowledge) and what a person must be able to do (skill) in order to complete a specific task relating to giving advice and/or rendering intermediary services successfully.

A representative must meet the entry-level qualifications for his category or sub-category when appointed. He may then work under supervision until he completes the full qualification requirements.

The FAIS Registrar published a list of "recognised qualifications" for each category and sub-category. Should the representative already have completed further qualifications, he needs to check that his qualification appears on the list. When a representative is responsible for more than one category or sub-category he needs to have a qualification that meets the most onerous requirements; there is no need to have a qualification for each category or sub-category.

In order to establish which qualifications are recognised as appropriate for representatives, the qualifications must meet the qualifying criteria, also set by the Registrar and published in the subordinate legislation.

Should the representative have to complete a further full qualification, the qualification must be completed within six years of appointment.

In order to understand the qualification requirements, it is crucial to identify whether one will be classified as part of the "transitional arrangements" (appointed prior to 1 January 2010) or as a "new entrant" (appointed 1 January 2010 onwards).

**Types of qualifications**

One of the competency requirements for fitness and propriety beyond 2010 is that the representative must have an appropriate qualification.

The FAIS Registrar published a list of "recognised qualifications" for each category and sub-category.

It is not possible for all qualifications to meet all the qualification criteria, and you will find that some qualifications' content meets 80% of specific criteria, and others may meet 100% of the applicable criteria.

The main reason for the differentiation and classification of qualifications is to indicate whether a person has to complete a regulatory examination, in addition to the qualification. To differentiate between the qualifications, the Regulator introduced a "rating" system.

**Table 1.2**

If you	Then
have a qualification and the content meets the qualifying criteria only partially, it is recognised as a Generic (G) qualification.	you have to complete a product-specific regulatory examination.
have a qualification and the content meets the qualifying criteria 80%, it is recognised as a Specific (S) qualification. This status only relates to representatives and FSPs appointed under the transitional requirements, i.e. prior to 1 January 2010.	you will be exempted from the applicable product-specific regulatory examination, as the transitional arrangements are applicable to you.

If you	Then
<p>have a qualification and the content meets the qualifying criteria 100%, it is recognised as a Specific (SP) qualification. SP status refers to post-transitional requirements, i.e. representatives, key individuals and FSPs authorised from 1 January 2010.</p>	<p>you will be exempted from the product-specific regulatory examination.</p>

### Qualifications list

The Registrar will, from time to time publish an updated version of the qualification list in the Government Gazette. If a particular qualification is not on the list, application can be made to the FSB for recognition. (Download the form from the FSB web site.)

#### Examples of qualification lists:

In the example below we are looking at an extract from Board Notice 268 of 2013, List 1 for Category I FSPs.



List 1: Qualifications recognised for Category IFSPs																				
Qualification title	Inst No	Institution	SAQA ID	Level	Credits	1	2	3	4	5	6	7	8	9	10	11	12	13	14	
ACCREDITED CERTIFIED	218	ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS	63550	8	915	G	G	G	G	G	G	G	G	G	G	G	G	G	G	G
ACCREDITED CERTIFIED	49	INTEC COLLEGE	21166	4	120	G	G	G	-	-	-	-	-	-	-	-	-	-	-	-
ACCREDITED CERTIFIED	47	DAMELIN	57998	5	120	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP
ACCREDITED CERTIFIED	4	MILPARK BUSINESS SCHOOL	62810	5	120	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP
ACCREDITED CERTIFIED	47	DAMELIN	21166	4	120	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP
ACCREDITED CERTIFIED	4	MILPARK BUSINESS SCHOOL	62809	4	120	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP
ACCREDITED CERTIFIED	11	UNIVERSITY OF FREE STATE	22151	5	120	G	G	G	G	G	G	G	G	G	G	G	G	G	G	G
ACCREDITED CERTIFIED	4	MILPARK BUSINESS SCHOOL	62269	5	120	G	G	G	G	G	G	G	G	G	G	G	G	G	G	G
ACCREDITED CERTIFIED	11	UNIVERSITY OF FREE STATE	17001	5	120	G	G	G	G	G	G	G	G	G	G	G	G	G	G	G
ACCREDITED CERTIFIED	170	GIMT SCHOOL OF BUSINESS (PTY) LTD	36047	5	120	G	G	G	G	G	G	G	G	G	G	G	G	G	G	G
ACCREDITED CERTIFIED	91	GORDON INSTITUTE OF BUSINESS SCIENCE (GIBS)	36047	5	120	G	G	G	G	G	G	G	G	G	G	G	G	G	G	G
ACCREDITED CERTIFIED	106	THE GRADUATE INSTITUTE OF MANAGEMENT AND TECHNOLOGY	36047	5	120	G	G	G	G	G	G	G	G	G	G	G	G	G	G	G
ACCREDITED CERTIFIED	4	MILPARK BUSINESS SCHOOL	65170	5	120	G	G	G	G	G	G	G	G	G	G	G	G	G	G	G
ACCREDITED CERTIFIED	5	UNIVERSITY OF PRETORIA	67215	7	120	G	G	G	G	G	G	G	G	G	G	G	G	G	G	G
ACCREDITED CERTIFIED	113	DA VINCI INSTITUTE	59449	5	120	G	G	G	G	G	G	G	G	G	G	G	G	G	G	G
ACCREDITED CERTIFIED	91	GORDON INSTITUTE OF BUSINESS SCIENCE (GIBS)	73350	6	120	G	G	G	G	G	G	G	G	G	G	G	G	G	G	G
ACCREDITED CERTIFIED	5	UNIVERSITY OF PRETORIA	73350	6	120	G	G	G	G	G	G	G	G	G	G	G	G	G	G	G
ACCREDITED CERTIFIED	106	THE GRADUATE INSTITUTE OF MANAGEMENT AND TECHNOLOGY	36045	6	120	G	G	G	G	G	G	G	G	G	G	G	G	G	G	G
ACCREDITED CERTIFIED	139	GRADUATE SCHOOL OF MANAGEMENT AND TECHNOLOGY	36045	6	120	G	G	G	G	G	G	G	G	G	G	G	G	G	G	G
ACCREDITED CERTIFIED	153	INTERNATIONAL ACADEMY OF RETAIL BANKING	FSB0092	0	0	G	G	G	G	G	G	G	G	G	G	G	G	G	G	G
ACCREDITED CERTIFIED	46	FINANCIAL PLANNING INSTITUTE	59235	7	120	S	G	S	S	S	S	S	S	S	S	S	S	S	S	S
ACCREDITED CERTIFIED	89	INSTITUTE OF INTERNAL AUDITORS	FSB 083	0	0	G	G	G	G	G	G	G	G	G	G	G	G	G	G	G

Source: Government Gazette, 20 December 2013

You will notice that the list shows the name of the qualification and the institution that offers it, as well as the South African Qualification Authority (SAQA) number that is used to identify different qualifications. It also shows the NQF level of the qualification and the number of credits. Thereafter the 20 sub-categories of Category I are listed, with the last column allocated to qualifications that are acceptable for key individuals.

Each qualification is rated as a G, S or SP based on its coverage of the qualifying criteria, as discussed above.

### **Appointment dates**

There are different qualification requirements for different appointment dates. "Appointment date" means the first date on which a representative was appointed by any financial services provider to render financial services in relation to a specific category or sub-category. Representatives appointed between 2004 and 2009 are subject to the transitional arrangements published in the subordinate legislation. These rules determine the type of qualification which is required, as well as arrangements regarding the requirements in terms of experience, regulatory examinations and CPD.

### **Transitional arrangements**

The transitional arrangements apply to those that have been authorised, appointed or approved before 31 December 2009. Different qualifications (or skills programmes) must be achieved for the different categories, based on the list of recognised qualifications published by the Registrar

Refer to Board Notice 106 of 2008 as amended for detailed information. Remember – we are referring to date of first appointment.

Individuals appointed or approved during 2009 should meet a specific entry level requirement:

**Table 1.3**

<b>Qualification requirement</b>	<b>By when</b>
<p>Representatives appointed up until 31 December 2007:</p> <p>Meet the "old" fit and proper requirements as per BN 91 of 2006. (Also referred to generally as the "credit" requirements).</p>	<p>31 December 2009</p>
<p>Representatives appointed between 1 January 2008 and 31 December 2009:</p> <p>This group has a choice between the following options:</p> <p>Option 1: Meet the "old" fit and proper requirements as per BN 91 of 2006 (Column 2 of Table E) by 30 December 2011.</p> <p>Option 2: Meet the "new" fit and proper requirements, i.e. select a full qualification from the list of recognised qualifications (Board Notice 105 of 2008, Annexure 2) by 31 December 2013.</p>	

**Table 1.4**

<b>Entry level requirement</b>	<b>By when</b>
<p>Category I and IV entry level requirement:</p> <p>Matric, Grade 12 or an equivalent</p> <p>Refer to Board Notice 106 of 2008 (as amended) for detailed information.</p>	<p>At the date of appointment/approval</p>
<p>Category II, IIA and III entry level requirement:</p> <p>Relevant Bachelor's degree or equivalent.</p>	<p>At the date of appointment/approval</p>

## Note

Representatives who only work with sub-category 1.1 (Long-term Insurance Category A) and/or sub-category 1.19 (Friendly Society Benefits) should only prove that they can read, write and calculate. The FSP that is their employer should be satisfied that they can perform their duties.

## **Beyond 2010:**

Only the new fit and proper requirements apply. This would mean that:

### **Category I and IV**

- Entry level requirement: Matric, Grade 12 or an equivalent qualification
- Obtain a full qualification from the list of recognised qualifications as per Board Notice 105 of 2008, within six years of appointment/approval. The representative must obtain the relevant qualification by 30 June after the expiry of 72 months (6 years) from the date of first appointment as a representative. (Refer to Board Notice 260 of 2013.)

### **Category II, IIA and III**

- Entry level requirement: Relevant Bachelor's degree or equivalent from the list of recognised qualifications (as per Board Notice 105 of 2008, Annexure 2).

(Source: FSB Newsletter 7 of 2009)

## **1.5.5 Regulatory examinations**

To meet the fit and proper requirements in terms of competence, representatives have to complete the relevant first and second levels Regulatory Examinations (within the prescribed dates).

These exams include a set of core examinations (known as first level Regulatory Examinations) which focus on the role and responsibilities of the representative, and what you need to know about the FAIS and FICA Act in order that you remain compliant.

In addition, there will be specific examinations (known as second level Regulatory Examinations) relating to the product category or sub-category in respect of which the FSP is authorised to render financial services. These examinations will be product specific and will focus on the testing of technical knowledge and skill an individual should have when dealing with these financial products.

As with qualifications, there are specific timeframes in which individuals must complete the regulatory exams successfully. All representatives must

successfully complete the relevant first level Regulatory Examination by 30 June after the expiry of 24 months from the date of first appointment as a representative. All representatives must complete the relevant second level Regulatory Examination by 30 June after the expiry of 72 months from date of first appointment. (Refer to Board Notice 260 of 2013.)

## Note

Board Notice 120 of 2013 granted a general exemption from the Second Level Regulatory Examinations to FSPs, key individuals and representatives until a date to be determined by the Registrar. In the FAIS Information Circular 8/2013 (25 October 2013) it was stated that it was anticipated that this exemption will be in force for at least three years to allow for the development and implementation of a new model.

There is provision in the legislation that representatives may be appointed without having completed the relevant regulatory examination as long as the representatives work under supervision in the particular category or sub-category. The regulatory examination must then be completed in terms of the requirements which apply to services under supervision.

The Registrar appointed examination bodies which are responsible for compiling the examination questions and for administering the examinations. In some instances, the second level Regulatory Examination may be offered in conjunction with the first level Regulatory Examination.

Let's look at some examples:

### Example 1:

Wilfred is a representative for a Category I FSP who is appointed only for the Health Care Benefits sub-category. He will be required to write two regulatory examinations:

- Regulatory Examination Level 1 for Representatives, and
- Regulatory Examination Level 2 for Health Care Benefits.

**Example 2:**

Mandy is a representative (appointed after 1 January 2010) for a Category I FSP, and who gives advice on the following sub-categories:

- Long-term Insurance: Category C
- Retail pension funds
- Collective Investment Schemes and
- Pension fund benefits.

She will have to write the following regulatory examinations:

- Regulatory Examination Level 1 for representatives;
- Long-term Insurance: Category C and Retail Pension Funds (one exam)
- Collective Investment Schemes and
- Pension fund benefits.

In total, Mandy would thus be required to complete four regulatory examinations.

Should Mandy have a qualification that has SP status for any of these categories, she will be exempt from the second level Regulatory Examination for the category where SP is indicated.

**1.5.6 Continuous professional development**

Continuous professional development (CPD) is a new requirement and is defined in Board Notice 103 of 2008 as a process of learning and development with the purpose to ensure that representatives:

- develop and maintain professional competence in order to provide financial services of a high quality.
- understand that the primary responsibility of competence vests in the individual.
- render financial services with due care, competence and diligence with an ongoing duty to maintain knowledge and skills at required levels.

A representative must meet the CPD requirements specified for the various product categories and sub-categories once they have met the experience, qualifications and Regulatory Examination (Level 1 and Level 2) requirements.

Continuous professional development will require 15 to 60 notional hours of development over a three-year cycle. If a representative is appointed in multiple categories or sub-categories, the highest requirement in terms of notional hours will apply.

The concept of notional hours involves time taken for an 'average learner' to achieve the desired outcome, taking into account contact time, time spent in structured learning and individual learning.

Continuous professional development activities and/or programmes must be verifiable and could include courses, conferences, seminars, studies leading to formal assessment, workshops and structured self-study programmes.

The FSB must approve CPD activities and/or programmes and BN 103 of 2008 contains the conditions for approval.

Examples of verifiable CPD programmes and/or activities include the following:

- Courses, conferences and seminars
- Studies leading to formal assessments (e.g. additional qualification, which may be through private study, distance learning or attendance at formal courses)
- Workshops
- Structured self-study programmes, including web-based, computer-based or paper-based delivery that assess the knowledge.

## Note

If a representative does not meet all the fit and proper requirements by the relevant date, he will be debarred.

### 1.6 THE PURPOSE OF THE REGISTER OF REPRESENTATIVES

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An authorised FSP must maintain a register of representatives and key individuals of such representatives, which must be regularly updated.

The purpose of this register is to:

- provide a record of all the representatives of an FSP (and, where applicable, key individuals of juristic representatives) which shows
-

personal information, capacity of the representative (employee/mandatory), compliance with fit and proper requirements and the applicable categories and sub-categories the representative is appointed for or key individual is approved for.

- enable the Registrar to maintain a central register with all the information gathered from the FSP registers.
- calculate the levies (fees) payable by the FSP in respect of each representative and key individual.

The register requires the following information:

**Table 1.5**

1. FSP reference number	14. Physical address, postal code
2. Natural person ID no or passport no or registration no	15. Date of appointment
3. ID type (Natural, juristic)	16. Key individual of rep
4. Type (Natural or juristic person)	17. ID number of rep
5. Title	18. Category/Sub-category/A/B; A=Advice B=Intermediary Service
6. Initials	19. Accreditation number
7. First name of natural person	20. Qualifications
8. Surname of natural person or company name of juristic person	21. Debarred
9. Date of birth	22. Date debarred
10. Country of registration (if juristic person) or passport no	23. Reason for debarment
11. Physical (Business) address 1	24. Process flag (Add/Update/Delete)
12. Physical address 2	25. Regulatory examinations
13. Physical address 3	

The Registrar may also require other information from the FSP so as to enable him to maintain and continuously update a central register of all representatives and key individuals; such register must be published in appropriate media.



## 1.7 DISTINGUISH BETWEEN "ADVICE" AND "INTERMEDIARY SERVICES" IN TERMS OF THE FAIS ACT

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Before we can distinguish between advice and intermediary services in terms of the FAIS Act, we have to agree on the meaning of advice and intermediary services. So let's first consider each of these terms separately.

### 1.7.1 What is "advice"?

According to the FAIS Act, "advice" includes any recommendation, guidance or proposal of a financial nature by any means or media, to any client or group of clients.

This advice must be in respect of purchasing or investing in a financial product or the conclusion of a transaction aimed at incurring a liability (cession/pledge), or in respect of the variation, replacement or termination of a financial product.

The elements of "advice" include the following:

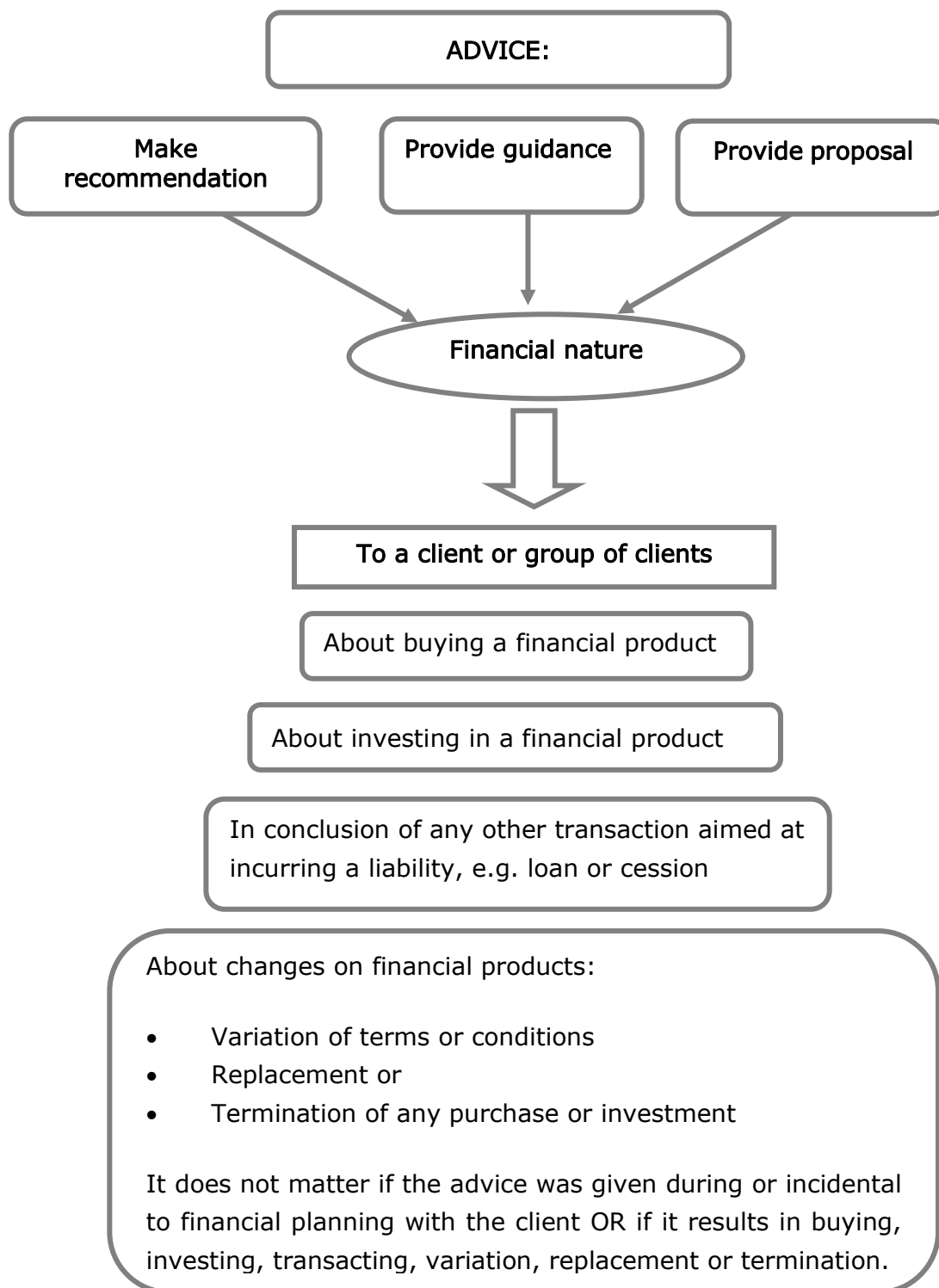
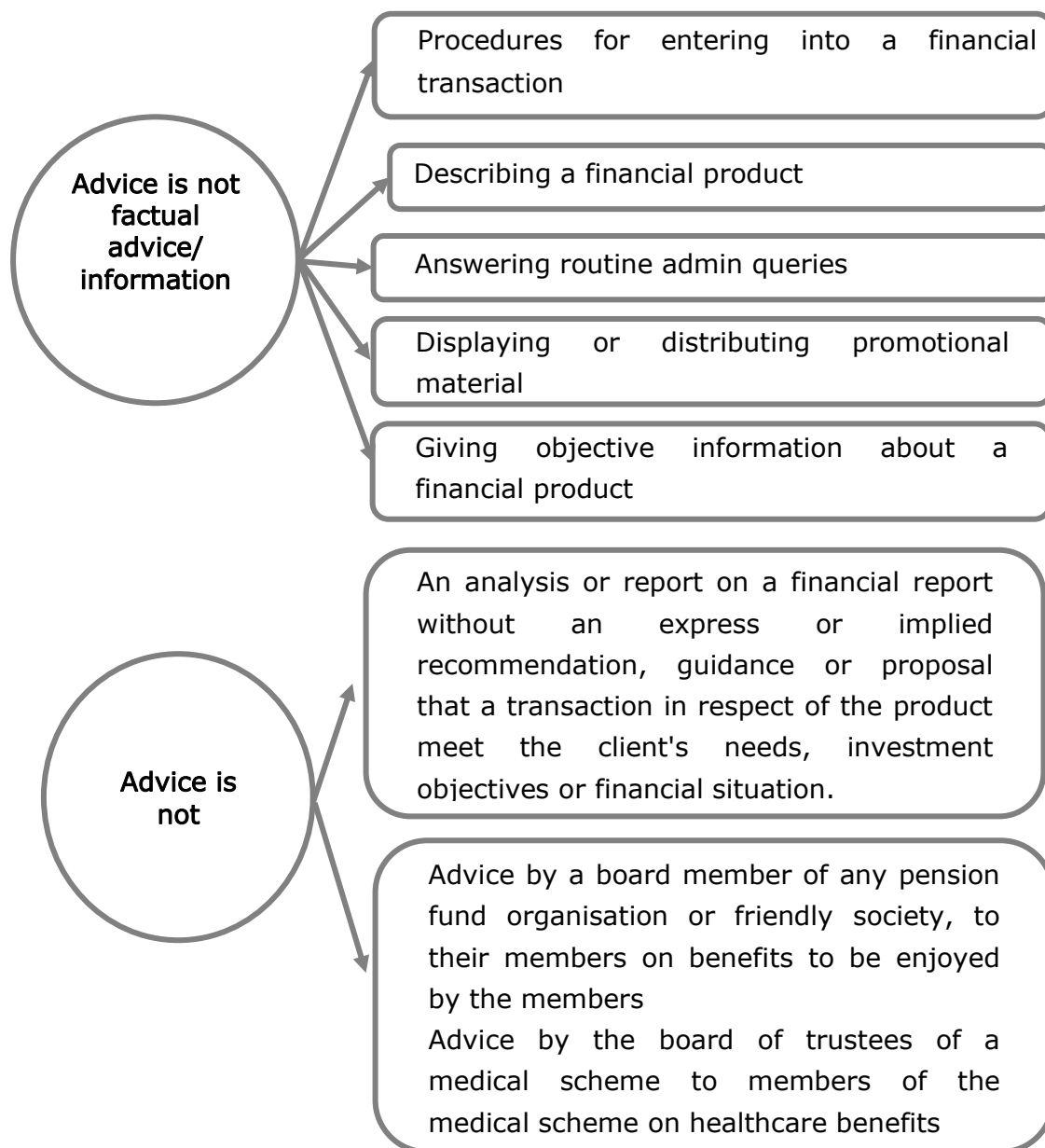


Figure 1.1

The following is **not** included in the definition of "advice":



**Figure 1.2**

The Registrar may also exempt any other advisory activity from the provisions of this Act.

### 1.7.2 What is an "intermediary service"?

Let's look at the elements of "intermediary service" in order to distinguish between the two components which make up "financial service".

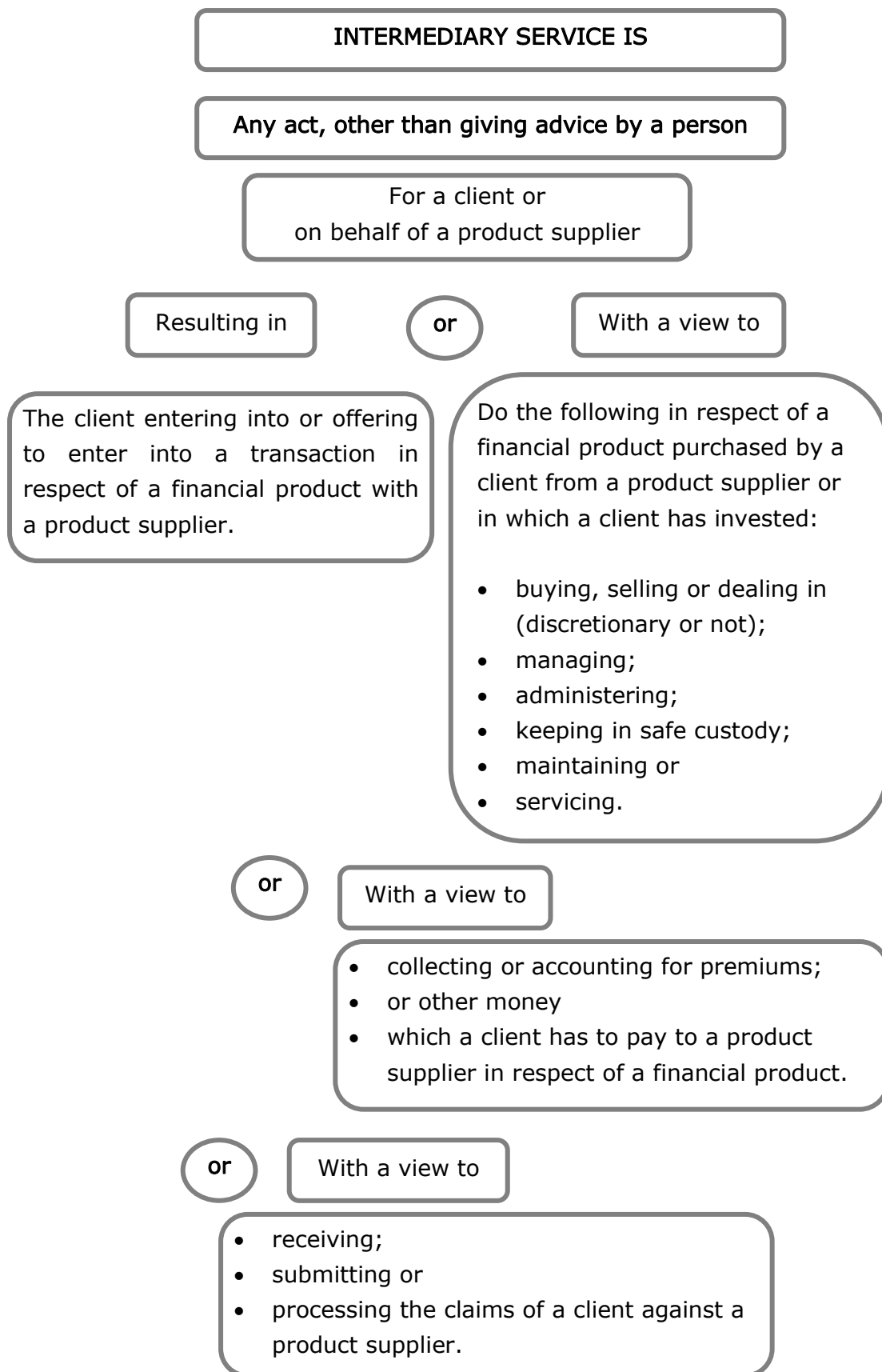
The **FAIS Act** defines **"intermediary service"** as follows:

"any act, other than the furnishing of advice, performed by a person for or on behalf of a client or product supplier:

- c) the result of which is that the client may enter into, offers to enter into or enters into any transaction in respect of a financial product with a product supplier; or
- d) with a view to –
  - i. Buying, selling or otherwise dealing in, managing administering, keeping in safe custody, maintaining or servicing a financial product purchased by a client from a product supplier of in which the client has invested; or
  - ii. Collecting or accounting for premiums or other moneys payable by the client to a product supplier in respect of a financial product; or
  - iii. Receiving, submitting or processing the claims of a client against a product supplier."

In practice, "intermediary service" means the facilitation of a financial transaction where the service is not a recommendation or guidance or proposal regarding financial products.

The **elements of "intermediary service"** include the following:



**Figure 1.3**

### 1.7.3 What is the difference between “advice” and “intermediary services”?

The difference between “advice” and “intermediary services” could be explained as follows:

- Advisory services assist the client to make a decision in relation to a financial product.
- Intermediary services may facilitate the administration of the product.

The following examples show the difference between “advice” and “intermediary services”:

#### Example 1:

Jack Daniels advises Andy Moloi on how to invest his inheritance. (Jack is **offering advice** which will help Andy to make up his mind about an investment.)

#### Example 2:

Owen advises a client that insurance is a requirement on a bond. (Owen is **giving factual advice**. Factual advice is excluded from the definition of advice in terms of FAIS.)

#### Example 3:

Mia helps Jennifer to complete an application form for purchasing a whole-life policy. Mia does not give any advice on the whole-life policy. (Mia is facilitating the action leading the client to take up this product – she is not giving advice, but **rendering an intermediary service**.)

Now that we understand the difference between “advice” and “intermediary services”, it is important to consider the full definition of “representative”.

The FAIS Act defines “representative” as follows:

“...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 a financial services provider, in terms of conditions of employment or any other mandate,

but **excludes** a person rendering clerical, technical, administrative, legal accounting or other service in a subsidiary or subordinate capacity, which service:

- (a) does not **require judgment** on the part of the latter person; or
- (b) does not lead a client to **any specific transaction** in respect of a financial product in response to general enquiries.”

It is thus clear that when a person gives advice, he qualifies as a representative and he has to be on the register of representatives. There are however also representatives who only renders intermediary services and do not give any advice to clients. From this definition it is also clear that there may be employees who render intermediary services, but who do not qualify as representatives, as they render a service which is of a clerical, technical, administrative, legal or accounting nature and the service either does not require judgment, or it does not lead a client to a specific transaction in response to general enquiries.

It is very important that you study the definitions of advice, intermediary services and representative well.

## 1.8 EXPLAIN WHEN REPRESENTATIVES CAN ACT UNDER SUPERVISION

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What is meant by "acting under supervision"? When a representative does not meet the prescribed fit and proper requirements of experience, qualifications and/or regulatory examinations (competency), the representative will be given a chance to work under supervision until he becomes compliant.

In terms of the exemption<sup>2</sup>, representatives will not have to comply in respect of experience qualifications and regulatory examinations, with the standards set for the representatives at the date of appointment.

The supervisor can be a key individual of an FSP or another representative as long as the supervisor meets the competency requirements prescribed in this exemption.

The exemption allows representatives to gain experience, obtain a qualification and complete the regulatory examinations while working under supervision in

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<sup>2</sup> Published in Board Notice 151 of 2008

Categories I, II, IIA, III and IV. The exemption is subject to certain conditions, which we discuss further on in this chapter.

The FSP must ensure that the normal working relationship between the supervisee and the supervisor allows the supervisor oversight of the activities performed by the supervisee as per agreement, and that there is regular contact that enables the transfer of skills, which may include face-to-face and/or contact via electronic means, between the supervisee and supervisor in the execution of their duties.

Representatives can only be offered the opportunity to work under supervision if the licensed FSP can satisfy the Registrar that it has the required operational ability to facilitate services under supervision.<sup>3</sup>

Let's look at the level of supervision which is required in respect of representatives working under supervision of Categories I and IV<sup>4</sup>:

**Table 1.6**

<b>Categories I and IV: Level of supervision required</b>			
<b>Category</b>	<b>Sub-category</b>	<b>Direct supervision</b>	<b>Ongoing level of supervision</b>
1.1	Long-term Insurance Sub-category A	The first two months of the period under supervision	After two months for the rest of the period under supervision
1.2	Short-term Insurance Personal Lines		
1.3	Long-term Insurance Sub-category B1		
1.4	Long-term Insurance sub-category C		
1.5	Retail Pension Benefits		
1.6	Short-term Insurance Commercial Lines		
1.7	Pension Fund Benefits (excluding Retail Pension Benefits)		
1.8	Securities and Instruments: Shares	The first four months of the period under supervision	After four months for the rest of the period under supervision
1.9	Securities and Instruments: Money Market Instruments		
1.10	Securities and Instruments: Debentures and Securitised Debt		
1.11	Securities and Instruments: Warrants, certificates and other instruments acknowledging debt		
1.12	Securities and instruments: Bonds		
1.13	Securities and Instruments: Derivative Instruments		

<sup>3</sup> Section 4(1)(a) of BN 104

<sup>4</sup> Board Notice 60 of 2010



Categories I and IV: Level of supervision required			
Category	Sub-category	Direct supervision	Ongoing level of supervision
1.14	Participatory interests in one or more Collective Investment Schemes		
1.15	Forex Investment Business		
1.16	Health Service Benefits	The first two months of the period under supervision	After two months for the rest of the period under supervision
1.17	Long-term Deposits	The first six weeks of the period under supervision	After six weeks for the rest of the period under supervision
1.18	Short-term Deposits	The first six weeks of the period under supervision	After six weeks for the rest of the period under supervision
1.19	Friendly Society Benefits	The first two weeks of the period under supervision	After two weeks for the rest of the period under supervision
1.20	Long-term Insurance Sub-category B2	The first two months of the period under supervision	After two months for the rest of the period under supervision
Category IV	Assistance Business FSP	The first six weeks of the period under supervision	After six weeks for the rest of the period under supervision

Representatives can, on appointment, only be exempted from the fit and proper requirements relating to full **qualifications** if the following criteria are met:

**To qualify for the exemption from full qualifications for Category I and IV representatives:**

- Representatives working in these categories must have the following entry-level qualifications when appointed by the FSP:
  - Matric; or
  - Grade 12; or
  - An appropriate certificate at NQF Level 4<sup>5</sup>
- Representatives working in **sub-categories 1.1 Long-term Insurance Category A and/or 1.19 Friendly Society Benefits** must have the following entry-level qualifications when appointed by the FSP:
  - ABET Level 1; or the proven ability to read, write and calculate to the satisfaction of the FSP.

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<sup>5</sup> Section 3(b)(i) of BN 104

## Requirements

Requirements that apply to representatives working under supervision:

- A representative may not work under supervision for a period that exceeds six years. Keep in mind that the period of supervision commences on the date of appointment and ends on 30 June after the expiry of 72 months. The representative may render services under supervision across the subcategories of which they are appointed.
- The representative must remain under supervision until he meets the experience requirements for the category or sub-category.

Representatives will only be allowed to work under supervision if their FSP can satisfy the Registrar that they have the operational ability to do so.

The following are the requirements for FSPs for work under supervision as stated in the FSB Board Notice 104 of 2008:

- An FSP's representative register must indicate whether a particular representative is acting under supervision and must differentiate between representatives acting under supervision and those who are not acting under supervision.
- A supervisor must have completed and have met all the relevant requirements regarding experience and qualifications and at least the first level Regulatory Exam in relation to the specific categories or sub-category for which he will be acting as supervisor, before he may be allowed to act as supervisor.
- The FSP must maintain records of how the supervision was carried out, the assessments and reviews of the financial services rendered and the approvals by the supervisor.

## Supervisory activities

Any one or more of the following activities are regarded as supervisory activities:

- Sign-off advice given to a client.
- Co-attend advice-giving meetings between the supervisee and clients.
- Obtain samples of the supervisee's work to monitor finalised transactions.
- Conduct follow-up calls to clients after the rendering of financial services by the supervisee.

- Perform any other activity that allows the supervisor to monitor the activities of the supervisee.
- A pre-transactional sign-off where intermediary services are rendered
- Have regular contact that will enable the transfer of skills.
- Have a written supervision agreement that details the procedures regarding the rendering of services under supervision.

### Supervisory responsibilities

Specific supervisor responsibilities include:

- ensuring the supervisee has a good understanding of, and exposure to, the product category in which the financial service is rendered.
- observation of selected meetings between the supervisee and clients.
- being able to provide evidence of supervision actions undertaken, which must be properly documented, including the method followed and frequency of supervision.
- keeping a record of evidence available for scrutiny by the Registrar of Financial Services.

## 1.9 SUPERVISORY REQUIREMENTS

Roles and duties:

**Table 1.7**

Key individual/FSP	Supervisor	Supervisee (Representative)
<ul style="list-style-type: none"> <li>• <b>Satisfy the Registrar that the business</b> has the operational ability to provide services under supervision.</li> <li>• <b>Satisfy the Registrar that</b> there is a competent person to act as supervisor.</li> <li>• Identify the representatives who act under supervision and differentiate between</li> </ul>	<ul style="list-style-type: none"> <li>• Sign-off on advice given to clients</li> <li>• Pre-transaction sign-off by a supervisor where intermediary services are rendered.</li> <li>• Attend meetings with supervisee and clients where the purpose of the meeting is to render financial services.</li> <li>• Do appropriate post-</li> </ul>	<ul style="list-style-type: none"> <li>• Adhere to the requirements of the supervision agreement.</li> <li>• Provide the supervisor upon request, where applicable, with any records/documents regarding the advice given and/or intermediary services rendered.</li> <li>• Disclose to clients that</li> </ul>

Key individual/FSP	Supervisor	Supervisee (Representative)
<p>representatives who meet all the requirements and those who are working under supervision in the representative register.</p> <ul style="list-style-type: none"> <li>• Place supervisees in right categories for services under supervision.</li> <li>• Ensure that the supervisee has a good understanding of and exposure to the categories and/or sub-categories where he is providing financial service.</li> <li>• Observe selected meetings between the supervisee and customers (frequency may differ).</li> <li>• Assess the advice given by the supervisee for appropriateness in terms of the requirements of the General Code.</li> <li>• Ensure that the FSP/key individual takes the necessary action to protect the client where it is found that the supervisee's actions may not have been in the interests of the client.</li> <li>• Have documented evidence, together with the supervisee, of the method and frequency of the supervision for the period of services under</li> </ul>	<p>transaction sampling.</p> <ul style="list-style-type: none"> <li>• Make follow-up calls to clients after rendering financial services by the supervisee to confirm certain aspects of the interaction with the client.</li> <li>• Any other activity which enables the supervisor to scrutinise the activities of the supervisee in respect of financial services being provided by the supervisee</li> <li>• Ensure that the supervisee has a good understanding of and exposure to the categories and/or sub-categories where he is providing a financial service.</li> <li>• Observe selected meetings between the supervisee and customers (frequency may differ).</li> <li>• Assess the advice given by the supervisee for appropriateness in terms of the requirements of the General Code.</li> <li>• Ensure that the FSP/key individual takes the necessary action to protect the client where it is found</li> </ul>	<p>he is acting under supervision.</p> <ul style="list-style-type: none"> <li>• Complete the required qualifications within the prescribed time limits.</li> <li>• Undertake the relevant product training.</li> <li>• Request guidance from the supervisor if in doubt.</li> <li>• The supervision period must be linked to the category or sub-category for which the representative is appointed.</li> <li>• Maximum period any representative can act under supervision in any category or sub-category is six years from date of appointment.</li> <li>• Representatives working in multiple categories or sub-categories can get experience in all the categories at the same time. They remain under supervision until they meet requirements for the most onerous category.</li> <li>• Must complete first level Regulatory Examination (for the applicable category or</li> </ul>

Key individual/FSP	Supervisor	Supervisee (Representative)
<p>supervision.</p> <ul style="list-style-type: none"> <li>Ensure that the relevant and applicable supervision agreement/s is/are in place and signed by the employee and employer or the supervisor and supervisee.</li> </ul>	<p>that the supervisee's actions may not have been in the interests of the client.</p> <ul style="list-style-type: none"> <li>Have documented evidence, together with the supervisee, of the method and frequency of the supervision for the period of services under supervision.</li> </ul>	<p>sub-category) within two years of appointment as representative.</p> <ul style="list-style-type: none"> <li>Must complete second level Regulatory Examination and the relevant qualification for the applicable category or sub-category within six years (by 30 June after the expiry of 72 months) from the date of appointment.</li> </ul>

**Summary of specific supervisory requirements for Categories II, IIA and III (in addition to the above)**

(Remember that key individuals are responsible for managing and overseeing that supervisors comply with the requirements.)

The supervisor must also ensure the following:

- In Category II and IIA, when a supervisor signs off on transactions regarding intermediary services, he must check that the representative carries out instructions accurately and in line with the relevant mandate and/or consensus decision.
- Review and approve discretionary financial services provided by representatives (Categories II and IIA) in writing before a transaction is concluded or executed.
- Approve a transaction before it is finalised if the representative renders a discretionary financial service in respect of all representatives acting under supervision of Category III **or** if it cannot be approved before conclusion, it must be approved within a reasonable time thereafter.
- Ensure that all actions by the representatives in Categories II and IIA adhere to the mandate and/or morning meeting decisions.
- Conduct sample checks on a weekly basis to ensure that the supervisee did not deviate from the relevant mandate and/or investment team meetings.

- Ensure that the supervision requirements are not lessened in intensity during the period under supervision.

## 1.10 EXPLAIN THE RECORD-KEEPING REQUIREMENTS IN TERMS OF SECTION 18 OF THE FAIS ACT AND THE GENERAL CODE OF CONDUCT

One has to take note of the record-keeping requirements set in Section 18 of the Act as well as those in part 9 of the General Code of Conduct.

### 1.10.1 Record-keeping obligations in terms of the FAIS Act

Section 18 of the FAIS Act requires that an authorised FSP must keep certain records for five years (unless the Registrar granted an exemption in this regard). These records include the following:

**Table 1.8**

1.	Records of known premature cancellations of transactions or financial products by clients of the FSP.	
2.	Records of complaints received and information on whether the complaints have been resolved.	
3.	Records of ongoing compliance with the requirements of Section 8 of the FAIS Act.	Section 8 refers to licensing requirements and the elements of fit and proper.
4.	Records of instances of non-compliance with the Act as well as reasons for non-compliance.	
5.	Records of ongoing compliance by representatives as required by Section 13(1) and (2) of the Act.	Representatives must have the necessary documentation to confirm that they represent the FSP in terms of a mandate or contract and that the FSP accepts responsibility for the activities of the representatives accordingly.  There must be adequate processes and systems in place to ensure continued fitness and propriety of key individuals and representatives.

### 1.10.2 Record-keeping obligations in terms of the FAIS General Code of Conduct

In addition to the record-keeping requirements in terms of the FAIS Act itself, the FAIS General Code has the following requirements:

**Table 1.9**

<p>1. The FSP must have adequate systems and procedures in place to record verbal and written communications relating to the provisions of financial services to clients. The records must be kept in accordance with the requirements of Section 3(2)(a) of the General Code.</p>	<p>Telephonic conversations regarding the provision of financial services must be recorded and the records kept for five years, subject to point 8 below.</p>
<p>2. The FSP must be able to retrieve the records and other material documentation relating to clients or financial services.</p>	<p>When the Registrar needs access to records of clients and/or financial services provided (such as the record of advice) this must be produced within the required time period (seven days).</p>
<p>3. The records and documentation must be kept safe from destruction.</p>	<p>This requirement is also part of the risk management systems and procedures which must be put in place in terms of Section 11 of the General Code. Banks and insurance companies have obligations to ensure that documentation must be kept safe from destruction and it is important that the FAIS Act requirements are included in these arrangements. This is also covered in Section 18 of the Act which we discussed above.</p>
<p>4. The records must be kept for five years after the termination of the product, to the knowledge of the FSP or in any other case after the rendering of the financial service.</p>	

<p>5. Record-keeping may be outsourced as long as the records are available for inspection within seven days of such a request by the Registrar.</p>	<p>The General Code makes provision that FSPs may outsource their record-keeping to third parties. The condition is that the FSP is able to meet all the requirements regarding record-keeping and retrieval of records if the function is outsourced. These requirements should therefore be included in the agreements between the FSP and third party to enable the FSP to meet the legislative requirements.</p>
<p>6. It is permissible to keep records in an appropriate electronic or recorded format, as long as it is accessible and can be easily converted to a written or printable format.</p>	<p>There must be provision in the systems and procedures for an FSP to access and convert voice-logged records to a written format if required. In certain instances, clients must be given a copy of the voice recording if the request comes before the FSP could convert it to written format (see point 9 below)</p>
<p>7. The FSP must maintain a record of advice furnished to a client.</p>	<p>This record must reflect:</p> <ul style="list-style-type: none"> <li>• A brief summary of the information on which the advice was based;</li> <li>• The financial product considered;</li> <li>• The product(s) recommended with an explanation of why the product(s) is or are likely to satisfy the client's needs;</li> <li>• Where a replacement product is recommended, a detailed comparison of all aspects pertaining to the two products.</li> </ul> <p>The record of advice only has to be <b>maintained</b> where a transaction or contract in respect of financial products is concluded.</p>



## TELEPHONIC RECORDS

8. If an FSP advertises a financial service by telephone, an electronic, voice-logged record of all communications must be maintained. If no financial service is provided within 45 days of the telephonic advertisement, the record may be discarded.

9. Clients must be able to get copies of the telephonic advertisement records within seven (7) days of request.

### 1.11 THE ROLE AND RESPONSIBILITIES OF THE KEY INDIVIDUAL IN TERMS OF FAIS

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Let's first find out who exactly a key individual is. Once this is clear, it will be easy to work out what the role of the key individual is.

#### 1.11.1 The role and responsibilities of the key individual

The FAIS Act defines a key individual as follows:

"Key individual in relation to an authorised financial services provider, or a representative, carrying on business as:

- a) A corporate or unincorporated body, a trust or a partnership, means any natural person responsible for managing or overseeing, either alone or together with other so responsible persons, the activities of the body, trust or partnership relating to the rendering of any financial service; or
- b) A corporate body or trust consisting of only one natural person as member, director shareholder or trustee, means any such natural person."

From the definition we see that the Act requires a key individual to:

- manage or oversee
- alone or with another key individual
- the activities of the FSP for which the key individual is appointed.

The key individual is the person responsible for **managing and overseeing** (supervising) the activities of the financial services provider and its representatives when they render financial services to clients with regard to financial products.

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Key individuals can be directors or managers within the business.

**Example:**

Excel Life may appoint directors, provincial managers, and any other individual who is engaged in overseeing the activities of a representative as key individuals.

The **activities of the FSP** refer to the **rendering of an intermediary service and/or advice** relating to the financial products for which the FSP is licensed (category and sub-categories). The key individual is the person who the Registrar holds responsible for compliance and non-adherence to the Act and subordinate legislation, except if stated otherwise in the Act (for instance auditors and compliance officers also have certain responsibilities and accountabilities in terms of the Act).

We also see that it is possible for an FSP to have one natural person in the business (sole proprietor), who can also be the key individual. The Act refers to the FSP in this instance as "the applicant". In this instance, the FSP will also be the key individual. Banks and insurance companies will normally have designated key individuals and representatives.

A small business, like a sole proprietor called ABC Brokers, may have only one individual giving advice and rendering intermediary services to clients, and also managing and overseeing the business as a key individual.

When a key individual's function is only to manage and oversee the business or a part of it, he will be regarded as only fulfilling the duties of a key individual. When a key individual also gives advice or renders an intermediary service, he is regarded as acting as a representative as well. In this regard he would need to meet the fit and proper requirements as set for representatives as well.

We discussed above that the key individual has the responsibility of the management and oversight of the FSP, which performs the activities relating to the rendering of financial services, including the provision of advice and intermediary services in respect of such licence.

The key individual also has to ensure that the FSP meets the operational requirements as set by the Act. He needs to ensure that the FSP meets the requirements set by Section 19 of the Act in this regard.

The FSP must:

- maintain full and proper accounting records on a continual basis, brought up to date monthly;
- annually prepare financial statements in respect of the relevant financial year of the provider;
- maintain records in respect of money and assets held on behalf of clients and submit a report by the auditor to the Registrar which confirms the amount held on behalf of clients, and that such money and financial products were throughout the financial year kept separate from those of the FSP. Any instance of non-compliance during the year has to be reported too.

The key individual must have the required experience in management (one year) **before the Registrar will approve the appointment.**

Key individuals in Category 1 products must, on the date of approval by the Registrar, have at least one year's practical experience in the management or oversight of the activities of a business or part thereof.

Such experience:

- could have been gained either within or outside the RSA;
- could have been gained during intermittent periods, not more than 5 years prior to the application for approval;
- may have been gained in the management or oversight of services similar to or corresponding to the financial services rendered by the FSP.

# Relevant Legislation



## *Financial Advisory and Intermediary Services Act 37 of 2002*

*To regulate the rendering of certain financial advisory and intermediary services to clients; to repeal or amend certain laws; and to provide for matters incidental thereto.*



## *Financial Advisory and Intermediary Services Act 37 of 2002* *Introductory Provisions*

### *1 Definitions and Application*

**1. *In this Act, unless the context indicates otherwise:***

***"advice"*** means, subject to subsection (3)(a), any recommendation, guidance or proposal of a financial nature furnished, by any means or medium, to any client or group of clients -

- (a) *in respect of the purchase of any financial product; or*
- (b) *in respect of the investment in any financial product; or*
- (c) *on the conclusion of any other transaction, including a loan or cession, aimed at the incurring of any liability or the acquisition of any right or benefit in respect of any financial product; or*
- (d) *on the variation of any term or condition applying to a financial product, on the replacement of any such product, or on the termination of any purchase of or investment in any such product, and irrespective of whether or not such advice -*
  - (i) *is furnished in the course of or incidental to financial planning in connection with the affairs of the client; or*
  - (ii) *results in any such purchase, investment, transaction, variation, replacement or termination, as the case may be, being effected;*

***"continuous professional development"*** means a process of learning and development with the aim of enabling a financial services provider, key individual, representative or compliance officer to maintain the competency to comply with this Act;

***"financial product"*** means, subject to subsection (2) -

- (a) *securities and instruments, including -*
  - (i) *shares in a company other than a "share block company" as defined in the Share Blocks Control Act, 1980 (Act No. 59 of 1980);*
  - (ii) *debentures and securitised debt;*

- (iii) *any money-market instrument;*
- (iv) *any warrant, certificate, and other instrument acknowledging, conferring or creating rights to subscribe to, acquire, dispose of, or convert securities and instruments referred to in subparagraphs (i), (ii) and (iii);*
- (v) *any "securities" as defined in Section 1 of the Financial Markets Act, 2012 (Act No. 19 of 2012);*  
*[Subpara. (v) substituted by Section 175 of Act 45/2013 w.e.f. 28 February 2014]*
- (b) *a participatory interest in one or more collective investment schemes;*
- (c) *a long-term or a short-term insurance contract or policy, referred to in the Long-term Insurance Act, 1998 (Act No. 52 of 1998), and the Short-term Insurance Act, 1998 (Act No. 53 of 1998), respectively;*
- (d) *a benefit provided by -*
  - (i) *a pension fund organisation as defined in Section 1(1) of the Pension Funds Act, 1956 (Act No. 24 of 1956), to the members of the organisation by virtue of membership; or*
  - (ii) *a friendly society referred to in the Friendly Societies Act, 1956 (Act No. 25 of 1956), to the members of the society by virtue of membership;*
- (e) *a foreign currency denominated investment instrument, including a foreign currency deposit;*
- (f) *a deposit as defined in Section 1(1) of the Banks Act, 1990 (Act No. 94 of 1990);*
- (g) *a health service benefit provided by a medical scheme as defined in Section 1(1) of the Medical Schemes Act, 1998 (Act No. 131 of 1998);*
- (h) *any other product similar in nature to any financial product referred to in paragraphs (a) to (g), inclusive, declared by the registrar by notice in the Gazette to be a financial product for the purposes of this Act;*  
*[Para. (h) substituted by Section 175 of Act 45/20113 w.e.f. 28 February 2014]*
- (i) *any combined product containing one or more of the financial products referred to in paragraphs (a) to (h), inclusive;*
- (j) *any financial product issued by any foreign product supplier and marketed in the Republic and which in nature and character is essentially similar or corresponding to a financial product referred to in paragraphs (a) to (i), inclusive;*

**"financial services provider"** means any person, other than a representative, who as a

*regular feature of the business of such person -*

- (a) furnishes advice; or*
- (b) furnishes advice and renders any intermediary service; or*
- (c) renders an intermediary service;*

**"fit and proper requirements"** means the requirements published under Section 6A;

**"intermediary service"** means, subject to subsection (3)(b), any act other than the furnishing of advice, performed by a person for or on behalf of a client or product supplier-

- (a) the result of which is that a client may enter into, offers to enter into or enters into any transaction in respect of a financial product with a product supplier; or*
- (b) with a view to -*
  - (i) buying, selling or otherwise dealing in (whether on a discretionary or non-discretionary basis), managing, administering, keeping in safe custody, maintaining or servicing a financial product purchased by a client from a product supplier or in which the client has invested;*
  - (ii) collecting or accounting for premiums or other moneys payable by the client to a product supplier in respect of a financial product; or*
  - (iii) receiving, submitting or processing the claims of a client against a product supplier;*

**"key individual"**, in relation to an authorised financial services provider, or a representative, carrying on business as -

- (a) a corporate or unincorporated body, a trust or a partnership, means any natural person responsible for managing or overseeing, either alone or together with other so responsible persons, the activities of the body, trust or partnership relating to the rendering of any financial service; or*
- (b) a corporate body or trust consisting of only one natural person as member, director, shareholder or trustee, means any such natural person;*

**"representative"** 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 a financial services provider, in terms of conditions of employment or any other mandate, but excludes a person rendering clerical, technical, administrative, legal, accounting or other service in a subsidiary or subordinate capacity, which service-

- (a) does not require judgment on the part of the latter person; or*
- (b) does not lead a client to any specific transaction in respect of a financial product in response to general enquiries;*



## **Financial Advisory and Intermediary Services Act 37 of 2002**

### **Chapter I**

#### **Administration of Act**

#### **2. Registrar and Deputy Registrar of financial services providers**

- (1) *The executive officer referred to in Section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), is the Registrar of financial services providers and has the powers and duties provided for by or under this Act and any other law.*
- (2) *The deputy executive officer referred to in Section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), is the Deputy Registrar of financial services providers.*
- (3) *The Deputy Registrar of financial service providers exercises the powers and duties of the Registrar of financial services providers to the extent that such powers and duties have been delegated to the Deputy Registrar under Section 20 of the Financial Services Board Act, 1990 (Act No. 97 of 1990).*



## **Financial Advisory and Intermediary Services Act 37 of 2002**

### **Introductory Provisions**

#### **(3) For the purposes of this Act -**

- (a) *advice does not include -*
  - (i) *factual advice given merely -*
    - (aa) *on the procedure for entering into a transaction in respect of any financial product;*
    - (bb) *in relation to the description of a financial product;*
    - (cc) *in answer to routine administrative queries;*
    - (dd) *in the form of objective information about a particular financial product; or*
    - (ee) *by the display or distribution of promotional material;*
  - (ii) *an analysis or report on a financial product without any express or implied recommendation, guidance or proposal that any particular transaction in respect of the product is appropriate to the particular investment objectives, financial situation or particular needs of a client;*
  - (iii) *advice given by -*
    - (aa) *the board of management, or any board member, of any pension fund organisation or friendly society referred to in paragraph (d) of the definition of "financial product" in subsection (1) to the members of the organisation or society on benefits enjoyed or to be enjoyed by such members; or*
    - (bb) *the board of trustees of any medical scheme referred to in paragraph (g) of the said definition of "financial product", or any board member, to the members of the medical scheme, on health care benefits enjoyed or to be enjoyed by such members; or*

- (iv) *any other advisory activity exempted from the provisions of this Act by the Registrar by notice in the Gazette;*
- (b) *intermediary service does not include -*
  - (i) *the rendering by a bank, mutual bank or co-operative bank of a service contemplated in paragraph (b)(ii) of the definition of 'intermediary service' where the bank, mutual bank or co-operative bank acts merely as a conduit between a client and another product supplier; [Subpara. (i) substituted by Section 45 of Act 22/2008]*
  - (ii) *an intermediary service rendered by a product supplier -*
    - (aa) *who is authorised under a particular law to conduct business as a financial institution; and*
    - (bb) *where the rendering of such service is regulated by or under such law;*
  - (iii) *any other service exempted from the provisions of this Act by the Registrar, by notice in the Gazette.*



***Financial Advisory and Intermediary Services Act 37 of 2002***  
***Chapter II***

***Fit and proper requirements***  
***Section 6A***

**6A. *Fit and proper requirements***

- (1) *The Registrar, for purposes of this Act, by notice in the Gazette-*
  - (a) *must-*
    - (i) *classify financial services providers into different categories;*
    - (ii) *determine fit and proper requirements for each category of providers; and*
    - (iii) *in each category of providers determine fit and proper requirements for-*
      - (aa) *key individuals of providers;*
      - (bb) *representatives of providers;*
      - (cc) *key individuals of representatives of providers; and*
      - (dd) *compliance officers; and*
  - (b) *may determine fit and proper requirements for providers, key individuals, representatives, key individuals of representatives and compliance officers in general.*
- (2) *Fit and proper requirements may include, but are not limited to, appropriate standards relating to-*
  - (a) *personal character qualities of honesty and integrity;*
  - (b) *competence, including-*
    - (i) *experience;*
    - (ii) *qualifications; and*
    - (iii) *knowledge tested through examinations determined by the Registrar;*



- (c) *operational ability;*
  - (d) *financial soundness; and*
  - (e) *continuous professional development.*
- (3) *Different fit and proper requirements may be determined for providers, representatives and compliance officers that are natural persons and for those that are partnerships, trusts or corporate or unincorporated bodies.*
- (4) *The Registrar may, by notice in the Gazette, amend the fit and proper requirements from time to time, and a provider, key individual, representative, key individual of a representative and compliance officer must comply therewith within such period as determined by the Registrar.*



**Financial Advisory and Intermediary Services Act 37 of 2002**  
**Chapter II**

**Authorisation of Financial Services Providers**  
**Section 7**

- (3) *An authorised financial services provider or representative may only conduct financial services related business with a person rendering financial services if that person has, where lawfully required, been issued with a licence for the rendering of such financial services and the conditions and restrictions of that licence authorises the rendering of those financial services, or is a representative as contemplated in this Act.*  
*[Subs. (3) added by s. 47 of Act 22/2008]*



**Financial Advisory and Intermediary Services Act 37 of 2002**  
**Chapter II**

**Authorisation of Financial Services Providers**  
**Section 8**

**8. Application for authorisation**

- (1) *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 on the official web site, and be accompanied by information to satisfy the Registrar that the applicant complies with the fit and proper requirements determined for financial services providers or categories of providers, determined by the Registrar by notice in the Gazette, in respect of-*
- (a) *personal character qualities of honesty and integrity;*
  - (b) *competence*
  - (bA) *operational ability; and*

(c) *financial soundness.*

*[Subs. (1) substituted by Section 182 of Act 45/2013 w.e.f. 28 February 2014]*

(1A) *If the applicant is a partnership, trust or corporate or unincorporated body, the requirements in paragraphs (a) and (b) of subsection (1) do not apply to the applicant, but in such a case the application must be accompanied by additional information to satisfy the Registrar that every person who acts as a key individual of the applicant complies with the fit and proper requirements for key individuals in the category of financial services providers applied for, in respect of-*

(a) *personal character qualities of honesty and integrity;*

(b) *competence; and*

(c) *operational ability,*

*to the extent required in order for such key individual to fulfil the responsibilities imposed by this Act.*



***Financial Advisory and Intermediary Services Act 37 of 2002***

***Chapter II***

***Compliance with fit and proper requirements after authorisation***

***Section 8A***

***8A. Compliance with fit and proper requirements after authorisation***

*An authorised financial services provider, key individual, representative of the provider and key individual of the representative must-*

(a) *continue to comply with the fit and proper requirements; and*

(b) *comply with the fit and proper requirements relating to continuous professional development.*



***Financial Advisory and Intermediary Services Act 37 of 2002***

***Chapter III***

***Representatives of Authorised Financial Services Providers***

***Section 13***

***13. Qualifications of representatives and duties of authorised financial services providers***

(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*  
*(Commencement date of para. (a): 30 September 2004)*
  - (b) *act as a representative of an authorised financial services provider, unless such person-*
    - (i) *prior to rendering a financial service, provides confirmation, certified by the provider, to clients -*
      - (aa) *that a service contract or other mandate, to represent the provider, exists; and*  
*[Item (aa) substituted by Section 52 of Act 22/2008]*
      - (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*  
*[Item (bb) substituted by Section 52 of Act 22/2008]*
    - (iA) *meets the fit and proper requirements; and*
    - (ii) *if debarred as contemplated in Section 14, complies with the requirements determined by the Registrar 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 the key individuals of such representatives, are, when rendering a financial service on behalf of the provider, competent to act, and comply with-*
    - (i) *the fit and proper requirements; and*
    - (ii) *any other requirements contemplated in subsection (1)(b)(ii);*
  - (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.*
- (3) *The authorised financial services provider must maintain a register of representatives, and key individuals of such representatives, which must be regularly updated and be available to the Registrar for reference or inspection purposes.*
- (4) *Such register must -*
- (a) *contain every representative's or key individual's name and business address, and state whether the representative acts for the provider as employee or as mandatory; and*
  - (b) *specify the categories in which such representatives are competent to render financial services.*
- (5) *The Registrar may require information from the authorised financial services provider, including the information referred to in subsection (4), so as to enable the Registrar to maintain and continuously update a central register of all representatives and key*

*individuals, which register must be published in any appropriate media.*  
*[Subs. (5) substituted by Section 52 of Act 22/2008]*

- (6) *A person who on the date contemplated in Section 7(1) complies with the requirements of this Act for a representative and on such date acts as employee or mandatory for any person who on or after such date becomes an authorised financial services provider, is, for the purposes of this Act, but subject to the provisions of this Act relating to representatives, regarded as a representative.*



***Financial Advisory and Intermediary Services Act 37 of 2002***  
***Chapter III***

***Debarment of representatives***  
***Section 14***

***14. Debarment of representatives***

- (1) *An authorised financial services provider must ensure that any representative of the provider who no longer complies with the requirements referred to in Section 13(2)(a) or has contravened or failed to comply with any provision of this Act in a material manner, is prohibited by such provider from rendering any new financial service by withdrawing any authority to act on behalf of the provider, and that the representative's name, and the names of the key individuals of the representative, are removed from the register referred to in Section 13(3): Provided that any such provider must immediately take steps to ensure that the debarment does not prejudice the interest of clients of the representative, and that any uncompleted business of the representative is properly concluded.*

*[Subs. (1) substituted by Section 53 of Act 22/2008]*

- (2) *For the purposes of the imposition of a prohibition contemplated in subsection (1), the authorised financial services provider must have regard to information regarding the conduct of the representative as provided by the Registrar, the Ombud or any other interested person.*

*[Subs. (2) substituted by Section 53 of Act 22/2008]*

***(3)***

- (a) *The authorised financial services provider must within a period of 15 days after the removal of the names of a representative and key individuals from the register as contemplated in subsection (1), inform the Registrar in writing thereof and provide the Registrar with the reasons for the debarment in such format as the Registrar may require.*

- (b) *The Registrar may make known any such debarment and the reasons therefor by notice on the official web site or by means of any other appropriate public media.*



*Codes of Conduct*

*Section 16*

**16. Principles of code of conduct**

- (1) *A code of conduct must be drafted in such a manner as to ensure that the clients being rendered financial services will be able to make informed decisions, that their reasonable financial needs regarding financial products will be appropriately and suitably satisfied and that for those purposes authorised financial services providers, and their representatives, are obliged by the provisions of such code to -*
- (a) *act honestly and fairly, and with due skill, care and diligence, in the interests of clients and the integrity of the financial services industry;*
  - (b) *have and employ effectively the resources, procedures and appropriate technological systems for the proper performance of professional activities;*
  - (c) *seek from clients appropriate and available information regarding their financial situations, financial product experience and objectives in connection with the financial service required;*
  - (d) *act with circumspection and treat clients fairly in a situation of conflicting interests; and*
  - (e) *comply with all applicable statutory or common law requirements applicable to the conduct of business.*
- (2) *A code of conduct must in particular contain provisions relating to -*
- (a) *the making of adequate disclosures of relevant material information, including disclosures of actual or potential own interests, in relation to dealings with clients;*
  - (b) *adequate and appropriate record-keeping;*
  - (c) *avoidance of fraudulent and misleading advertising, canvassing and marketing;*
  - (d) *proper safe-keeping, separation and protection of funds and transaction documentation of clients;*
  - (e) *where appropriate, suitable guarantees or professional indemnity or fidelity insurance cover, and mechanisms for adjustments of such guarantees or cover by the Registrar in any particular case;*  
*[Para. (e) amended by Section 56 of Act 22/2008]*

- (eA) *the control or prohibition of incentives given or accepted by a provider; and*  
[Para. (eA) inserted by Section 56 of Act 22/2008]
- (f) *any other matter which is necessary or expedient to be regulated in such code for the better achievement of the objects of this Act.*



***Financial Advisory and Intermediary Services Act 37 of 2002***  
***Chapter V***

***Duties of Authorised Financial Services Providers***  
***Section 18***

***18. Maintenance of records***

*An authorised financial services provider must, except to the extent exempted by the Registrar, maintain records for a minimum period of five years regarding -*

- (a) *known premature cancellations of transactions or financial products by clients of the provider;*
- (b) *complaints received together with an indication whether or not any such complaint has been resolved;*
- (c) *the continued compliance with the requirements referred to in Section 8;*
- (d) *cases of non-compliance with this Act, and the reasons for such non-compliance; and*
- (e) *the continued compliance by representatives with the requirements referred to in Section 13(1) and (2).*



***General Code of Conduct for Authorised Financial Services Providers and Representatives,***  
***2003***

***Part II***  
***General Provisions***  
***Section 3***

***3. Specific duties of provider***

- (1) *When a provider renders a financial service-*
- (a) *representations made and information provided to a client by the provider-*
- (i) *must be factually correct;*
- (ii) *must be provided in plain language, avoid uncertainty or confusion and not be misleading;*
- (iii) *must be adequate and appropriate in the circumstances of the particular financial service, taking into account the factually established or*

- reasonably assumed level of knowledge of the client;*
- (iv) must be provided timeously so as to afford the client reasonably sufficient time to make an informed decision about the proposed transaction;*
  - (v) may, subject to the provisions of this Code, be provided orally and, at the client's request, confirmed in writing within a reasonable time after such request;*
  - (vi) must, where provided in writing or by means of standard forms or format, be in a clear and readable print size, spacing and format;*
  - (vii) must, as regards all amounts, sums, values, charges, fees, remuneration or monetary obligations mentioned or referred to therein and payable to the product supplier or the provider, be reflected in specific monetary terms: Provided that where any such amount, sum, value, charge, fee, remuneration or monetary obligation is not reasonably predeterminable, its basis of calculation must be adequately described; and*
  - (viii) need not be duplicated or repeated to the same client unless material or significant changes affecting that client occur, or the relevant financial service renders it necessary, in which case a disclosure of the changes to the client must be made without delay;*
- (b) \*a provider and a representative must avoid and where this is not possible, mitigate any conflict of interest between the provider and a client or the representative and a client;*  
*[Para (b) substituted by BN 58 of 19 April 2010.]*
- (c) \*a provider and a representative must, in writing, at the earliest reasonable opportunity–*
- (i) disclose to a client any conflict of interest in respect of that client, including–*
    - (aa) \*the measures taken, in accordance with the conflict of interest management policy of the provider referred to in Section 3A(2), to avoid or mitigate the conflict;*
    - (bb) any ownership interest or financial interest, other than an immaterial financial interest, that the provider or representative may be or become eligible for;*
    - (cc) the nature of any relationship or arrangement with a third party that gives rise to a conflict of interest, in sufficient detail to a client to enable the client to understand the exact nature of the relationship or arrangement and the conflict of interest; and*
  - (ii) inform a client of the conflict of interest management policy referred to in Section 3A(2) and how it may be accessed.*  
*[Para (c) substituted by BN 58 of 19 April 2010.]*
- (d) the service must be rendered in accordance with the contractual relationship and reasonable requests or instructions of the client, which must be executed as soon as reasonably possible and with due regard to the interests of the client which must be accorded appropriate priority over any interests of the provider;*
- (e) transactions of a client must be accurately accounted for; and*

*(f) the provider involved must not deal in any financial product for own benefit, account or interest where the dealing is based upon advance knowledge of pending transactions for or with clients, or on any non-public information the disclosure of which would be expected to affect the prices of such product.*

*(2)*

*(a) A provider must have appropriate procedures and systems in place to-*

*(i) record such verbal and written communications relating to a financial service rendered to a client as are contemplated in the Act, this Code or any other Code drafted in terms of Section 15 of the Act;*

*(ii) store and retrieve such records and any other material documentation relating to the client or financial service rendered to the client; and*

*(iii) keep such client records and documentation safe from destruction.*

*(b) All such records must be kept for a period of five years after termination, to the knowledge of the provider, of the product concerned or, in any other case, after the rendering of the financial service concerned.*

*(c) Providers are not required to keep the records themselves but must ensure that they are available for inspection within seven days of the Registrar's request.*

*(d) Records must be kept in an appropriate electronic or recorded format, which are accessible and readily reducible to written or printed form.*

*(3) A provider may not disclose any confidential information acquired or obtained from a client or, subject to Section 4(1), a product supplier in regard to such client or supplier, unless the written consent of the client or product supplier, as the case may be, has been obtained beforehand or disclosure of the information is required in the public interest or under any law.*

*\* Dates of commencement:*

*(a) the amendments to Section 3 of the General Code, take effect three months after the date on which this Notice takes effect;*

*(b) the insertion of Section 3A(1)(a) and (c) and Section 3A(3) in the General Code takes effect six months after the date on which this Notice takes effect; and*

*(c) the insertion of Section 3A(1)(b) and (c) and Section 3A(2) in the General Code takes effect twelve months after the date on which this Notice takes effect.*

*(4) Until Section 3A(2) takes effect, Section 3(1)(c)(i)(aa) must be read as follows:*

*"(aa) the measures taken, to avoid or mitigate the conflict;"*

*"Paragraph 5(3) and (4) – BN 58 of 19 April 2010."*

*\* Dates of commencement:*

*(a) the amendments to Section 3 of the General Code, take effect three months after the date on which this Notice takes effect;*

*(b) the insertion of Section 3A(1)(a) and (c) and Section 3A(3) in the General Code takes effect six months after the date on which this Notice takes effect; and*

*(c) the insertion of Section 3A(1)(b) and Section 3A(2) in the General Code takes effect twelve months after the date on which this Notice takes effect.*



- (4) *Until Section 3A(2) takes effect, Section 3(1)(c)(i)(aa) must be read as follows:  
“(aa) the measures taken, to avoid or mitigate the conflict;”  
“Paragraph 5(3) and (4) – BN 58 of 19 April 2010.”*

*\* Dates of commencement:*

- (a) *the amendments to Section 3 of the General Code, take effect three months after the date on which this Notice takes effect;*  
(b) *the insertion of Section 3A(1)(a) and (c) and Section 3A(3) in the General Code takes effect six months after the date on which this Notice takes effect; and*  
(c) *the insertion of Section 3A(1)(b) and Section 3A(2) in the General Code takes effect twelve months after the date on which this Notice takes effect.*

- (4) *Until Section 3A(2) takes effect, Section 3(1)(c)(i)(aa) must be read as follows:  
“(aa) the measures taken, to avoid or mitigate the conflict;”  
“Paragraph 5(3) and (4) – BN 58 of 19 April 2010.”*

**Part X**  
**Advertising and Direct Marketing**  
**Section 14**

**14.**

- (1) *An advertisement by any provider must -*
- (a) *not contain any statement, promise or forecast which is fraudulent, untrue or misleading;*
- (b) *if it contains-*
- (i) *performance data (including awards and rankings), include references to their source and date;*
- (ii) *illustrations, forecasts or hypothetical data*
- (aa) *contain support in the form of clearly stated basic assumptions (including but not limited to any relevant assumptions in respect of performance, returns, costs and charges) with a reasonable prospect of being met under current circumstances;*
- (bb) *make it clear that they are not guaranteed and are provided for illustrative purposes only; and*
- (cc) *also contain, where returns or benefits are dependent on the performance of underlying assets or other variable market factors, clear indications of such dependence;*
- (iii) *a warning statement about risks involved in buying or selling a financial product, prominently render or display such statement; and*
- (iv) *information about past performances, also contain a warning that past performances are not necessarily indicative of future performances; and*
- (c) *if the investment value of a financial product mentioned in the advertisement is not guaranteed, contain a warning that no guarantees are provided.*

- (2) *Where a provider advertises a financial service by telephone-*
- (a) *an electronic, voice logged record of all communications must be maintained. Where no financial service is rendered as a result of the advertisement, such record need not be maintained for a period exceeding 45 days;*
  - (b) *a copy of all such records must be provided on request by the client or the Registrar within seven days of the request;*
  - (c) *all the information required by Sections 4(1)(a) and (c) and 5(a) and (c) shall not be required: Provided that the client is provided with basic details (such as business name and telephone number or address) of the provider or relevant product supplier, and of their relevant compliance departments: Provided further that, if the promotion results in the rendering of a financial service, the full details required by those sections are provided to the client in writing within 30 days of the relevant interaction with the client.*
- (3) *Where a provider advertises a financial service by means of a public radio service, the advertisement must include the business name of the provider.*



***Financial Advisory and Intermediary Services Act 37 of 2002  
Determination of Fit and Proper Requirements for Financial Services Providers, 2008***

***Part I  
Definitions***

***"Category I"***, in relation to a financial services provider, means all persons, other than persons referred to in Categories II, IIA, III and IV, who are authorised to render the financial services (other than financial services mentioned in Categories II, IIA, III and IV) as set out in the relevant application;

***"Category II"***, in relation to a financial services provider, means all persons who are authorised as discretionary FSPs as set out in the relevant application;

***"Category IIA"***, in relation to a financial services provider, means all persons who are authorised as hedge fund FSPs as set out in the relevant application;

***"Category III"***, in relation to a financial services provider, means all persons who are authorised as administrative FSPs as set out in the relevant application;

***"Category IV"***, in relation to a financial services provider, means all persons who require licences as Assistance Business FSP;

***"Long-term Insurance subcategory A"*** means assistance policies as defined in Section 1(1) of the Long-term Insurance Act, 1998, but excludes policies referred to in the definitions of Long-term Insurance subcategories B1, B2 and C;

*[Definition of "Long-term Insurance subcategory A" substituted by BN 60/2010]*

**"Long-term Insurance subcategory B1"** means disability, health and life policies as defined in Section 1 (1) of the Long-term Insurance Act, 1998, which provide only risk benefits as contemplated in the Regulations under the Long-term Insurance Act, 1998, but excludes fund policies as defined in Section 1 (1) of the Long-term Insurance Act, 1998, fund member policies, investment policies as defined in Part 5B of the Regulations under the Long-term Insurance Act, 1998, and policies referred to in the definitions of Long-term Insurance subcategories A, B2 and C;

[Definition of "Long-term Insurance subcategory B" substituted by the definition of "Long-term Insurance subcategory B1" by BN 60/2010]

**"Long-term Insurance subcategory B2"** means long-term policies as defined in Section 1 of the Long-term Insurance Act, 1998, which are-

- (a) investment policies as defined in Part 5B of the Regulations under the Long-term Insurance Act, 1998, which guarantee a minimum return of any premium paid at a specified future date or dates, and where such minimum is ascertainable in Rand terms at inception;
- (b) disability, health and life policies that provide risk benefits as contemplated in the Regulations under the Long-term Insurance Act, 1998, and have a guaranteed investment value or a materially equivalent value;
- (c) annuities which guarantee a minimum annuity for the term of the policy which annuity is ascertainable in Rand terms at inception; or
- (d) any policy which combines the policy features included in paragraphs (a) to (c),

but excludes fund policies, fund member policies and policies referred to in the definitions of Long-term Insurance sub categories A, B1 and C;

[Definition of "Long-term Insurance subcategory B" substituted by the definition of "Long-term Insurance subcategory B2" by BN 60/2010]

**"Long-term Insurance subcategory C"** means long-term policies as defined in Section 1(1) of the Long-term Insurance Act, 1998, excluding fund policies as defined in Section 1 (1) of the Long-term Insurance Act, 1998, fund member policies and policies referred to in the definitions of Long-term Insurance subcategories A, B1 and B2;

[Definition of "Long-term Insurance subcategory C" substituted by BN 60/2010]

**"Regulatory Examinations"** means examinations prescribed by the Registrar, set in accordance with the qualifying criteria for the purpose of meeting the competency requirements of this Determination;

**"continuous professional development"** or **"CPD"** means a process of learning and development, with the aim of ensuring a financial services provider, key individual, representative or compliance officer maintain the competency to comply with this Act.



**Financial Advisory and Intermediary Services Act 37 of 2002**  
**Determination of Fit and Proper Requirements for Financial Services Providers, 2008**

**Part III**  
**Competency Requirements**

- (8) *An FSP or any representative that renders financial services in respect of health service benefits must be accredited as a broker, and a representative that renders financial services under supervision in respect of health services benefits must be accredited as an apprentice broker, in terms of the provisions of Regulation 28 B under the Medical Schemes Act, 1998*



**Determination of Fit and Proper Requirements for Financial Services Providers, 2008**  
**Published under Board Notice 106 in Government Gazette 31514 of 15 October 2008 and**  
**amended**  
**by**  
**BN 151 GG 31755 29/12/2008**

**Part III**  
**Competency Requirements**

- (9) *An FSP, who is a sole proprietor, a key individual and a representative must, after completion of all relevant qualification, experience and regulator examinations, meet the requirements relating to CPD as set out in Part VII of this Determination.*



**Financial Advisory and Intermediary Services Act 37 of 2002**  
**Determination of Fit and Proper Requirements for Financial Services Providers, 2008**

**Part IV**  
**Experience Requirements**

- (1) **Experience Requirements for Category I:**
- (a) *Subject to the provisions of the Act, an FSP (who is a sole proprietor) in respect of Category I must meet the minimum experience applicable to the subcategories as described in either column two and/or three of Table A below. The experience must be practical experience gained in the rendering of financial services in respect of Category I and the subcategories concerned: Provided that-*
- (i) *such experience involved the active and ongoing gaining of knowledge, skills and expertise required in terms of the Act;*
  - (ii) *such experience was obtained through the active involvement of in rendering such financial services, irrespective of whether the experience was gained in the course of rendering such services under supervision*
  - (iii) *such experience could have been gained either within or outside the*

*Republic of South Africa;*

- (iv) such experience could have been gained during intermittent periods, not more than 5 years prior to the application and includes experience gained prior to the date envisaged in Section 7(1) of the Act;*
  - (v) such experience may have been gained simultaneously in multiple subcategories, provided that proof of such experience can be provided.*
  - (vi) where an FSP changes its licence restrictions to include additional financial services or renders services in relation to additional subcategories, the FSP is required to meet the experience requirements relating to the additional subcategories with the proviso that where the change in restriction will include-*
    - (aa) additional financial service (advice or the rendering of intermediary services, as applicable), the FSP is required to obtain 50 percent of the experience requirements applicable to the additional financial services;*
    - (bb) an additional subcategory, the FSP is required to gain 100 percent of the experience requirements relation to the additional subcategory.*
- (b) A representative of an FSP in respect of Category I at the date of appointment by the FSP comply with the same relevant experience requirements as referred to in subparagraph 1(a), provided that a representative who does not meet such requirement on date of authorisation, may be exempted by the Registrar to acquire the required minimum experience while working under supervision.*

**(2) Category II - Experience Requirements:**

- (a) Subject to the provisions of the Act, an FSP (who is a sole proprietor) in respect of Category II must meet the minimum experience applicable to the subcategories as described in column two of Table B below. The experience must be practical experience gained in the rendering of financial services in respect of Category II and the subcategories concerned: Provided that*
  - (vi) may have been gained in a team environment where the person participated in the process of making investment decisions whilst working under supervision;*
  - (vii) where a Category II FSP applies for the amendment of the restrictions on its licence to allow such FSP to render the financial services referred to in subparagraph (a) in additional subcategories, the FSP must comply with the experience requirements applicable to the additional subcategories.*
- (b) A representative of an FSP in respect of Category II, must at appointment by the FSP comply with the same relevant experience requirements as referred to in subparagraph 2(a) above, as the FSP with authorisation, provided that a representative who does not meet such requirement on date of authorisation, may be exempted by the Registrar to acquire the required minimum experience while working under supervision.*

**(4) Category III - Experience Requirements:**

- (a) *Subject to the provisions of the Act, the key individual of a Category III FSP must have 3 years' practical experience gained in the rendering of financial services as referred to in the definition of "administrative FSP": and must have at least one (1) year's practical experience in the management and/or oversight of services similar to or corresponding to the financial services rendered by the FSP: Provided that such practical experience-*
- (i) *involved the active and ongoing gaining of knowledge, skills and expertise required in terms of the Act;*
  - (ii) *was obtained through the active involvement in the rendering of such financial services*
  - (iii) *could have been gained either within or outside the Republic of South Africa;*
  - (iv) *could have been gained during intermittent periods, not more than 5 years prior to the application and includes experience gained prior to the date envisaged in Section 7(1) of the Act;*
  - (v) *may have been gained simultaneously in multiple subcategories provided that proof of such experience can be provided and irrespective of whether the experience was gained whilst rendering such services under supervision.*

*A representative of a Category III FSP must, unless exempted, at the date of appointment by the FSP comply with the same relevant experience requirement as referred to in subparagraph 4(a), excluding the requirement to have at least one year's practical experience in the management and/or oversight of services similar to or corresponding to the financial services rendered by the FSP.*

**(5) Experience Requirements for Category IV:**

- (a) *Subject to the provisions of the Act, a Category IV FSP (who is a sole proprietor), must have one (1) year's experience gained in the rendering of financial services as referred to in the definition of "administration of assistance policies": Provided that such practical experience-*
- (i) *involved the active and ongoing gaining of knowledge, skills and expertise required in terms of the Act;*
  - (ii) *was obtained through the active involvement in the rendering of such intermediary services and irrespective of whether the experience was gained whilst rendering such services under supervision: provided that proof of such experience can be provided;*
  - (iii) *could have been gained either within or outside the Republic of South Africa;*
  - (iv) *could have been gained during intermittent periods, not more than 5 years prior to the application and includes experience gained prior to the date envisaged in Section 7(1) of the Act;*
- (b) *A representative of an FSP in respect of Category IV must with authorisation by the FSP meet the same relevant practical experience requirement, mentioned in subparagraph 1(a) above, as an FSP (who is a sole proprietor) on authorisation,*

*provided that a representative who does not meet such requirement on date of authorisation by the FSP, may be exempted by the Registrar to acquire the required minimum experience while working under supervision for the minimum experience period.*

## Summary

In this topic we looked at various aspects concerning the role of a representative in terms of FAIS.

The most important of these requirements are the fit and proper requirements, which are:

- Personal character qualities of honesty and integrity
- Competency requirements
  - Experience requirements
  - Qualifications
  - Regulatory examinations.
- Continuous professional development.

Should a representative not comply with the fit and proper requirements of experience, qualifications and examinations, He may be allowed to act under supervision for a period of no longer than six years.

An FSP is required to keep a register of representatives, containing specific information about each representative.

One can distinguish between “advice” and “intermediary services” in terms of FAIS if you keep in mind that advice **assists a client to make a decision** in relation to a financial product while intermediary services **facilitates the administration** of the product.

The key individual is the person responsible for managing and overseeing (supervising) the activities of the financial services provider and its representatives when they render financial services to clients with regard to financial products. The key individual may fulfil two roles, namely that of being a key individual as well as that of a representative.

## Self-Assessment Questions

Please note that the questions that follow are formative in nature. The questions were not developed by the FSB's examination bodies and as such cannot be used as an indication of the nature/structure/level of the questions that you will encounter in the FSB's regulatory examination.

1. Which of the following would qualify as a representative of an FSP in terms of the FAIS Act?
  - a) An accountant whose job does not lead clients to buying a financial product
  - b) A clerk who does not have to use judgement in performing his job functions
  - c) An admin manager who handles general admin queries only
  - d) A contractor who renders financial services
  
2. The FAIS General Code does not require representatives to:
  - a) make adequate disclosures.
  - b) maintain adequate and appropriate record-keeping.
  - c) keep a log of all car expenses.
  - d) keep client's funds safe and separate.
  
3. Which of the following activities do **not** qualify as CPD activities?
  - a) Courses
  - b) Conferences, workshops and seminars
  - c) Self-study programmes
  - d) Passing a regulatory examination
  
4. Which of the following items does not have to be contained in the FSP's register for representatives?
  - a) Representatives' names and business addresses
  - b) An indication whether the representative is employed by the FSP or works as a mandatory
  - c) Past experience of the representative in terms of financial services
  - d) The categories in which the representatives are competent to render financial services



5. Advice as defined in terms of FAIS does not include any recommendation with the intention of getting the client to consider:
- a) purchasing or investing in a financial product.
  - b) finalising a loan on a financial product.
  - c) changing or replacing a financial product or investment.
  - d) drafting a Will.

6. Elise has been working as a long-term insurance broker for more than eight years. She is well-loved by clients and colleagues due to her professional and friendly attitude. Elise has just finished Financial Planning on NQF Level 6; she has passed the Level 1 Regulatory Examination and would now like to specialise in call-centre selling.

What is Elise's current status regarding fit and proper requirements?

- a) Not applicable; she is not regarded as a representative, as defined in the FAIS Act.
  - b) She is working under supervision until she has passed the Regulatory Examination.
  - c) Not yet fit and proper at this time because, in terms of FAIS, she requires a qualification on a higher level.
  - d) Regarded as fully fit and proper as she meets all the current requirement in terms of FAIS.
7. Which of the following must be included in the register of representatives and key individuals?
- a) A person not employed by the FSP, but who has a verbal agreement to submit business to the FSP.
  - b) A person not employed by the FSP, but who has signed an agreement to submit business only to the FSP and one other FSP.
  - c) A person not employed by the FSP, but who operates on his own behalf by virtue of a verbal agreement with the FSP.
  - d) A person not employed by the FSP, but who operates on behalf of the FSP by virtue of a mandate from the FSP.

8. "Advice", as defined in the FAIS Act, is given with a view to:
- a) making a client aware of the benefits of the intermediary's services.
  - b) making a client aware of the benefits of the product supplier's services.
  - c) getting a client to consider acquiring or changing a financial product.
  - d) getting a client interested in financial planning.
9. Molo, a representative for an insurance company, wants to attend some courses and workshops in his personal capacity and as part of his training plan at work.

To establish with the providers which of these would contribute towards his CPD hours, he must establish that the courses and workshops:

- a) are verifiable and related to his work.
  - b) result in a number of NQF credits.
  - c) are presented by accredited learning providers.
  - d) have been formally assessed.
10. Charne (a representative) is faced with a difficult choice: the FAIS Code of Conduct requires her to act in the interests of the customer and the integrity of the financial services industry. If she tells her customer about a certain feature of Product A, she may lose the sale, but her company needs to boost sales of Product A in order to achieve their strategic objectives.

Which one of the following options presents the most appropriate course of action?

- a) Charne tells the customer about the feature and, if he does not purchase Product A, she must work harder to attract suitable buyers.
- b) Charne must first conclude the sale and then tell the customer about the features to make sure that there are no undisclosed relevant facts.
- c) Charne must encourage the customer to purchase the product that suits his needs, even if her sales do not reflect the targets provided.
- d) Charne must continue to promote the product, together with a service or other innovative solution that overcomes the negative feature.

# 2

## Contribute towards maintaining an FSP licence

### 2.1 INTRODUCTION

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In the previous topic we learnt that an FSP or representative may only provide financial advice if licensed by the Registrar. The purpose of this topic is to inform you about the prescribed licensing process that the Registrar follows when considering an application. This topic also informs you of the consequences relating to licensing if an FSP or representative no longer meets the fit and proper requirements.

In this topic, you will gain knowledge in the following areas:

1. Explain the requirements an FSP must meet to maintain an FSP licence.
  2. Explain what processes are required to remain updated with regard to other legislation, amendments, updates and requirements published that will affect the FSP.
  3. Explain what is meant by “undesirable practices”.
  4. Describe the implication for an FSP if the Registrar publishes a notice regarding an “undesirable business practice”.
  5. Explain the reparation measures available to the Registrar if an FSP continues with undesirable business practices.
  6. Discuss the requirements of the FAIS Act around the display of licences.
  7. Explain the reasons why a licence can be suspended or withdrawn.
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8. Explain what recourse an FSP has in a case where its licence has been suspended or withdrawn.
9. Discuss the reasons why an FSP would lapse a licence.
10. Describe how lapsing a licence differs from suspension or withdrawals.
11. Describe the conditions under which a licence can be reinstated.
12. Describe the conditions under which reinstatements of authorisation may be imposed.
13. Describe the role and powers of the Ombud.

The following skills criteria are related to the knowledge criteria listed above:

1. Assist in maintaining an FSP licence by executing the required actions as a representative in terms of the Act.
2. Check that execution of duties and actions do not constitute undesirable business practices.
3. Comply with any requirements the Ombud may have in the event of an investigation.

## 2.2 THE REQUIREMENTS THAT AN FSP MUST MEET TO MAINTAIN A LICENCE

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The FAIS Act requires certain actions in respect of the licensing conditions. There may be limitations in terms of the type of financial service which is allowed for a specific financial products category or sub-category – for instance, the FSP may be licensed to only provide intermediary service or only advice in respect of a particular category of financial product.

An application for authorisation must be submitted to the Registrar in the form and manner determined by the Registrar by notice on the official web site. The application must be accompanied by information to satisfy the Registrar that the applicant complies with the fit and proper requirements that are set for FSPs [Section 8(1)]. The Registrar may require the applicant to furnish additional information as he deems necessary. He may also take any other information regarding the applicant or proposed key individual of the applicant (obtained

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from any source including the Ombud) into account, provided that the applicant is granted an opportunity to respond to the information.

FAIS licences issued to FSPs always carry a few conditions. There are standard conditions and there are conditions specifically applicable to the FSP licence.

Specific conditions include reference to the categories for which the FSP is authorised, as well as any other applicable conditions about the fit and proper status of the key individuals who need to obtain certain qualifications within a certain period of time from the date of licensing the FSP. The licensing conditions may also include exemptions applicable to the FSP.

**FSPs must adhere to the conditions** and also ensure that there are **adequate systems and processes** in the business to ensure **compliance with the conditions**. Where representatives (and key individuals) work across various (sub)-products and licence categories, there must be internal controls to ensure that the financial service (or management and oversight) they provide correspond with the specific licence conditions and restrictions.

The **financial services** of the FSP **are limited to the specific sub-product category** for which a licence is issued. The FSP may have **more than one licence** because the structure of the business may be such that products are grouped together, which makes it logical to have a specific licence for that part of the business. **All the requirements of the FAIS Act must be met under each licence.**

Section 13 of the FAIS Act includes the requirement for qualifications of representatives and duties of FSPs towards the maintenance of the FAIS licence.

Let's consider a summary of the responsibilities of an FSP and/or key individual with regard to the requirements of Section 13 of the FAIS Act.

**Table 2.1**

<b>What must be done?</b>	<b>Who must do it and how?</b>
Nobody may provide financial services to clients for or on behalf of un-authorized FSPs who are not exempted from the FAIS Act.	Representatives must only render a financial service for authorized FSPs.

What must be done?	Who must do it and how?
<p>Nobody may act as a representative for an FSP unless the person, prior to rendering a financial service, can confirm to clients (certified by the FSP) that he:</p> <ul style="list-style-type: none"> <li>• has an <b>employment or mandate agreement with the FSP</b>, to represent the FSP; and</li> <li>• that the <b>FSP accepts responsibility for the activities of the representative</b> performed in terms of the agreement.</li> </ul>	<p>Representatives must ensure that the necessary documentation is available and used to confirm the required information to clients.</p> <p>Where representatives provide financial services on mandates from the FSP, the required written mandate must be available to representatives to provide to clients.</p>
<p>If a representative was <b>debarred</b>, he can only operate as one again if the <b>procedures for reappointment of a "rehabilitated" debarred representative</b> have been followed.</p>	<p>When the FSP wants to reappoint any person who had been debarred, the representative must ensure that the correct procedure is followed to ensure that the re-appointment request is assessed in terms of the criteria as stipulated in Section 2 of BN 82 of 2003.</p>
<p>The FSP must at all times:</p> <ul style="list-style-type: none"> <li>• ensure that representatives and key individuals of representatives are competent to act and in compliance with the requirements for being fit and proper.</li> <li>• take reasonable steps to ensure that representatives comply with applicable codes of conduct and with other applicable laws on conduct of business.</li> </ul>	<p>FSPs must ensure that representatives and key individuals are and remain fit and proper.</p> <ul style="list-style-type: none"> <li>• As such, representatives must undergo the required training to comply with the FAIS Act and other applicable legislation in the rendering of financial services, as well as training in relation to product and process training.</li> <li>• Representatives must understand and comply with the FSP's codes of ethics or related codes, as well as the relevant Codes of Conduct, as required in FAIS subordinate legislation.</li> </ul>

What must be done?	Who must do it and how?
An authorised FSP or representative may only conduct financial services related business with a person rendering financial services if that person has, if required, been issued with a licence for the rendering of such services.	FSPs and representatives need to verify whether other FSPs and representatives that they deal with are properly licensed.

## 2.3 THE PROCESSES THAT ARE REQUIRED TO REMAIN UPDATED WITH REGARD TO OTHER LEGISLATION, AMENDMENTS, UPDATES AND REQUIREMENTS PUBLISHED THAT WILL AFFECT THE FSP

It is crucial for an FSP to be aware of changes in legislation, as well as new legislation introduced, and to ensure that all staff members, such as representatives, are informed of the changes and requirements. Financial services are impacted by many laws relating to financial products, security-related legislation, insurance-specific legislation, as well as consumer protection legislation. It is important that the business constantly align its practices and compliance with applicable legislation.

The FSP must, therefore, ensure that there are procedures and systems in place to identify and flag changes in legislation, and representatives should actively seek information about changes. An example of such a process is subscription to a service provider that specialises in updating business with changes, alerts and updates.

Once identified, the required action must be taken to ensure compliance. It is also important that the key individual/FSP and representative stay up to date with changes and updates in the FAIS legislation, including the subordinate legislation.

## 2.4 UNDESIRABLE BUSINESS PRACTICES

### 2.4.1 What is meant by “undesirable practices?”

There are prescribed principles that must be taken into account before the Registrar can declare the practice undesirable, including:

**Table 2.2**

<b>The business practice must have, or is likely to have, a direct or indirect effect resulting in:</b>	<ul style="list-style-type: none"><li>• harming the relations between FSPs or any FSP or category of FSPs, and clients or the general public;</li><li>• unreasonable prejudice to clients;</li><li>• deceiving any client;</li><li>• unfairly affecting any client; and</li><li>• if allowed to continue, the practice will defeat one or more objects of the FAIS Act.</li></ul>
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The Registrar may declare a particular business practice to be undesirable for FSPs or providers and publish such a decision in the Government Gazette.

#### **2.4.2 Implication for an FSP if the Registrar publishes a notice regarding an “undesirable business practice”**

If the Registrar is convinced that these “requirements” are met, the following must happen:

1. The Registrar must publish an intention to make the declaration in the Gazette, and provide reasons and invite written representations to the Registrar.
2. The declaration then gets published and the FSP (or representative) concerned must stop with the business practice on or after the date of publication in the Gazette (this refers to the actual declaration, not the intention to declare)

#### **2.4.3 Reparation measures available to the Registrar if an FSP continues with an undesirable business practices.**

1. If an FSP carries on with the business practice after the date of publication, the Registrar may inform the FSP to rectify or reinstate, to the satisfaction of the Registrar, any damage or loss which was caused by or arose out of the carrying on of the business practice concerned.
2. The FSP who must rectify or reinstate must do so within 60 days after the direction was issued.

If the FSP does not adhere to the Registrar's directive, a fine of not more than R10 million or imprisonment of not more than ten years, or both, may be imposed in terms of Section 36 of the FAIS Act.



Business must be informed not to continue doing business with, or using the services of an FSP whose business practice has been declared undesirable.

## 2.5 LICENSING

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### 2.5.1 Licence displaying requirements

Once a licence has been granted, the FAIS Act requires that the licence must be displayed in a durable and prominent manner within each of the applicant's business premises.

The licence must at all times, immediately or within a reasonable time, be available to any person who has a legal right to request it or wants to enter into a business relationship with the FSP.

Reference must also be made to the licence in all advertisements, business documentation and promotional material – it is not necessary to refer to the licence number in promotional material.

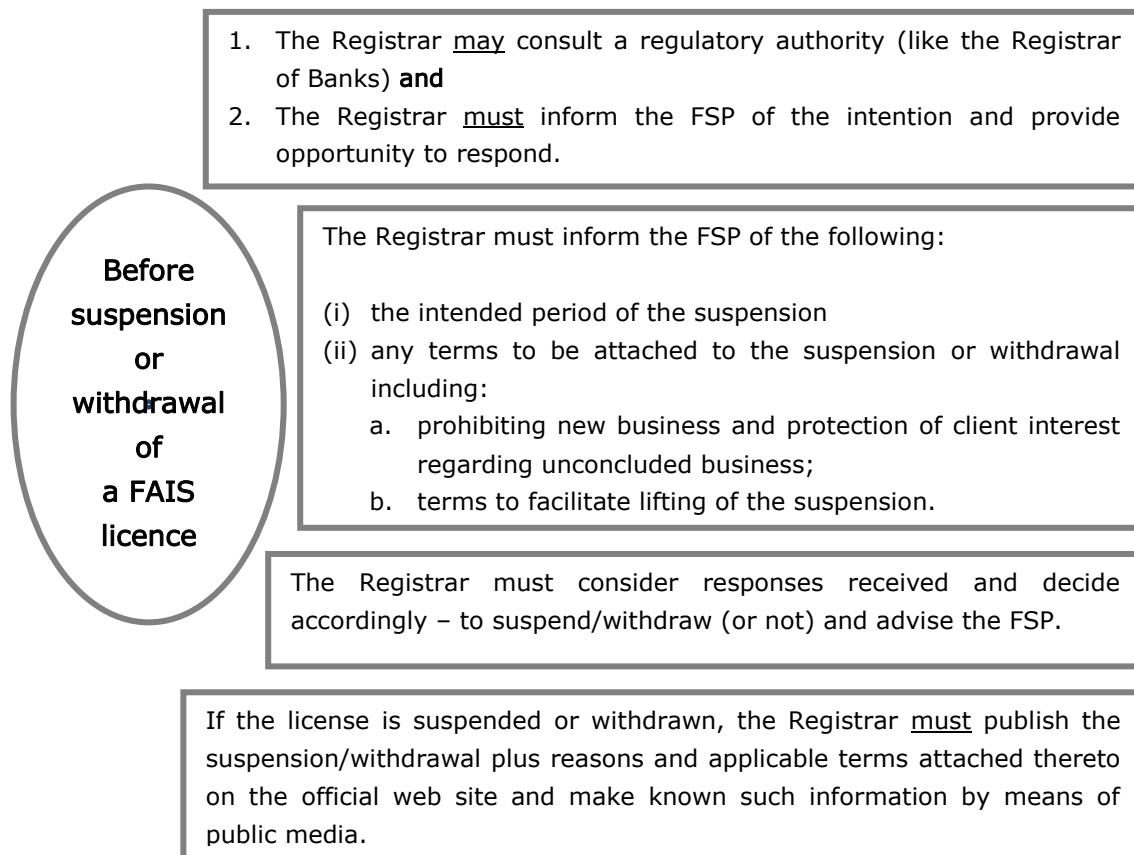
In addition, the licence must be available for production to anyone who requests proof that the business is licensed.

Certified copies of licences may be used for display purposes.

### 2.5.2 Reasons for suspension or withdrawal

The Registrar may suspend or withdraw a FAIS licence, subject to certain conditions. The licence may also be reinstated, subject to certain conditions.

The diagram below indicates the steps before the Registrar **may suspend or withdraw** a FAIS licence.



**Figure 2.1**

Once the requirements have been met (outlined in the diagram above), the Registrar may suspend or withdraw any licence if he is satisfied on the basis of available facts and information that the licensee:

- **no longer** meets the fit and proper requirements of the FAIS Act.
- **didn't disclose** all required information upon applying for a licence or **submitted false or misleading information.**
- **failed to comply with any provision/s of the FAIS Act.**
- **still owes levies, penalties or administrative sanctions to the FSB** and hasn't paid it.
- does not have an **approved key individual.**
- **failed to comply with any directive issued under the FAIS Act.**
- **failed to comply with any condition or restriction under the FAIS Act.**

### **2.5.3 Urgent suspension or withdrawal**

Notwithstanding the fact that the Registrar must follow certain procedures, as outlined in Figure 2.1, before suspension or withdrawal, the Registrar may, on

an urgent basis, if there are **reasonable grounds** that the public or clients may be substantially prejudiced:

- **provisionally suspend or withdraw** a licence. The Registrar must **inform the licensee of the grounds** and the **period and terms** as well as allow the licensee a **reasonable opportunity to respond** thereto and to provide reasons why the provisional suspension or withdrawal should be lifted or why the period and terms should be changed.
- **publish the provisional suspension or withdrawal** on the official web site and if necessary, by means of **any other appropriate public media**.

#### 2.5.4 Penalties

Any person who, in respect of an investigation run by the Ombud, acts in a way which, if committed in respect of a court of law, would have constituted contempt of court, is guilty of an offence. Such person is liable on conviction to any penalty which may be imposed on a conviction of contempt of court.

A person who anticipates a determination of the Ombud in any manner calculated to influence the determination or who willfully interrupts any proceedings conducted by the Ombud, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.

#### 2.5.5 Recourse of FSP and reinstatement

The Registrar must **consider a response** received from the licensee and **may decide** to:

- **lift** the provisional suspension or withdrawal; or
- **make it final**.

The **licensee** must be **advised** accordingly including the terms and reasons. The **notification** must happen on the official web site and **appropriate public media, if necessary**.

**If a licence is suspended or withdrawn, the licensee is not authorised to act as an FSP.**

#### 2.5.6 Debarment following suspension or withdrawal

If a **licence** has been **withdrawn in terms of Section 9** of the FAIS Act (which deals with suspension and withdrawal of licences), the person is **debarred** for a

period specified by the Registrar from applying for a new licence and the Registrar may, on good cause shown, vary the period.

### 2.5.7 Registrar may consult a regulatory authority

Before suspending or withdrawing a licence, the Registrar may consult "any regulatory authority". This implies that the FAIS Registrar may (and should) consult another regulator if the FSP concerned is also authorised or licensed for business under that regulator.

In the diagram in Section 2.5.2 we used the example of the FAIS Registrar consulting the Registrar of Banks in the event of a possible suspension or withdrawal of a bank-related FSP licence. It may be critical for the FAIS Registrar to consult another applicable regulator because suspension or withdrawal of an FSP licence may have dire consequences in the financial services industry.

## Note

With effect from February 2014, the FAIS Act provides for publication of the suspension or withdrawal of a licence on the official web site instead of the Gazette. The Registrar may also make known such information by means of other appropriate public media.

### 2.5.8 Lapsing a FAIS licence

The licence of a **natural person** may **lapse** in the following instances:

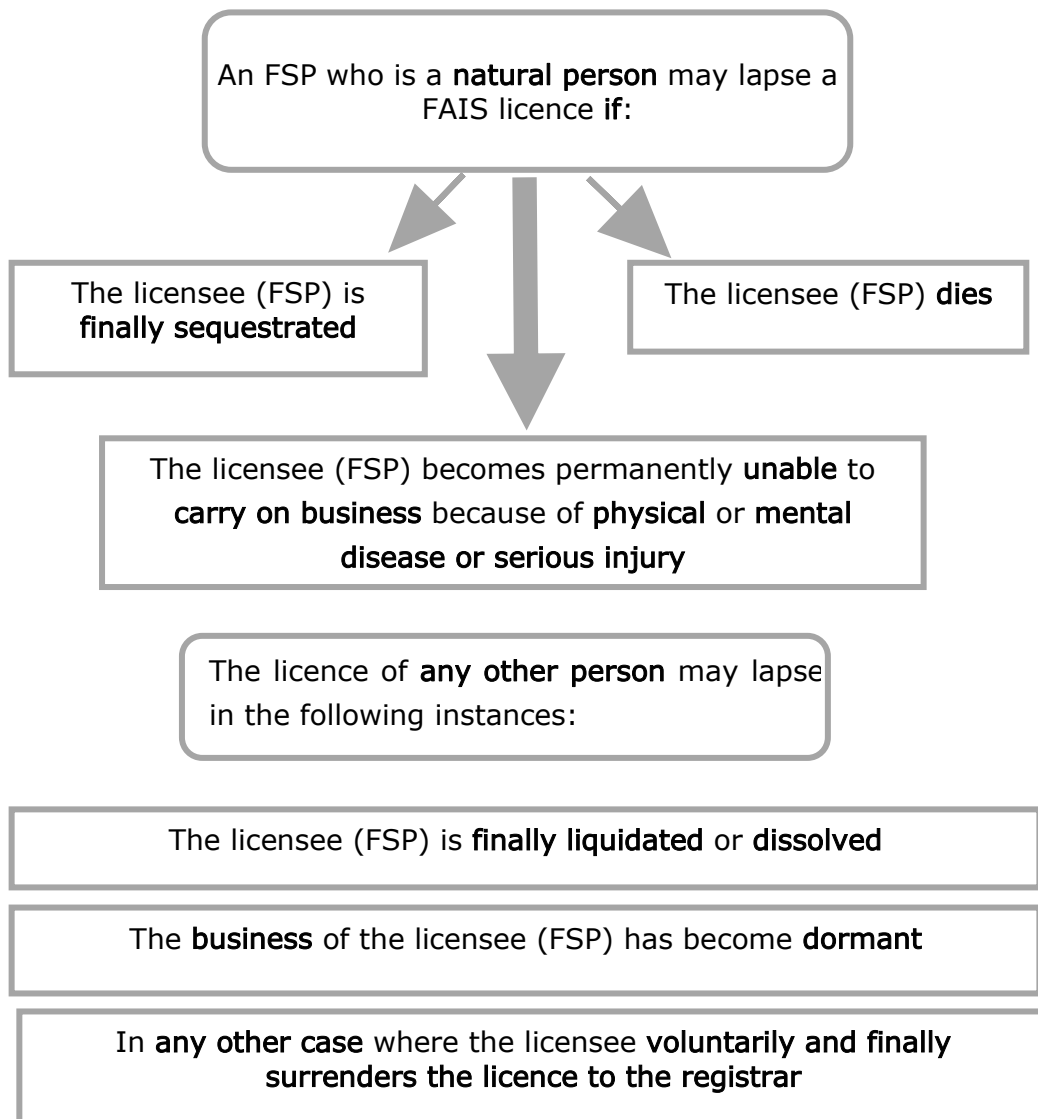


Figure 2.2

The Registrar must be advised in writing by the licensee, any key individual of the licensee, or another person in control of the affairs of the licensee, of the lapsing of a licence and the reasons therefore and the Registrar may publish the lapsing of a licence by notice on the official web site and, if necessary in any other appropriate public media announcement.

### 2.5.9 Distinguish between “suspension” and “withdrawal”

Suspension or withdrawal of a licence is the result of non-compliance with the requirements of the FAIS Act. Lapsing of a licence is the result of factors other than non-compliance.

**Table 2.3**

<b>Suspension or withdrawal of a FAIS licence</b>	<b>Lapsing of a FAIS licence</b>
Suspension or withdrawal of a licence is initiated by the Registrar, following actions or omissions by the FSP. We discuss these aspects and requirements in Section 2.5.2 of this chapter.	Lapsing of a licence is initiated by the FSP, following an event which gave reason for the lapse.
The Registrar may allow reinstatement of a suspended licence under certain conditions.	There are no provisions in the Act for the reinstatement of a lapsed licence.
After withdrawal of a licence, the person will be debarred from applying for a new licence. This is slightly different to debarment as applicable to honesty and integrity.	There are no requirements for debarment in terms of lapsing a licence.
There are implications for accredited FSPs under the Medical Schemes Act [Refer to Section 7(e) of Chapter II.] as the FSP will lose the accreditation if the FAIS licence is suspended or withdrawn and vice versa.	Accreditation in terms of the Medical Schemes Act (where applicable) will also be deemed to have lapsed.

As you have seen, the three-stage process for withdrawing or suspending a licence is the same. The difference between these two is that:

- The Act does not make specific provision for a withdrawn licence to be reinstated, however, the Registrar has been reinstating a number of withdrawn licences. If the licence was withdrawn, the entity will need to start afresh after a period of time, and will need to apply for a new licence. But this can only happen if that entity has not been permanently debarred from receiving a licence for that product.
- The Registrar can reinstate a suspended licence once all the conditions have been met.
- The Registrar may impose conditions if a suspension or withdrawal is lifted. These conditions may include certain actions by the FSP in relation to its business.

### 2.5.10 Conditions for reinstatement of a suspended licence

A suspended licence could be reinstated by the Registrar once all the conditions attached to the suspension have been fulfilled. These conditions could be to:

- prove fit and proper status to the Registrar.
- provide acceptable reasons for non-disclosure of material information when applying for the licence.
- pay the said levy, etc.

The Registrar could vary the period of suspension on good cause shown.

## 2.6 THE OMBUD FOR FINANCIAL SERVICES PROVIDERS (FAIS OMBUD)

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### 2.6.1 The role and powers of the Ombud (Sections 20 – 32)

The FAIS Act<sup>6</sup> makes provision for the appointment of an Ombud for financial services.

The function of the FAIS Ombud is:

- to resolve disputes relating to the rendering of financial services by providers where they have:
  - either failed to comply with the FAIS Act or
  - where as a result of either wilful or negligent conduct by the provider the client has suffered or
  - will potentially suffer prejudice or damage.

**The objective of the Ombud office is to consider and dispose of complaints in a procedurally fair, informal, economical and expeditious manner and by reference to what is equitable in all the circumstances.**

The FAIS Ombud is a statutorily created body. There are other voluntary Ombudsmen created by the financial services industry who also deal with financial disputes. There is therefore a great deal of confusion about which Ombudsman does what.

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<sup>6</sup> Sections 20 to 32 of the FAIS Act

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Since 1 April 2005, the FAIS Ombud was granted the authority to act as Statutory Ombud in terms of the Financial Ombud Schemes Act 2004 (Act No. 37 of 2004) ('FSOS Act').

This means that the FAIS Ombud can deal with complaints where there is uncertainty over jurisdiction and where the other voluntary Ombudsmen do not have jurisdiction.

The following fundamental principles apply to the role of the FAIS Ombud:

- The FAIS Ombud acts independently and objectively and takes no instructions from any person regarding the exercise of authority.
- The services rendered by the Ombud are not to be construed as being similar to those of a professional legal adviser and are confined to the investigation and determination of complaints in terms of the Act and the Rules.

### 2.6.2 The powers of the FAIS Ombud

The FAIS Ombud is mandated to investigate and adjudicate complaints by clients against FSPs and representatives.

These complaints could relate to a number of areas of non-compliance with the various codes of conduct promulgated under the FAIS Act and where a financial service has been rendered negligently and where someone has willfully committed misconduct whilst rendering a financial service.

The FAIS Act requires that when adjudicating a complaint, the FAIS Ombud must consider the contractual or other legal relationship between the parties and ultimately do what is equitable in the circumstances.

Compensation could vary from:

- ordering **the complainant to be placed in the position in which she or he would have been** had it not been for the misconduct of the representative or
- simply correcting a **misunderstanding**.

It all depends on the circumstances of the particular case.



## **Jurisdiction**

The following jurisdictional provisions apply to the Ombud in respect of the investigation of complaints:

- The Ombud must decline to investigate any complaint which relates to an act or omission which occurred on or after 30 September 2004 but more than three years before the date of receipt of the complaint by the Ombud's office. This three-year period only starts when the complainant became aware or ought reasonably to have become aware of the problem.
- The Ombud must decline to investigate any complaint if proceedings have already been instituted in any Court in respect of the act or omission.
- The Ombud may, on reasonable grounds, determine that it is more appropriate that the complaint be dealt with by a Court or through any other available dispute resolution process and decline to entertain the complaint.

The complaint must not constitute a monetary claim in excess of R800 000, for a particular kind of financial prejudice or damage, unless the respondent (the FSP) has agreed in writing to this limitation being exceeded, or the complainant has abandoned the amount in excess of R800 000.

The Ombud may, when accepting a complaint in terms of Section 27(5) of the FAIS Act, require the respondent to pay a case fee to the Office of the Ombud not exceeding R1 000. The case fee is non-refundable irrespective of the outcome of the matter.

If a case cannot be settled through mediation or conciliation, the FAIS Ombud or the Deputy FAIS Ombud may issue a determination. A determination has the same legal effect as a judgment of a court.

### **2.6.3 Requirements in the event of an investigation by the Ombud**

The Ombud will typically consider a complaint in the following circumstances:

If the complainant alleges that a financial services provider or its representative has:

- contravened or failed to comply with the provisions of the FAIS Act and as a result thereof the complainant has suffered or is likely to suffer financial prejudice or damage.
- wilfully or negligently rendered a financial service to the complainant which has caused prejudice or damage to the complainant or which is likely to result in such damage.
- treated the complainant unfairly.

In terms of the FAIS Act, the Ombud can also entertain a complaint relating to any agreement with, or a financial service or product of a financial institution where it is alleged that a client has suffered or potentially will suffer financial prejudice or harm.

### **Procedures when investigating a complaint**

The Ombud may follow and implement any procedure (including mediation) which the Ombud deems appropriate and may allow any party the right of legal representation. He must, in the first instance, explore any reasonable prospect of resolving a complaint by a conciliated settlement acceptable to all parties. He may make recommendations to the parties in this regard, requiring them to confirm whether or not they accept the recommendation. The Ombud may decide how to use the different parties in his office to perform the investigation.

For purposes of any investigation or determination by the Ombud, the provisions of the Commissions Act (Act 8 of 1947) regarding the summoning and examination of persons, and the administering of oaths, etc. apply.

The process will flow as follows:

1. The complainant completes a complaint form and submits it to the office of the FAIS Ombud. The Ombud will insist that the complaint be referred to and dealt with by the FSP first.
2. The Ombud must inform every other interested party to the complaint that they have received it.
3. All parties must be provided particulars to enable them to respond to the complaint.
4. All parties must be afforded the opportunity to submit a response to the complaint.

5. The Ombud may implement any procedure including mediation which he deems appropriate and may allow any party the right to legal representation in considering the complaint.
6. The Ombud may ask the respondent (FSP/representative) to discuss the complaint and provide any relevant information that the Ombud may require.
7. The Ombud will in the first instance explore any reasonable prospects of resolving a complaint by a conciliated settlement acceptable to all parties.
8. He may make a recommendation to speedily resolve a complaint and require the parties to confirm in writing whether or not they accept the recommendation.
9. Where the parties accept the recommendation, the recommendation will have the effect of a final determination by the Ombud as outlined in Section 28(1) of the FAIS Act.
10. The Ombud may dismiss the complaint if he is of the view that the offer made by the FSP is fair.
11. If the complainant is unhappy with the Ombud's determination he may appeal to the Appeal Board, provided the Ombud grants leave to appeal.
12. Where a matter has not been settled or a recommendation has not been accepted by the parties, the Ombud shall make a determination which may include:
  - a) Dismissing the complaint; or
  - b) Upholding the complaint, wholly or partially.
13. The complainant may be awarded an amount as fair compensation for any financial prejudice or damage suffered.
14. A direction may be issued that the authorised financial services provider, representative or other party concerned take such steps in relation to the complaint as the Ombud deems appropriate and just.
15. A determination or final decision of the board of Appeal, as the case may be, is regarded as a civil judgment which shall be recorded by the clerk of the court or Registrar of the High Court as the case may be.
16. A warrant of execution may be issued in the case of a determination or final decision of the board which amounts to a monetary award and may be executed by the Sheriff of the Court after the expiration of a period of two weeks, after the date of the determination or final decision of the board as the case may be.

The key individual must ensure that there are adequate processes in place and that staff are informed and trained with regard to the handling of complaints submitted to the Ombud and any investigations by the Ombud's office.

# Relevant Legislation



## *Financial Advisory and Intermediary Services Act 37 of 2002* *Chapter II*

### *Authorisation of Financial Services Providers* *Section 8*

#### **8. Application for authorisation**

(1) *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 on the official web site, and be accompanied by information to satisfy the Registrar that the applicant complies with the fit and proper requirements determined for financial services providers or categories of providers, determined by the Registrar by notice in the Gazette, in respect of-*

(a) *personal character qualities of honesty and integrity;*

(b) *competence*

(bA) *operational ability; and*

(c) *financial soundness.*

*[Subs. (1) substituted by Section 182 of Act 45/2013 w.e.f. 28 February 2014]*

(1A) *If the applicant is a partnership, trust or corporate or unincorporated body, the requirements in paragraphs (a) and (b) of subsection (1) do not apply to the applicant, but in such a case the application must be accompanied by additional information to satisfy the Registrar that every person who acts as a key individual of the applicant complies with the fit and proper requirements for key individuals in the category of financial services providers applied for, in respect of-*

(a) *personal character qualities of honesty and integrity;*

(b) *competence; and*

(c) *operational ability,*

*to the extent required in order for such key individual to fulfil the responsibilities imposed by this Act.*

*[Subs. (1A) inserted by Section 182 of Act 45/2013 w.e.f. 28 February 2014]*

(2) *The Registrar may -*

(a) *require an applicant to furnish such additional information, or require such*

*information to be verified, as the Registrar may deem necessary; and*

- (b) take into consideration any other information regarding the applicant or proposed key individual of the applicant, derived from whatever source, including the Ombud and any other regulatory or supervisory authority, if such information is disclosed to the applicant and the latter is given a reasonable opportunity to respond thereto.*

*[Para. (b) substituted by Section 182 of Act 45/20113 w.e.f. 28 February 2014]*

*(3) The Registrar must after consideration of an application -*

- (a) grant the application if the Registrar-*

- (i) is satisfied that the applicant and its key individual or key individuals comply with the requirements of this Act; and*

- (ii) approves the key individual or key individuals of the applicant, in the case of a partnership, trust or corporate or unincorporated body; or*

*[Para. (a) substituted by Section 182 of Act 45/2013 w.e.f. 28 February 2014]*

- (b) refuse the application if the Registrar-*

- (i) is not satisfied that the applicant and its key individual or key individuals comply with the requirements of this Act; or*

- (ii) does not approve the key individual or key individuals of the applicant in the case of a partnership, trust or corporate or unincorporated body.*

*[Para. (b) substituted by Section 182 of Act 45/2013 w.e.f. 28 February 2014]*

*(4)*

- (a) Where an application is granted, the Registrar may impose such conditions and restrictions on the exercise of the authority granted by the licence, and to be included in the licence, as are necessary, having regard to -*

- (i) all facts and information available to the Registrar pertaining to the applicant and any key individual of the applicant;*

- (ii) the category of financial services which the applicant could appropriately render or wishes to render;*

- (iii) the category of financial services providers in which the applicant is classified for the purposes of this Act; and*

*[Subpara. (iii) substituted by Section 182 of Act 45/2013 w.e.f. 28 February 2014]*

- (iv) the category or subcategory of financial products in respect of which the applicant could appropriately render or wishes to render financial services.*

*[Subpara. (iv) substituted by Section 182 of Act 45/2013 w.e.f. 28 February 2014]*

- (b) Conditions and restrictions contemplated in paragraph (a), may include a condition that where after the date of granting of the licence -*

- (i) any key individual in respect of the licensee's business is replaced by a new key individual; or*

- (ii) any new key individual is appointed or assumes office; or*

- (iii) any change occurs in the personal circumstances of a key individual which renders or may render such person to be no longer compliant with the fit and proper requirements for key individuals,*

*[Subpara. (iii) substituted by Section 182 of Act 45/2013 w.e.f. 28 February 2014]*

*no such person may be permitted to take part in the conduct, management or oversight of the licensee's business in relation to the rendering of financial services, unless such person has on application been approved by the Registrar as compliant with the fit and proper requirements for key individuals, in the manner and in accordance with a procedure determined by the Registrar by notice on the official web site.*

*[Words following subpara. (iii) substituted by Section 182 of Act 45/2013 w.e.f. 28 February 2014]*

(5)

(a) *Where an application for authorisation is granted, the Registrar must issue to the applicant-*

*[Words preceding subpara. (i) substituted by Section 182 of Act 45/2013 w.e.f. 28 February 2014]*

- (i) *a licence authorising the applicant to act as a financial services provider, in the form determined by the Registrar by notice in the Gazette; and*
- (ii) *such number of certified copies of the licence as may be requested by the applicant.*

(b) *The Registrar may at any time after the issue of a licence -*

- (i) *on application by the licensee or on own initiative withdraw or amend any condition or restriction in respect of the licence, after having given the licensee a reasonable opportunity to make submissions on the proposed withdrawal or amendment and having considered those submissions, if the Registrar is satisfied that any such withdrawal or amendment is justified and will not prejudice the interests of clients of the licensee; or*
- (ii) *pursuant to an evaluation of a new key individual, or a change in the personal circumstances of a key individual, referred to in subsection (4)(b), impose new conditions on the licensee after having given the licensee a reasonable opportunity to be heard and having furnished the licensee with reasons,*

*[Subpara. (ii) substituted by Section 182 of Act 45/2013 w.e.f. 28 February 2014]*  
*and must in every such case issue an appropriately amended licence to the licensee, and such number of certified copies of the amended licence as may be requested by the licensee.*

(6) *Where an application referred to in subsection (1) is refused, the Registrar must -*

- (a) *notify the applicant thereof; and*
- (b) *furnish reasons for the refusal.*

(7)

(a) *Despite any other provision of this section, a person granted accreditation under Section 65(3) of the Medical Schemes Act, 1998 (Act No. 131 of 1998), must, subject to this subsection, be granted authority to render as a financial services provider the specific financial service for which the person was accredited, and must be issued with a licence in terms of subsection (5).*

*[Para. (a) substituted by Section 182 of Act 45/2013 w.e.f. 28 February 2014]*

*(b) The Registrar must be satisfied that a person to be granted authority under paragraph (a), and any key individual of such person, comply with the fit and proper requirements.*

*[Para. (b) substituted by Section 182 of Act 45/2013 w.e.f. 28 February 2014]*

*(c) A person granted authority and licensed as contemplated in paragraph (a), together with any key individual, are thereafter subject to the provisions of this Act.*

*(d) If a licence -*

*(i) is refused in terms of this section;*

*(ii) is suspended in terms of Section 9;*

*(iii) is withdrawn in terms of Section 10; or*

*(iv) lapses in terms of Section 11,*

*the accreditation referred to in paragraph (a) is deemed to have lapsed in terms of the Medical Schemes Act, 1998, or to have been suspended or withdrawn, as the case may be.*

*(e) If an accreditation referred to in paragraph (a) is suspended or withdrawn or lapses in terms of the Medical Schemes Act, 1998, the licence issued in terms of that paragraph is deemed to have been suspended or withdrawn or to have lapsed in terms of Sections 9, 10 and 11, respectively, of this Act.*

*(8) A licensee must -*

*(a) display a certified copy of the licence in a prominent and durable manner within every business premises of the licensee;*

*(b) ensure that a reference to the fact that such a licence is held is contained in all business documentation, advertisements and other promotional material; and*

*[Para. (b) amended by Section 182 of Act 45/2013 w.e.f. 28 February 2014]*

*(c) ensure that the licence is at all times immediately or within a reasonable time available for production to any person requesting proof of licensed status under authority of a law or for the purpose of entering into a business relationship with the licensee.*

*(9) No person may-*

*(a) in any manner make use of any licence or copy thereof for business purposes where the licence has lapsed, has been withdrawn or provisionally withdrawn or during any time when the licensee is under provisional or final suspension;*

*(b) perform any act which indicates that the person renders or is authorised to render financial services or is appointed as a representative to render financial services, unless the person is so authorised or appointed; and*

*(c) perform any act, make or publish any statement, advertisement, brochure or similar communication which-*

*(i) relates to the rendering of a financial service, the business of a provider*

*or a financial product; and*

- (ii) the person knows, or ought reasonably to know, is misleading, false, deceptive, contrary to the public interest or contains an incorrect statement of fact.*

*[Subs. (9) substituted by Section 182 of Act 45/2013 w.e.f. 28 February 2014]*

*(10)*

- (a) Where a provider is a corporate or unincorporated body, a trust or a partnership, the provider must-*

- (i) at all times be satisfied that every director, member, trustee or partner of the provider, who is not a key individual in the provider's business, complies with the requirements in respect of personal character qualities of honesty and integrity as contemplated in paragraph (a) of subsection (1A); and*

*[Subpara. (i) substituted by Section 182 of Act 45/2013 w.e.f. 28 February 2014]*

- (ii) within 15 days of the appointment of a new director, member, trustee or partner, inform the Registrar of the appointment and furnish the Registrar with such information on the matter as the Registrar may reasonably require.*

- (b) If the Registrar is satisfied that a director, member, trustee or partner does not comply with the requirements as contemplated in paragraph (a) of subsection (1A), the Registrar may suspend or withdraw the licence of the provider as contemplated in Section 9.*

*[Para. (b) substituted by Section 182 of Act 45/2013 w.e.f. 28 February 2014]*

#### **8A. Compliance with fit and proper requirements after authorisation**

*An authorised financial services provider, key individual, representative of the provider and key individual of the representative must-*

- (a) continue to comply with the fit and proper requirements; and*
- (b) comply with the fit and proper requirements relating to continuous professional development.*



## **Financial Advisory and Intermediary Services Act 37 of 2002**

### **Chapter II**

#### **Authorisation of Financial Services Providers**

##### **Section 9**

#### **9. Suspension and withdrawal of authorisation**

- (1) The Registrar may, subject to subsection (2) and irrespective of whether the Registrar has taken or followed, or is taking or following, any step or procedure referred to in Section 4, at any time suspend or withdraw any licence (including the licence of a licensee under provisional or final suspension) if satisfied, on the basis of available facts and information, that the licensee-*



- (a) *does not meet or no longer meets the fit and proper requirements applicable to the licensee, or if the licensee is a partnership, trust or corporate or unincorporated body, that the licensee or any key individual of the licensee does not meet or no longer meets the fit and proper requirements applicable to the licensee or the key individual;*  
[Para. (a) substituted by Section 184 of Act 45/2013 w.e.f. 28 February 2014]
- (b) *did not, when applying for the licence, make a full disclosure of all relevant information to the Registrar, or furnished false or misleading information;*
- (c) *has failed to comply with any other provision of this Act;*  
[Para. (c) substituted by Section 184 of Act 45/2013 w.e.f. 28 February 2014]
- (d) *is liable for payment of a levy under Section 15A of the Financial Services Board Act, 1990 (Act No. 91 of 1990), a penalty under Section 41(2) and (3) or an administrative sanction under Section 6D(2) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001), and has failed to pay the said levy, penalty or administrative sanction and any interest in respect thereof;*  
[Para. (d) substituted by Section 184 of Act 45/2013 w.e.f. 28 February 2014]
- (e) *does not have an approved key individual;*  
[Para. (e) added by Section 184 of Act 45/2013 w.e.f. 28 February 2014]
- (f) *has failed to comply with any directive issued under this Act; or*  
[Para. (f) added by Section 184 of Act 45/2013 w.e.f. 28 February 2014]
- (g) *has failed to comply with any condition or restriction imposed under this Act.*  
[Para. (g) added by Section 184 of Act 45/2013 w.e.f. 28 February 2014]

(2)

- (a) *Before suspending or withdrawing any licence, the Registrar-*
  - (i) *may consult any regulatory authority; and*
  - (ii) *must inform the licensee of the intention to suspend or withdraw and the grounds therefor and must give the licensee a reasonable opportunity to make a submission in response thereto.*
- (b) *Where the Registrar contemplates the suspension or withdrawal of any licence, the Registrar must also inform the licensee of-*  
[Words preceding subpara. (i) substituted by Section 184 of Act 45/2013 w.e.f. 28 February 2014]
  - (i) *the intended period of the suspension; and*
  - (ii) *any terms to be attached to the suspension or withdrawal, including-*
    - (aa) *a prohibition on concluding any new business by the licensee as from the effective date of the suspension or withdrawal and, in relation to unconcluded business, such measures as the Registrar may determine for the protection of the interests of clients of the licensee; and*
    - (bb) *terms designed to facilitate the lifting of the suspension.*
 [Subpara. (ii) substituted by Section 184 of Act 45/2013 w.e.f. 28 February 2014]

- (c) *The Registrar must consider any response received, and may thereafter decide to suspend or withdraw, or not to suspend or withdraw, the licence, and must notify the licensee of the decision.*
- (d) *Where the licence is suspended or withdrawn, the Registrar must make known the reasons for the suspension or withdrawal and any terms attached thereto by notice on the official web site and may make known such information by means of any other appropriate public media.*  
*[Para. (d) substituted by Section 184 of Act 45/2013 w.e.f. 28 February 2014]*
- (3) *Notwithstanding the provisions of subsection (2), the Registrar may under urgent circumstances, where the Registrar is satisfied on reasonable grounds that substantial prejudice to clients or the general public may occur-*
- (a) *provisionally suspend or withdraw a licence, and inform the licensee of the -*
- (i) *grounds therefor; and*
- (ii) *period and terms of suspension as referred to in subsection (2)(b), and give the licensee a reasonable opportunity to respond thereto and to provide reasons why the provisional suspension or withdrawal should be lifted or why the period and terms should be changed; and*
- (b) *make known such provisional suspension or withdrawal by notice on the official web site and, if necessary, by means of any other appropriate public media.*  
*[Para. (b) substituted by Section 184 of Act 45/2013 w.e.f. 28 February 2014]*
- (4)
- (a) *The Registrar must, within a reasonable time after receipt of any response contemplated in subsection (3)(a) consider the response, and may thereafter decide to-*
- (i) *lift the provisional suspension or withdrawal; or*
- (ii) *render the provisional suspension or withdrawal final,*  
*[Subpara. (ii) substituted by Section 184 of Act 45/2013 w.e.f. 28 February 2014]*
- and must inform the licensee accordingly.*
- (b) *The Registrar must make known the terms of and reasons for such final suspension or withdrawal, or the lifting thereof, by notice on the official web site and, if necessary, in any other appropriate public media.*  
*[Para. (b) substituted by Section 184 of Act 45/2013 w.e.f. 28 February 2014]*
- (5) *During any period of suspension, whether provisional or final, the licensee concerned is for the purposes of this Act regarded as a person who is not authorised to act as a financial services provider.*
- (6)
- (a) *A person whose licence has been withdrawn under this section is debarred for a period specified by the Registrar from applying for a new licence.*
- (b) *The Registrar may, on good cause shown, vary any such period.*  
*[Section 9 substituted by Section 49 of Act 22/2008]*



**Financial Advisory and Intermediary Services Act 37 of 2002**

**Chapter II**

**Authorisation of Financial Services Providers**

**Section 11**

**11. Lapsing of licence**

(1) A licence lapses -

(a) where the licensee, being a natural person -

- (i) becomes permanently incapable of carrying on any business due to physical or mental disease or serious injury;
- (ii) is finally sequestered; or
- (iii) dies;

(b) where the licensee, being any other person, is finally liquidated or dissolved;

(c) where the business of the licensee has become dormant; and

(d) in any other case, where the licensee voluntarily and finally surrenders the licence to the Registrar.

(2) The Registrar must be advised in writing by the licensee, any key individual of the licensee, or another person in control of the affairs of the licensee, as the case may be, of the lapsing of a licence and the reasons there for and the Registrar may make known any such lapsing of a licence by notice on the official web site and, if necessary by means of any other appropriate public media announcement.

[Subs. (2) substituted by Section 51 of Act 22/2008 and Section 185 of Act 45/2013 w.e.f. 28 February 2014]



**Financial Advisory and Intermediary Services Act 37 of 2002**

**Chapter III**

**Representatives of Authorised Financial Services Providers**

**Section 13**

**13. Qualifications of representatives and duties of authorised financial services providers**

(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

(Commencement date of para. (a): 30 September 2004)

- (b) *act as a representative of an authorised financial services provider, unless such person-*
- (i) *prior to rendering a financial service, provides confirmation, certified by the provider, to clients-*  
*[Words preceding item (aa) substituted by Section 186 of Act 45/2013 w.e.f. 28 February 2014]*
    - (aa) *that a service contract or other mandate, to represent the provider, exists; and*  
*[Item (aa) substituted by Section 52 of Act 22/2008]*
    - (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*  
*[Item (bb) substituted by Section 52 of Act 22/2008]*
  - (iA) *meets the fit and proper requirements; and*  
*[Subpara. (iA) inserted by Section 186 of Act 45/2013 w.e.f. 28 February 2014]*
  - (ii) *if debarred as contemplated in Section 14, complies with the requirements determined by the Registrar by notice in the Gazette, for the reappointment of a debarred person as a representative.*  
*[Subpara. (ii) substituted by Section 186 of Act 45/2013 w.e.f. 28 February 2014]*
- (c) *render financial services or contract in respect of financial services other than in the name of the financial services provider of which such a person is a representative; and*

(2) *An authorised financial services provider must -*

- (a) *at all times be satisfied that the provider's representatives, and the key individuals of such representatives, are, when rendering a financial service on behalf of the provider, competent to act, and comply with-*
  - (i) *the fit and proper requirements; and*
  - (ii) *any other requirements contemplated in subsection (1)(b)(ii);*  
*[Para. (a) substituted by Section 52 of Act 22/2008 and by Section 186 of Act 45/2013 w.e.f. 28 February 2014]*
- (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.*

(3) *The authorised financial services provider must maintain a register of representatives, and key individuals of such representatives, which must be regularly updated and be available to the Registrar for reference or inspection purposes.*

(4) *Such register must -*

- (a) *contain every representative's or key individual's name and business address, and state whether the representative acts for the provider as employee or as mandatory; and*

- (b) *specify the categories in which such representatives are competent to render financial services.*
- (5) *The Registrar may require information from the authorised financial services provider, including the information referred to in subsection (4), so as to enable the Registrar to maintain and continuously update a central register of all representatives and key individuals, which register must be published in any appropriate media.*  
*[Subs. (5) substituted by Section 52 of Act 22/2008]*
- (6) *A person who on the date contemplated in Section 7(1) complies with the requirements of this Act for a representative and on such date acts as employee or mandatory for any person who on or after such date becomes an authorised financial services provider, is, for the purposes of this Act, but subject to the provisions of this Act relating to representatives, regarded as a representative.*



***Financial Advisory and Intermediary Services Act 37 of 2002***

***Chapter VI***

***Enforcement***

***Section 20***

***20. Office of Ombud for Financial Services Providers***

- (1) *There is an office to be known as the Office of the Ombud for Financial Services Providers.*
- (2) *The functions of the Office are performed by the Ombud for Financial Services Providers.*
- (3) *The objective of the Ombud is to consider and dispose of complaints in a procedurally fair, informal, economical and expeditious manner and by reference to what is equitable in all the circumstances, with due regard to -*
- (a) *the contractual arrangement or other legal relationship between the complainant and any other party to the complaint; and*
- (b) *the provisions of this Act.*
- (4) *When dealing with complaints in terms of Sections 27 and 28, the Ombud is independent and must be impartial.*  
*(Commencement date of Section 20: 8 March 2003)*



**Financial Advisory and Intermediary Services Act 37 of 2002**  
**Chapter VI**

**Enforcement**  
**Section 27**

**27. Receipt of complaints, prescription, jurisdiction and investigation**

- (1) *On submission of a complaint to the Office, the Ombud must –*
- (a) *determine whether the requirements of the rules contemplated in Section 26(1)(a)(iv) have been complied with;*
  - (iv) *the rights of complainants in connection with complaints, including the manner of submitting a complaint to the authorised financial services provider or representative concerned;*
  - (b) *in the case of any non-compliance, act in accordance with the rules made under that Section; and*
  - (c) *otherwise officially receive the complaint if it qualifies as a complaint.*
- (2) *Official receipt of a complaint by the Ombud suspends the running of prescription in terms of the Prescription Act, 1969 (Act No. 68 of 1969), for the period after such receipt of the complaint until the complaint has either been withdrawn, or determined by the Ombud or the board of appeal, as the case may be.*
- (3) *The following jurisdictional provisions apply to the Ombud in respect of the investigation of complaints:*
- (a)
    - (i) *The Ombud must decline to investigate any complaint which relates to an act or omission which occurred on or after the date of commencement of this Act but on a date more than three years before the date of receipt of such complaint by the Office.*
    - (ii) *Where the complainant was unaware of the occurrence of the act or omission contemplated in subparagraph (i), the period of three years commences on the date on which the complainant became aware or ought reasonably to have become aware of such occurrence, whichever occurs first.*
  - (b)
    - (i) *The Ombud must decline to investigate any complaint if, before the date of official receipt of the complaint, proceedings have been instituted by the complainant in any Court in respect of a matter which would constitute the subject of the investigation.*
    - (ii) *Where any proceedings contemplated in subparagraph (i) are instituted during any investigation by the Ombud, such investigation must not be proceeded with.*

- (c) *The Ombud may on reasonable grounds determine that it is more appropriate that the complaint be dealt with by a Court or through any other available dispute resolution process, and decline to entertain the complaint.*
- (4) *The Ombud must not proceed to investigate a complaint officially received, unless the Ombud –*
- (a) *has in writing informed every other interested party to the complaint of the receipt thereof;*
- (b) *is satisfied that all interested parties have been provided with such particulars as will enable the parties to respond thereto; and*
- (c) *has provided all interested parties the opportunity to submit a response to the complaint.*
- (5) *The Ombud –*
- (a) *may, in investigating or determining an officially received complaint, follow and implement any procedure (including mediation) which the Ombud deems appropriate, and may allow any party the right of legal representation;*
- (b) *must, in the first instance, explore any reasonable prospect of resolving a complaint by a conciliated settlement acceptable to all parties;*
- (c) *may, in order to resolve a complaint speedily by conciliation, make a recommendation to the parties, requiring them to confirm whether or not they accept the recommendation and, where the recommendation is not accepted by a party, requiring that party to give reasons for not accepting it: Provided that where the parties accept the recommendation, such recommendation has the effect of a final determination by the Ombud, contemplated in Section 28(1);*
- (d) *may, in a manner that the Ombud deems appropriate, delineate the functions of investigation and determination between various functionaries of the Office;*
- (e) *may, on terms specified by the Ombud, mandate any person or tribunal to perform any of the functions referred to in paragraph (d).*
- (6) *For the purposes of any investigation or determination by the Ombud, the provisions of the Commissions Act, 1947 (Act No. 8 of 1947), regarding the summoning and examination of persons and the administering of oaths or affirmations to them, the calling for the production of books, documents and objects, and offences by witnesses, apply with the necessary changes.*  
*(Commencement date of Section 27: 8 March 2003)*



*Financial Advisory and Intermediary Services Act 37 of 2002*

*Chapter VI*

*Enforcement*

*Section 28*

**28. Determinations by Ombud**

(1) *The Ombud must in any case where a matter has not been settled or a recommendation referred to in Section 27(5)(c) has not been accepted by all parties concerned, make a final determination, which may include -*

- (a) *the dismissal of the complaint; or*
- (b) *the upholding of the complaint, wholly or partially, in which case -*
  - (i) *the complainant may be awarded an amount as fair compensation for any financial prejudice or damage suffered;*
  - (ii) *a direction may be issued that the authorised financial services provider, representative or other party concerned take such steps in relation to the complaint as the Ombud deems appropriate and just;*
  - (iii) *the Ombud may make any other order which a Court may make.*

(2)

- (a) *A monetary award may provide for the amount payable to bear interest at a rate and as from a date determined by the Ombud.*
- (b) *The Board may by rule determine -*
  - (i) *the maximum monetary award for a particular kind of financial prejudice or damage;*
  - (ii) *different maximum monetary awards for different categories of complaints;*
  - (iii) *the granting of costs, including costs against a complainant in favour of the Office or the respondent if in the opinion of the Ombud -*
    - (aa) *the conduct of the complainant was improper or unreasonable; or*
    - (bb) *the complainant was responsible for an unreasonable delay in the finalisation of the relevant investigation:*

*Provided that an amount payable under a cost award bears interest at a rate and as from a date determined by the Ombud.*

(3) *Any award of interest by the Ombud in terms of subsection (2) may not exceed the rate which a Court would have been entitled to award, had the matter been heard by a Court.*

(4)

- (a) *The Ombud must reduce a determination to writing, including all the reasons therefor, sign the determination, and send copies thereof to the Registrar and all parties concerned with the complaint and, if no notice of appeal to the board of appeal has been lodged within the period required therefor, to the clerk or*



*Registrar of court which would have had jurisdiction in the matter had it been heard by a Court.*

*(b) Where a notice of appeal has been lodged, the Ombud must send a copy of the final decision of the board of appeal to any such clerk or Registrar.*

*(5) A determination -*

*(a) or a final decision of the board of appeal, as the case may be, is regarded as a civil judgment of a Court, had the matter in question been heard by a Court, and must be so noted by the clerk or Registrar, as the case may be, of that Court;*

*(b) is only appealable to the board of appeal -*

*(i) with the leave of the Ombud after taking into consideration*

*(aa) the complexity of the matter; or*

*(bb) the reasonable likelihood that the board of appeal may reach a different conclusion; or*

*(ii) if the Ombud refuses leave to appeal, with the permission of the chairperson of the board of appeal.*

*(6)*

*(a) A writ of execution may, in the case of a determination or a final decision of the board of appeal amounting to a monetary award, be issued by the clerk or the Registrar referred to in subsection (3) and may be executed by the sheriff of such Court after expiration of a period of two weeks after the date of the determination or of the final decision of the board of appeal, as the case may be.*

*(b) Any other determination must be given effect to in accordance with the applicable procedures of a Court after expiration of a period of two weeks after the date of the determination or of the final decision of the board of appeal.*

*(Commencement date of Section 28: 8 March 2003)*



***Financial Advisory and Intermediary Services Act 37 of 2002***  
***Chapter VI***

***Enforcement***  
***Section 31***

***31. Penalties***

*Any person who -*

*(a) commits any act in respect of the Ombud or an investigation by the Ombud which, if committed in respect of a court of law, would have constituted contempt of court, is guilty of an offence and liable on conviction to any penalty which may be imposed on a conviction of contempt of court; or*

(b)

- (i) *anticipates a determination of the Ombud in any manner calculated to influence the determination; or*
- (ii) *wilfully interrupts any proceedings conducted by the Ombud, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.*

*(Commencement date of Section 31: 8 March 2003)*



## ***Financial Advisory and Intermediary Services Act 37 of 2002***

### ***Chapter VI***

#### ***Enforcement***

#### ***Section 34***

#### ***34. Undesirable practices***

- (1) *Subject to subsections (2) and (3), the Registrar may by notice in the Gazette declare a particular business practice to be undesirable for all or a category of authorised financial services providers, or any such provider.*  
*[Subs. (1) substituted by Section 196 of Act 45/2013 w.e.f. 28 February 2014]*
- (2) *The following principles must guide the Registrar in considering whether or not a declaration contemplated in subsection (1) should be made:*
  - (a) *That the practice concerned, directly or indirectly, has or is likely to have the effect of -*
    - (i) *harming the relations between authorised financial services providers or any category of such providers, or any such provider, and clients or the general public;*
    - (ii) *unreasonably prejudicing any client;*
    - (iii) *deceiving any client; or*
    - (iv) *unfairly affecting any client; and*
  - (b) *that if the practice is allowed to continue, one or more objects of this Act will, or is likely to, be defeated.*
- (3) *The Registrar may not make such a declaration unless the Registrar has by notice in the Gazette published an intention to make the declaration, giving reasons therefore, and invited interested persons to make written representations there anent so as to reach the Registrar within 21 days after the date of publication of that notice.*
- (4) *An authorised financial services provider or representative may not, on or after the date of the publication of a notice referred to in subsection (1), carry on the business practice concerned.*  
*[Subs. (4) substituted by Section 196 of Act 45/2013 w.e.f. 28 February 2014]*
- (5) *The Registrar may direct an authorised financial services provider who, on or after the date of the publication of a notice referred to in subsection (1), carries on the business practice concerned in contravention of that notice, to rectify to the satisfaction of the Registrar anything which was caused by or arose out of the carrying on of the*

*business practice concerned: Provided that the Registrar may not make an order contemplated in Section 6D(2)(b) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001).*

*[Subs. (5) substituted by Section 60 of Act 22/2008]*

- (6) *An authorised financial services provider concerned who is under subsection (5) directed to rectify anything, must do so within 60 days after such direction is issued.*

*[Subs. (6) substituted by Section 60 of Act 22/2008]*



### **Financial Advisory and Intermediary Services Act 37 of 2002**

#### **Section 39**

#### **39. Right of appeal**

*Any person who feels aggrieved by any decision by the registrar or the Ombud under this Act which affects that person, may appeal to the board of appeal established by Section 26(1) of the Financial Services Board Act, in respect of which appeal the said Section 26 applies with the necessary changes.*



### **Financial Advisory and Intermediary Services Act 37 of 2002**

#### **Rules on Proceedings of the Office of the Ombud for Financial Services Providers, 2003**

**Published under Board Notice 81 in Government Gazette 25299 of 8 August 2003 and amended by:**

**BN 100**

**GG 26844**

**29/9/2004**

#### **4. Type of complaint justiciable by Ombud**

- (a) *For a complaint to be submitted to the Office -*
- (i) *the complaint must fall within the ambit of the Act and these Rules;*
  - (ii) *the person against whom the complaint is made must be subject to the provisions of the Act (hereafter referred to as "the respondent");*
  - (iii) *the act or omission complained of must have occurred at a time when these Rules were in force; and*
  - (iv) *the respondent must have failed to address the complaint satisfactorily within six weeks of its receipt.*

*[Para. (a) substituted by BN 100/2004]*

- *The complaint must not constitute a monetary claim in excess of R800 000,00 for a particular kind of financial prejudice or damage, unless the respondent has agreed in writing to this limitation being exceeded, or the complainant has abandoned the amount in excess of R800 000,00.*

#### **7. Summary dismissal of complaints**

- (b) *The Ombud may dismiss a complaint without referral to any other party if on the facts provided by the complainant it appears to the Ombud that -*

- (i) *the complaint does not have any reasonable prospect of success;*
- (ii) *the respondent has made an offer which is fair and reasonable and which is still open for acceptance by the complainant;*
- (iii) *the matter has previously been considered by the Ombud;*
- (iv) *the essential subject of the complaint has been decided in court proceedings;*
- (v) *the subject of the complaint is pending in court proceedings; or*
- (vi) *the complaint or relief sought is of the nature that the Ombud can be of no assistance to the complainant.*

## **12. Appeals**

- (a) *A party against whom the Ombud has made a determination may apply to the Ombud for leave to appeal against the determination.*



### ***Financial Advisory and Intermediary Services Act 37 of 2002***

#### ***Determination of Requirements for Reappointment of Debarred Representatives, 2003***

***Published under Board Notice 82 in Government Gazette 25299 of 8 August 2003***

## **2. Requirements for reappointment of debarred representatives**

*The requirements for the reappointment of a debarred representative shall be as follows, namely, that the applicant must be a person who, on the date of reappointment, complies with the following, which compliance must, where necessary, be proved by the submission to the appointing provider by the applicant and, where appropriate, the debarring provider or any other person, of relevant original substantiating documentation or certified copies thereof, including affidavits (if any):*

- (a) *At least 12 (twelve) months since the debarment date must have elapsed, unless the debarment was consequent on the applicant not having qualified as contemplated in Section 13(2)(a) of the Act, and the applicant has within that period qualified as so contemplated;*
- (b) *all unconcluded business of the applicant as former representative, referred to in the proviso to Section 14(1) of the Act, has been properly concluded;*
- (c) *all-*
  - (i) *complaints or legal proceedings (if any) submitted by clients to the applicant or the debarring provider, or the Ombud or any court of law; or*
  - (ii) *other administrative or legal procedures or proceedings in terms of the Act or any other law, arising out of any acts or omissions in which the applicant was directly or indirectly involved prior to the debarment date, have been properly and lawfully resolved or concluded, as the case may be, and that the applicant has fully complied with any decision, determination or court order in connection therewith, given or issued in respect of the applicant;*
- (d) *all fit and proper requirements as contemplated in Section 8(1)(a) and (b), read with Section 13(2), of the Act are complied with.*

## Summary

In this topic we studied everything related to the licensing process of FSPs and representatives. The requirements for licensing were discussed as well as the circumstances under which a licence may be suspended or withdrawn.

Once a licence has been approved, the FSP is obliged to adhere to the licensing conditions. Licences must be displayed and appear in various documents used by the FSP. The Registrar has the power to suspend or withdraw a licence under certain circumstances. In these circumstances the FSP must be given an opportunity to state his case. Licences may also lapse. The difference between the suspension and withdrawal of a licence and lapsing is that lapsing is not initiated by the Registrar, for example, when a person dies or decides to surrender a licence. Suspension and withdrawal occurs as a result of enforced actions by the Registrar. Licences may be reinstated under certain conditions.

The Ombud for Financial Services Providers (FAIS Ombud) is responsible for handling complaints by clients against FSPs. The Ombud has the power to uphold or dismiss a complaint. For information on rulings by the FAIS Ombud, you can go to [www.faisombud.co.za](http://www.faisombud.co.za).

## Self-Assessment Questions

Please note that the questions which follow are formative in nature. The questions were not developed by the FSB's examination bodies and as such cannot be used as an indication of the nature/structure/level of the questions that you will encounter in the FSB's regulatory examination.

1. Which one of the following can be regarded as an undesirable business practice?
  - a) A client is advised to switch from one bank to another because the new bank charges lower rates
  - b) A representative recommends that a client cancels a policy without a valid reason
  - c) A representative advises a client to change his Will to be in line with the client's wishes at that stage
  - d) A representative informs a client about the improved performance of the product supplier's investments over the past five years

2. The FSP licence is granted by the:
    - a) South African Reserve Bank.
    - b) Insurance Institute.
    - c) Banking Council.
    - d) Financial Services Board.
  
  3. Which statement reflects all the actions with regard to complaints that are within the power of the Ombud for Financial Services Providers (FAIS Ombud)?
    - a) The Ombud may dismiss a complaint or uphold it.
    - b) The Ombud may dismiss a complaint, uphold it or refer it to a court if more suitable to be heard by the court.
    - c) The Ombud may dismiss a complaint, uphold it, decline it if it is received three years after the date of the issue of the complaint or refer it to a court of law if more suitable to be heard by the court.
    - d) The Ombud may uphold a complaint or decline it if it is received three years after the date of the issue of the complaint.
  
  4. If the Registrar has directed that an FSP who carried on with an undesirable business practice should reinstate any damages or loss caused, the FSP has to rectify the matter within:
    - a) 30 days
    - b) 90 days
    - c) 50 days
    - d) 60 days
  
  5. When the Registrar intends to suspend or withdraw a licence, the licensee is:
    - a) entitled to be given a reasonable opportunity to make a submission in this regard.
    - b) entitled to appeal against the decision.
    - c) not allowed the opportunity to make a submission in this regard.
    - d) allowed to continue working for another three months in order to conclude all outstanding business.
-

6. Under which of the following circumstances may a licence lapse?
- a) Only when the licensee has died
  - b) Only when the licensee voluntarily surrenders his licence
  - c) When the licensee has died, is sequestrated or voluntarily surrenders his licence
  - d) When the licence is withdrawn
7. The FAIS Ombud is the person appointed to resolve disputes between consumers and financial services providers relating to:
- a) the quality or nature of the advice given.
  - b) the contract between the insurer and the client.
  - c) the performance of an investment.
  - d) the experience of the adviser.
8. If an FSP carries on with an undesirable business practice, the Registrar may direct it to:
- a) make up any loss caused by the practice, to the satisfaction of the Registrar.
  - b) compensate the Registrar, in an amount to the satisfaction of the Registrar.
  - c) explain to the client that the practice is undesirable in a manner to the satisfaction of the Registrar.
  - d) stop the business practice immediately, and provide an undertaking to the satisfaction of the Registrar that this will be done.





## Adhere to the specific obligations in terms of the relevant Code of Conduct and other subordinate legislation

### 3.1 INTRODUCTION

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Section 15 of the FAIS Act requires that the Registrar should, after consultation with representative bodies of the financial services industry as well as client and consumer bodies, draft and publish a code of conduct for financial services providers. Section 16 of the Act states that the purpose of such a code of conduct is to ensure that clients who receive financial services will be able to make informed decisions. It also prescribes the following principles on which the code of conduct should be based:

Financial services providers and their representatives should:

- act honestly and fairly, and with due skill, care and diligence (i.e. legal carefulness), in the interests of clients and the integrity of the financial services industry.
  - have and employ effectively the resources, procedures and appropriate technological systems for the proper performance of professional activities
  - obtain from clients appropriate and available information regarding their financial situations, financial product experience and objectives in connection with the financial service required.
  - take into consideration all possible circumstances and consequences before acting and treat clients fairly in a situation of conflicting interests.
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- comply with all applicable statutory or common law requirements applicable to the conduct of business.

Section 16 of the Act also determines that the code of conduct should contain particular provisions with obligations imposed on financial services provider and their representatives, such as the following:

- The making of adequate disclosures of relevant material information, including disclosures of actual or potential own interests, in relation to dealings with clients
- Adequate and appropriate record-keeping
- Avoidance of fraudulent and misleading advertising, canvassing and marketing
- Proper safe-keeping, separation and protection of funds and the transaction documentation of clients
- Where appropriate, suitable guarantees or professional indemnity or fidelity insurance cover, and mechanisms for adjustments of such guarantees or cover by the Registrar in any particular case
- Any other matter that is necessary or expedient to be regulated in such code for the better achievement of the objects of this Act.

In the following sections we are going to look in detail at the obligations imposed by the General Code of Conduct and how it impacts FSPs and representatives.

In this topic, you will gain knowledge in the following areas:

1. Explain the obligations and requirements when client funds or premiums are received.
2. Explain the importance of disclosures.
3. Discuss the impact and requirements regarding the disclosure rules on the FSP.
4. Discuss the effect of disclosure requirements on commission is explained with reference to line of business and specific product/policy.
5. Describe the disclosure requirements regarding the FSP, product suppliers, product suppliers acting as FSPs and financial services.
6. Discuss how to ensure transparency and manage conflict of interests.

7. Distinguish between actions regarded as advice and intermediary services in terms of the FAIS Act.
8. Describe the concept of ethical conduct in the financial services environment.
9. Discuss your role in terms of ethical conduct in the financial services environment.
10. Explain the manner in which complaints are to be handled by the industry with reference to the FAIS General Code of Conduct.
11. Explain the steps that must be taken by an FSP/ representatives when providing advice.
12. Explain the provisions of the General Code relating to:
  - custody
  - complaints
  - risk management
  - insurance
  - advertising
  - termination.

The following skills criteria are related to the knowledge criteria listed above:

1. Use disclosures that are adequate to enable the client's ability to make an informed decision.
2. Apply the requirements of the General Code of Conduct.
3. Apply disclosure requirements in terms of financial products.
4. Behave ethically when providing financial services within the financial services environment.
5. Follow the complaints procedures and processes that are in place.

The FAIS Act tells you about many requirements that an FSP and/or its representatives should adhere to if they want to be FAIS compliant. However, these requirements are usually not only determined in an Act, but also in what is called "subordinate legislation". Subordinate legislation refers to additional

and/or more detailed legal requirements that are based on the original Act. It actually supplements the original Act.

In terms of FAIS, the subordinate legislation includes the FAIS General Code of Conduct and any other related Acts and/or regulations that were introduced at a later stage to supplement or make changes to provisions of the original Act. It is absolutely essential that you understand what you have to do to adhere to the specific obligations in terms of the FAIS General Code of Conduct and other subordinate legislation.

The purpose of this topic is to inform you about these FAIS requirement so that you can obey them and remain FAIS compliant.

### 3.2 SAFE CUSTODY OF FUNDS AND PREMIUMS

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#### 3.2.1 Explain the obligations and requirements when client funds or premiums are received

The General Code of the FAIS Act applies to the provision of financial services and includes the procedures to be followed when an FSP receives financial products, funds or premiums from clients and holds it in custody before paying it over into a bank account. These provisions are subject to any other legislation which may be more prescriptive with regard to the custody of financial products and funds.

Representatives must ensure that they adhere to the prescribed procedures. The following must be done:

**Table 3.1**

Separate bank Account	The FSP must have an account at a bank, separate from any other funds, designated to receive funds and premiums from clients. The FSP is responsible for bank charges except the charges that relate to deposit or withdrawal, which the client must pay.  The FSP must pay all interest accumulating in the account to the client or owner of the funds.
Receipt of funds	When the FSP receives funds from a client, without a bank being involved, it must issue written confirmation when the money is received.

Safeguarding	<p>If the FSP or a designated third party receives funds or financial documents, reasonable steps must be taken to ensure that they are adequately safeguarded and that:</p> <ul style="list-style-type: none"> <li>• The funds or financial products are dealt with according to the client's mandate;</li> <li>• The funds or financial products are easily distinguished from the FSP's funds or assets;</li> <li>• The client has easy access to an amount paid into the separate account, less all relevant deductions, but subject to other applicable laws. (For instance, if the funds are proceeds of crime, money laundering legislation may prevent the client from accessing it.)</li> </ul> <p>We discuss money laundering in Topic 8.</p>
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### 3.3 DISCLOSURES

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#### 3.3.1 Explain the importance of disclosures

FAIS requires FSPs and product suppliers to make certain disclosures. Disclosure of sufficient and accurate information to clients at the earliest possible time is important because it enables them to make informed decisions. If the information is supplied verbally, it must be confirmed in writing within 30 days.

#### 3.3.2 Discuss the requirements regarding the disclosure rules on the FSP and/or representatives as well as the impact it has on them.

Disclosures that must be made regarding FSPs are given in Part IV of the Code. Section 5 determines that the following general information on FSPs has to be disclosed:

- Name of the business and registration number
- Information regarding the services the FSP is authorised to provide
- Addresses and contact numbers including email addresses, etc.
- Information about the legal relationship between the FSP, product supplier and representative where applicable
- A representative must confirm his contractual relationship with the FSP details about the compliance department of the FSP
- Information about any restrictions or conditions on the licence of the FSP

- Information regarding indemnity insurance (insurance against possible loss, damage, or liability)
- If applicable, the fact that a representative of an FSP acts under supervision.

#### **Example of disclosures: FSP/representative**

Joe Soap is a broker who provides financial advice and who sells long-term insurance. He works alone and is licensed as an FSP. On meeting a new client for the first time, he has to supply the following information about himself:

- Name of the business and registration number
- Information regarding the services he is authorised to provide
- Addresses and contact numbers including email addresses, etc.
- Information about the legal relationship between himself and any product supplier where applicable
- Details about the compliance department of the FSP
- Information about any restrictions or conditions on the licence of the FSP
- Information regarding his indemnity insurance.

The impact of this disclosure on FSPs is that they have to draft and provide documents containing all the relevant disclosures to be used by themselves and their representatives. In addition, they have to ensure that their representatives use these disclosures when rendering financial services to their clients.

#### **3.3.3 Describe the disclosure requirements regarding product suppliers and products**

The FSP must give clients information on product suppliers as soon as possible, where appropriate. Oral information must be confirmed in writing within 30 days.

#### **Disclosure must include the following:**

- Name, physical location, postal and telephone contact details of the product supplier
- The contractual relationship between FSP and the product supplier (if any), and whether the FSP has contractual relationships with other product suppliers

- Names and contact details of the relevant compliance and complaints departments of the product supplier
- If applicable, that the FSP holds more than 10% shares or has the equivalent financial interest in the product supplier or that the FSP received more than 30% of total remuneration, including commission in the last 12 months, from the product supplier.

## Note

A product supplier who is also an FSP and who has an intermediary or similar contract with another provider must ensure that when asked by the other provider, it provides all the required information about itself (product supplier) and the product, so that the provider can comply with the disclosure requirements.

### Product suppliers and products

Not only must FSPs ensure that there is adequate disclosure on product suppliers, FSPs and commission, they also need to ensure that there is adequate disclosure with regard to the products being offered to clients. **This is to ensure that clients get adequate information on financial products.**

The representative has to disclose the following information regarding the financial services that are rendered:

- The name, class or type of financial product concerned
- The nature and extend of the benefits provided
- When the financial product concerned is an investment or is having an investment component, the representative has to provide the following details as well:
  - Details of the manner in which the value of the investment is determined
  - Separate disclosure of any charges and fees
  - Any rebate arrangements between the product supplier and the product provider
  - Any platform fee arrangements.
- The nature and the extend of the monetary obligations assumed by the client in favour of the product supplier
- The nature and extent of monetary obligations assumed by the client in favour of the provider

- The nature, extent and frequency of any incentives, remuneration, consideration, commission, fee or brokerage, which may become payable to the provider
- Details of any special terms and conditions
- Any guaranteed minimum benefits
- To what extent the product is readily releasable
- Any restrictions or penalties for early termination
- Material tax considerations
- Whether cooling of rights are offered
- Any material investment or other risk associated with the product
- If the premiums have to increase, the increased premium for the first five years and thereafter on a five-year basis but not exceeding 20 years.

The following disclosures regarding the completion and/or submission of any transaction have to be made by the representative:

- That the client is responsible for the accuracy and completeness of all answers, statements and other information provided
- That if the provider completes the application form on behalf of the client, the client is still responsible for the accuracy and completeness of the details completed
- The possible consequences should the client non-disclose or misrepresent information on the application form
- The client must on request be supplied with a written copy of the completed application form.

Representatives are not allowed to request any client to sign a blank application form and must provide the client with a written statement of account should the client have requested this.

### **3.3.4 The effect of disclosure requirements on commission, with reference to line of business and specific product/policy**

When an FSP renders a financial service, he must avoid, and where not possible mitigate any conflict of interest between a provider and a client or the representative and a client. The FSP/representative therefore has to disclose all amounts, sums, values, charges, fees, remuneration or monetary obligations. These must be reflected in specific monetary terms. The FSP must also disclose the nature, extent and frequency of any incentive, remuneration, consideration, commission or fee which will become payable to the provider, including non-cash incentives or benefits.



The General Code introduced new conflict of interest rules in 2010. Section 3A of the code states that a provider or its representatives may only receive or offer the following financial interest from or to a third party:

- (i) Commission authorised under the Long-term Insurance Act, 1998 (Act No. 52 of 1998) or the Short-term Insurance Act, 1998 (Act No. 53 of 1998)
- (ii) Commission authorised under the Medical Schemes Act, 1998 (Act No. 131 of 1998)
- (iii) Fees authorised under the Long-term Insurance Act, 1998 (Act No. 52 of 1998), the Short-term Insurance Act, 1998 (Act No. 53 of 1998) or the Medical Schemes Act, 1998 (Act No. 131 of 1998), if those fees are reasonably commensurate to a service being rendered
- (iv) Fees for the rendering of a financial service in respect of which commission or fees referred to in subparagraph (i), (ii) or (iii) is not paid, if those fees -
  - (aa) are specifically agreed to by a client in writing
  - (bb) may be stopped at the discretion of that client
- (v) Fees or remuneration for the rendering of a service to a third party, which fees or remuneration are reasonably commensurate to the service being rendered
- (vi) Subject to any other law, an immaterial financial interest; and
- (vii) A financial interest, not referred to under subparagraph (i) to (vi), for which a consideration, fair value or remuneration that is reasonably commensurate to the value of the financial interest, is paid by that provider or representative at the time of receipt thereof.

Disclosure on commission must include the following:

- The **nature, extent and frequency** of any incentive, remuneration, consideration, commission, fee or brokerages ("**valuable consideration**"), which will or may become payable to the provider, **directly or indirectly**, by any **product supplier** or **any person** other than the client
- Fees or commissions for which the **provider may become eligible**, as a result of rendering of the financial service
- **The identity of the product supplier** or **other person** providing or offering the valuable consideration
- If the **maximum amount or rate** of the **valuable consideration** is **prescribed by law**, the provider may **disclose the actual amount in monetary terms** or the **basis** for the **calculation** must be described if the amount is not determinable

- Where a **financial product** is being **replaced** (the **terminated product**) by another financial product (the **replacement product**), **full details** must be **disclosed** of any incentive, remuneration, consideration, **commission**, fee or brokerages **received, directly or indirectly**, by the **provider on the terminated product** and the same by the provider on the **replacement product** where the provider rendered financial services on **both** the terminated and replacement product.

Disclosures required for forex investment business must include the following:

- The forex intermediary must disclose to a client non-cash incentives offered or other indirect consideration payable to the forex intermediary because of the intermediating on the client's investments;
- The **mandate** between a **client and a forex investment intermediary** must state whether **the forex investment intermediary receives commission**, incentives, fee reductions or rebates **from a foreign forex services provider** or **any other applicable institution** for **placing a client's funds** with them;
- The **mandate between** a client and a **discretionary FSP** must state whether the discretionary FSP **receives commission**, incentives, fee reductions or rebates from an **administrative FSP or product supplier** for **placing a client's funds with them**.

The effect of this disclosure is that clients are informed of the amounts that are paid to the adviser and which will consequently decrease the investment amount.

### 3.4 DISCUSS HOW TO ENSURE TRANSPARENCY AND MANAGE CONFLICT OF INTERESTS

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Conflict of interests arises when a role-player (e.g. a representative) has business and personal interests that compete with each other. In such a situation it may be impossible or difficult for the representative to provide impartial advice and recommendations.

The General Code of Conduct, amongst others, provides excellent guidelines that, if adhered to, enable a role-player to ensure transparency and to manage conflict of interests. It requires fair and honest disclosures, including the disclosure of a conflict of interest.

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Table 3.2

<p><b>The General Code requires the following in respect of conflict of interest management:</b></p>	
<p><b>When a provider (including a representative) renders a financial service, the provider must disclose to the client:</b></p>	<ul style="list-style-type: none"> <li>• the existence of any personal interest in the relevant service; or</li> <li>• of any circumstance which gives rise to an actual or potential conflict of interest in relation to the service; and</li> <li>• the provider must take all reasonable steps to ensure fair treatment of the client.</li> </ul>
<p>Non-cash incentives offered and/or other indirect consideration payable by another provider, a product supplier or any other person to the provider could be viewed as a potential conflict of interest.</p>	
<p><b>The Code of Conduct for FSPs and their Representatives Involved in Forex Investment Business requires the following in respect of conflict of interest management:</b></p>	
<p><b>A forex investment intermediary must:</b></p>	<p>Avoid any conflict between own interests and the interests of a client and where a conflict of interest does arise, the forex investment intermediary must:</p> <ul style="list-style-type: none"> <li>• adequately disclose details of such conflict to the client while maintaining the confidentiality of other clients; or</li> <li>• decline to act for that client.</li> </ul>

In addition to the above, the General Code was amended in Board Notice 58 of 2010 to include more stringent measures relating to managing conflict of interest.

Some important terms were introduced and defined in this Board Notice:

- **Associate** includes a natural person, juristic person and trusts controlled or administered by the person.
- **Financial interest** includes: cash, cash equivalent, voucher, gift, service, advantage, benefit, discount, domestic/foreign travel, accommodation, hospitality, sponsorship, other incentives, valuable consideration. Financial interest excludes: ownership interest, training on products (excluding travel and accommodation in relation to training), legal matters relating to products, general financial and industry information, third party systems needed.

- **Third party** includes: product suppliers, another provider, associates of product suppliers and providers, distribution channel.
- **Immaterial financial interest** means any financial interest which in Rand value does not exceed R1 000 over a calendar year period and which is paid by the same third party during that year.

The requirements relating to conflict of interest include those listed below.

A provider may not offer any financial interest to a representative of that provider for:

- i) giving preference to the quantity of business secured for the provider to the exclusion of the quality of the service rendered to clients; or
- ii) giving preference to a specific product supplier, where a representative may recommend more than one product supplier to a client; or
- iii) giving preference to a specific product of a product supplier, where a representative may recommend more than one product of that product supplier to a client.

#### **Conflict of interest management policy**

- Every provider, other than a representative, must adopt, maintain and implement a conflict of interest management policy that complies with the provisions of the FAIS Act.
- A conflict of interest management policy must be adopted by the sole proprietor of a provider, the board of directors of a provider or, in the case where a provider is not a company, the governing body of the provider.
- A provider must ensure that its employees, representatives and, where appropriate, associates are aware of the contents of its conflict of interest management policy and provide for appropriate training and educational material in this regard.
- A provider must continuously monitor compliance with its conflict of interest management policy and annually conduct a review of the policy.
- A provider must publish its conflict of interest management policy in appropriate media and ensure that it is easily accessible for public inspection at all reasonable times.
- A provider or representative may not avoid, limit or circumvent or attempt to avoid, limit or circumvent compliance with this section through an associate or an arrangement involving an associate.

**Example:**

FSPs have to disclose whether they hold more than a 10% share in a product supplier and where the FSP has received more than 30% of its total remuneration from a product supplier. The reason is that if an FSP has a share in a product supplier, the FSP may be inclined to recommend its own products to a client despite the fact that it may not best serve the needs of the client.

## 3.5 ETHICAL CONDUCT IN THE FINANCIAL SERVICES ENVIRONMENT

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### 3.5.1 The concept of ethical conduct in the financial services environment

The *Oxford Complementary Wordfinder* defines "ethics" as "the science of morals in human conduct". But what is the meaning of "morals"? Morals refer to issues of right and wrong and to how individual people should behave. Moral (or ethical) conduct therefore requires the ability to distinguish between right and wrong, based on generally accepted norms and standards of human behaviour in society, and to make decisions based on that knowledge.

In the financial services industry, the FAIS General Code of Conduct provides a framework for ethical behaviour by the role-players. It gives guidance on issues of right and wrong with regard to different aspects of the behaviour of the role-players, especially when faced with difficult ethical choices. One could therefore say that ethical conduct in the financial services environment is conduct which is aligned with the General Code of Conduct and which complies with all other relevant pieces of legislation.

### 3.5.2 Discuss your role in terms of ethical conduct in the financial services environment

The representative's role in terms of ethical conduct is to adhere to the following ethical obligations contained in the various provisions of the FAIS Act, especially in the General Code of Conduct (as listed in Chapter 1 of *The Financial Planning Handbook 2014* by Botha et al.)

- Trust
  - Confidentiality
  - Adequate disclosure
  - Respect for the client
-

- Right to information
- Right to appropriate knowledge and skills.

A representative who is able to make the correct ethical decisions will ensure an excellent reputation in the industry and be able to provide a sustainable service to clients.

But what constitutes unethical behaviour? It is behaviour in which a person does the wrong thing even though that person knows it is wrong. Examples include forging of documents or signatures, fraud, race and gender discrimination, misrepresentation of information, misuse of client funds and many more.

### 3.6 COMPLAINTS

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In this section we are going to investigate the manner in which complaints are to be handled by the industry with reference to the FAIS General Code of Conduct.

The General Code prescribes the requirements for complaints handling and representatives must be aware of the requirements so that they can advise clients accordingly and also so that they know what is expected from them when they are involved with complaints. The Ombud may, when accepting a claim, require the respondent to pay a case fee to the office not exceeding R1 000.

**Table 3.3**

<b>General obligations of FSP</b>	
An FSP must:	<ul style="list-style-type: none"> <li>• Request clients who want to complain to do so in writing and attach relevant documentation;</li> <li>• maintain records of complaints for five years;</li> <li>• handle complaints from clients in a timely and fair manner;</li> <li>• take steps to investigate and respond promptly to complaints and</li> <li>• where such a complaint is not resolved to the client's satisfaction, advise the client of any further steps which may be available to the client in terms of the Act or any other law.</li> </ul>

### Specific obligations of FSP

1. The internal complaint resolution system and procedures of an FSP must include the following [Section 19(1) & 19(2) of the General Code of Conduct as per the bullet points below]:
  - a) Written version of the complaints resolution system and procedures, plus all updates to it.
  - b) Access to the procedures by clients at branches, through electronic media and announcements; that it is available through public media or communication to existing clients.
  - c) Include the following in the written complaints policy:
    - i. Duties of the FSP and rights of clients
    - ii. Clear summary of the provisions of the Act which will apply whenever the client, after dismissal of a complaint by the provider, wishes to pursue further proceedings before the Ombud and name, address and contact details of the Ombud.
2. Acknowledge complaints received in writing, with communication details of contact staff and record complaints internally.
3. After receipt and recording, the complaint must be forwarded to the relevant staff member and provision must be made to ensure that:
  - a) the complaint receives proper consideration.
  - b) appropriate management controls are available to exercise effective control and supervision of the consideration process.
  - c) the client is informed of the results of the consideration within the required time (six weeks): provided that if the outcome is not favourable to the client, full written reasons must be furnished to the client within the required time, and the client must be advised that the complaint may be pursued (within six months) with the Ombud whose name, address and other contact particulars must simultaneously be provided to the client.
4. Where a complaint is resolved in favour of a client, the provider must ensure that a full and appropriate level of redress is offered to the client without any delay.
5. The internal complaint resolution system and procedures of the FSP must be designed to ensure the existence and maintenance of at least the following for purposes of effective and fair resolution of complaints:
  - a) availability of adequate manpower and other resources;

- b) adequate training of all relevant staff of legislated provisions pertaining to the resolution of complaints
- c) ensure that responsibilities and mandates are delegated to facilitate complaints resolution of a routine nature;
- d) ensure that there is provision for the escalation of non-routine serious complaints and the handling thereof by staff with adequate expertise;
- e) internal follow-up procedures to ensure avoidance of occurrences giving rise to complaints, or to improve services and complaint systems and procedures where necessary.

### 3.7 STEPS WHEN PROVIDING ADVICE

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We discussed the concept of 'financial service' previously. "To provide a financial service" means that a representative (or sole proprietor FSP) gives advice or provides an intermediary service, or both.

The General Code prescribes the steps to be taken and the action to be taken when representatives give advice to clients.

Key individuals must ensure that these requirements are met and that representatives are aware of and follow these principles.

The two main requirements of giving advice is establishing suitability and keeping a record of advice.

We look at suitability first. The information below gives a high level overview of the required steps in giving advice:

#### 3.7.1 Suitability

A provider other than a direct marketer must, prior to providing a client with advice:

1. Take reasonable steps to get information from the client on his financial situation, experience and objectives.
  2. Do an analysis for the purpose of advice, based on information obtained.
  3. Identify the financial product or products that will be appropriate to the client's risk profile and financial needs subject to the limitations
-



imposed on the provider under the FAIS Act or any contractual arrangement.

4. Where a financial product is being replaced (the terminated product) by another financial product (the replacement product) held by the client, full disclosure must be made of the actual and potential financial implications, costs and consequences of the replacement, including:
    - a) comparison of fees and charges between the two products.
    - b) special terms and conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided, applicable to the replacement product compared to the terminated product.
    - c) the impact of age and health changes when an insurance product is replaced.
    - d) the tax implications.
    - e) the material differences between the investment risks.
    - f) penalties or unrecovered expenses due to early termination of product.
    - g) to what extent the replacement product is readily realisable or the relevant funds accessible, compared to the terminated product.
    - h) loss of rights and minimum guaranteed benefits which will be lost due to the replacement.
    - i) any incentives, remuneration, consideration, commission, fee or brokerage received.
  
  5. If the client did not provide the information required in Step 1 above, or the provider did not do an analysis because there was not enough time, the provider must inform the client that it was not done and must make sure the client understands that:
    - a) a full analysis in respect of the client was not done.
    - b) there may be limitations on the appropriateness of the advice provided.
    - c) the client should take particular care to consider whether the advice is appropriate considering his objectives, financial situation and particular needs.
  
  6. If the client elects to conclude a transaction that differs from that recommended by the provider, or elects not to follow the advice furnished, or elects to receive more limited information or advice than the provider is able to provide:
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- a) the provider must alert the client as soon as reasonably possible of the clear existence of any risk to the client.
- b) the provider must advise the client to take care to consider if any product selected is appropriate to the client's needs, etc.

### **3.7.2 Recording the advice**

A provider must, subject to and in addition to the duties to keep records, maintain a record of the advice furnished to a client, including:

- a brief summary of the information and material on which the advice was based.
- the financial products which were considered.
- the financial product or products recommended with an explanation of why the product or products selected, is or are likely to satisfy the client's identified needs and objectives.
- Where the financial product or products recommended is/are (a) replacement product, the following must be recorded:
  - comparison of fees, charges, special terms and conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided, between the terminated product and the replacement product
  - the reasons the replacement product was considered to be more suitable to the client's needs than keeping or modifying the terminated product.
- The record of advice needs only be maintained if, as far as the provider knows, a transaction or contract is concluded by the client as a result of the advice given.
- A provider (not applicable if a direct marketer) must give the client a copy of the record of advice in writing.

### **3.7.3 Recording the advice for forex investment business**

A forex investment advisor must, subject to and in addition to the duties to keep records, maintain a record of the advice furnished to a client, including:

- a brief summary of the information and material on which the advice was based.
- the financial products which were considered.

- a description of the particular forex investment that was recommended and an explanation of why a forex investment is likely to satisfy the client's identified needs and objectives.
- a forex investment advisor must maintain records recording the investments owned by each client individually.
- the agreement between the forex investment advisor and any forex investment intermediary must provide provision for a written report.

## 3.8 VARIOUS PROVISIONS OF THE GENERAL CODE OF CONDUCT

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In this section we are going to study the provisions of the General Code relating to risk management, insurance, advertising and termination of a relationship.

### 3.8.1 Risk management – Part IX of the Code

The provider is required to have effective risk control measures at all times. The provider must use technology and effective systems to minimise the risk. Poor risk management may result in financial loss for clients, product providers and representatives due to theft, fraud, poor administration, negligence and professional misconduct. The specific control objectives include that the internal control procedures of a business must be structured to provide assurance that:

- the relevant business can be carried on in an orderly and efficient manner.
- financial and other information used or provided by the provider will be reliable.
- all applicable laws are complied with.

Representatives must ensure that they adhere to the business risk management policies.

### 3.8.2 Insurance

As part of risk management, a provider, excluding a representative, must maintain suitable guarantees or professional indemnity or fidelity insurance cover.

The General Code states that the Registrar may require providers to have suitable guarantees, professional indemnity or fidelity insurance cover in place. The General Code was amended in September 2009 to require (for providers

excluding representatives) specific cover for professional indemnity and fidelity insurance.

The following is a summary of the **insurance cover requirements**, effective from 21 September 2009.

**Table 3.4**

<b>WHO?</b>	<b>BY WHEN?</b>	<b>WHAT?</b>
<p><b>Category I or IV provider</b> Who does not receive or hold clients' financial products or funds on behalf of clients on 21 September 2009 <b>must</b></p>	<p><b>By 21 September 2010</b></p>	<p>Have in force, in respect of the clients:</p> <ul style="list-style-type: none"> <li>• suitable <b>guarantees</b> of a <b>minimum R1 million</b>; OR</li> <li>• suitable <b>professional indemnity</b> cover of a <b>minimum of R1 million.</b></li> </ul>
<p><b>Category I or IV provider</b> Who does receive or hold clients' financial products or funds on behalf of clients on 21 September 2009 <b>must</b></p>	<p><b>By 21 September 2010</b></p>	<p>Have in force, in respect of the clients:</p> <ul style="list-style-type: none"> <li>• suitable <b>guarantees</b> of a <b>minimum R1 million</b>; OR</li> <li>• suitable <b>professional indemnity and fidelity insurance</b> cover of a <b>minimum amount of R1 million.</b></li> </ul>
<p><b>Category II provider</b> Who does not receive or hold clients' financial products or funds on behalf of clients on 21 September 2009 <b>must</b></p>	<p><b>By 21 March 2010</b></p>	<p>Have in force, in respect of the clients:</p> <ul style="list-style-type: none"> <li>• suitable <b>guarantees</b> of a <b>minimum R1 million</b>; OR</li> <li>• suitable <b>professional indemnity</b> cover of a <b>minimum of R1 million</b></li> </ul>
<p><b>Category II provider</b> Who does receive or hold clients' financial products or funds on behalf of clients on 21 September 2009 <b>must</b></p>	<p><b>By 21 March 2010</b></p>	<p>Have in force, in respect of the clients:</p> <ul style="list-style-type: none"> <li>• suitable <b>guarantees</b> of a <b>minimum R5 million</b>; OR</li> <li>• suitable <b>professional indemnity and fidelity insurance</b> cover of a <b>minimum amount of R5 million, RESPECTIVELY.</b></li> </ul>

<p><b>Category IIA provider</b> Who does not receive or hold clients' financial products or funds on behalf of clients on 21 September 2009 <b>must</b></p>	<p><b>By 21 March 2010</b></p>	<p>Have in force, in respect of the clients:</p> <ul style="list-style-type: none"> <li>• suitable <b>guarantees</b> of a <b>minimum</b> amount of <b>R5 million</b>; OR</li> <li>• suitable <b>professional indemnity</b> cover of a <b>minimum of R5 million</b>.</li> </ul>
<p><b>Category IIA provider</b> Who does receive or hold clients' financial products or funds on behalf of clients on 21 September 2009 <b>must</b></p>	<p><b>By 21 March 2010</b></p>	<p>Have in force, in respect of the clients:</p> <ul style="list-style-type: none"> <li>• suitable <b>guarantees</b> of a <b>minimum R5 million</b>; OR</li> <li>• suitable <b>professional indemnity and fidelity insurance</b> cover of a <b>minimum amount of R5 million, RESPECTIVELY</b>.</li> </ul>
<p><b>Category III provider</b> Who receives or holds clients' financial products or funds of or on behalf of clients on 21 September 2009 <b>must</b></p>	<p><b>By 21 March 2010</b></p>	<p>Have in force, in respect of the clients:</p> <ul style="list-style-type: none"> <li>• suitable <b>guarantees</b> of a <b>minimum</b> amount of <b>R5 million</b> OR</li> <li>• <b>professional indemnity and fidelity insurance</b> cover of a <b>minimum of R5 million, respectively</b>.</li> </ul>

New FSPs (authorised after 21 September 2009) must comply within six weeks of authorisation depending on the category the FSP is registered for.

### 3.8.3 Advertising – Part X of the Code

The General Code requires that FSPs or representatives must adhere to certain advertising principles. These principles are discussed below:

Advertisements may not contain any statement, promise or forecast which fraudulent, untrue or misleading.

**Table 3.5**

Advertisements which include performance data must include references to their source and date.
Advertisements which include illustrations, forecasts or hypothetical data must: <ul style="list-style-type: none"><li>• show support through clearly stated basic assumptions with a reasonable prospect of being met under current circumstances</li><li>• make it clear that they are not guaranteed and are provided for illustrative purposes only</li><li>• show dependence on performance of underlying assets or variable market forces, where applicable.</li></ul>
Advertisements which include a warning statement about risks involved in buying or selling a financial product must be clearly identifiable as a warning statement.
Advertisements which include information about past performance must also have a warning stating that past performances are not necessarily indicative of future performances.
If the investment value of a financial product mentioned in the advertisement is not guaranteed, there must be a warning that no guarantees are provided.

**Where a provider advertises a financial service by telephone**

- An electronic, voice logged record of all communications must be maintained.
- If no financial service is rendered as a result of the advertisement, the record need not be kept for longer than 45 days. A copy of all the electronic records must be provided on request by the client or the Registrar within seven days of the request.
- If the basic details of the product supplier/provider are mentioned in the telephone conversation, then detailed disclosures as discussed above are not required. However, if the promotion results in the rendering of a financial service, the full details required by the Code are provided to the client in writing within 30 days of the relevant interaction with the client.

**Where a provider advertises a financial service by means of a public radio service**

The advertisement must include the business name of the provider as well as the fact that the provider is an authorised/licensed FSP, where applicable.

### **3.8.4 Termination of agreement or business – Part XII of the Code**

The General Code addresses the requirements when clients want to terminate contractual agreements as well as when the FSP or representative terminates their business operations and/or services.

#### **Client wants to terminate agreement**

Subject to the record-keeping obligations of the General Code (discussed previously) and bearing in mind any contractual obligations, a provider must, with immediate effect, allow a request from a client for voluntary termination of an agreement with a provider or in relation to a financial service.

The provider must take reasonable steps to ensure that the client understands the implications of the request for termination.

#### **Provider terminates business**

A provider (other than Representative) who stops operating as such must notify all affected clients immediately.

The provider must also, if appropriate, take reasonable steps, in consultation with clients and product suppliers, to ensure that any outstanding business is completed promptly or transferred to another provider.

#### **Representative stops to operate as such**

Where a representative stops acting as representative for an FSP, the provider must take reasonable steps, in consultation with clients and product suppliers, to notify all affected clients and ensure that any outstanding business is completed promptly or transferred to another provider.

# Relevant Legislation



## *Financial Advisory and Intermediary Services Act 37 of 2002*

### *Chapter IV*

#### *Codes of Conduct*

#### *Section 16*

#### **16. Principles of code of conduct**

(1) *A code of conduct must be drafted in such a manner as to ensure that the clients being rendered financial services will be able to make informed decisions, that their reasonable financial needs regarding financial products will be appropriately and suitably satisfied and that for those purposes authorised financial services providers, and their representatives, are obliged by the provisions of such code to -*

- (a) *act honestly and fairly, and with due skill, care and diligence, in the interests of clients and the integrity of the financial services industry;*
- (b) *have and employ effectively the resources, procedures and appropriate technological systems for the proper performance of professional activities;*
- (c) *seek from clients appropriate and available information regarding their financial situations, financial product experience and objectives in connection with the financial service required;*
- (d) *act with circumspection and treat clients fairly in a situation of conflicting interests; and*
- (e) *comply with all applicable statutory or common law requirements applicable to the conduct of business.*

(2) *A code of conduct must in particular contain provisions relating to -*

- (a) *the making of adequate disclosures of relevant material information, including disclosures of actual or potential own interests, in relation to dealings with clients;*
- (b) *adequate and appropriate record-keeping;*
- (c) *avoidance of fraudulent and misleading advertising, canvassing and marketing;*
- (d) *proper safe-keeping, separation and protection of funds and transaction documentation of clients;*



- (e) *where appropriate, suitable guarantees or professional indemnity or fidelity insurance cover, and mechanisms for adjustments of such guarantees or cover by the Registrar in any particular case;*  
[Para. (e) amended by Section 56 of Act 22/2008]
- (eA) *the control or prohibition of incentives given or accepted by a provider; and*  
[Para. (eA) inserted by Section 56 of Act 22/2008]
- (f) *any other matter which is necessary or expedient to be regulated in such code for the better achievement of the objects of this Act.*



**General Code of Conduct for Authorised Financial Services Providers  
and Representatives, 2003**

**Part II  
General Provisions  
Section 3**

**3. Specific duties of provider**

(1) *When a provider renders a financial service-*

- (b) *a provider and a representative must avoid and where this is not possible mitigate, any conflict of interest between the provider and a client or the representative and a client;*  
[Para. (b) substituted by BN 58/2010 w.e.f. 19 July 2010]
- (c) *a provider or a representative must, in writing, at the earliest reasonable opportunity -*
  - (i) *disclose to a client any conflict of interest in respect of that client, including -*
    - (aa) *the measures taken, to avoid or mitigate the conflict;*
    - (bb) *any ownership interest or financial interest, other than an immaterial financial interest, that the provider or representative may be or become eligible for;*
    - (cc) *the nature of any relationship or arrangement with a third party that gives rise to a conflict of interest, in sufficient detail to a client to enable the client to understand the exact nature of the relationship or arrangement and the conflict of interest; and*
  - (ii) *inform a client of the conflict of interest management policy referred to in Section 3A(2) and how it may be accessed.*  
[Para. (c) substituted by BN 58/2010 w.e.f. 19 July 2010]



**General Code of Conduct for Authorised Financial Services Providers  
and their Representatives**

**Part III  
Information on Product Suppliers  
Section 4**

4.

- (1) *A provider other than a direct marketer must at the earliest reasonable opportunity, and only where appropriate, furnish the client with full particulars of the following information about the relevant product supplier and, where such information is provided orally, must confirm such information within 30 days in writing:*
- (a) *Name, physical location, and postal and telephone contact details of the product supplier;*
  - (b)
    - (i) *the contractual relationship with the product supplier (if any), and whether the provider has contractual relationships with other product suppliers;*
    - (ii) *names and contact details of the relevant compliance and complaints departments of the product supplier.*
  - (c) *the existence of any conditions or restrictions imposed by the product supplier with regard to the types of financial products or services that may be provided or rendered by the provider; and*
  - (d) *where applicable, the fact that the provider -*
    - (i) *directly or indirectly holds more than 10% of the relevant product supplier's shares, or has any equivalent substantial financial interest in the product supplier;*
    - (ii) *during the preceding 12-month period received more than 30% of total remuneration, including commission, from the product supplier, and the provider must convey any changes thereafter in regard to such information at the earliest opportunity to the client.*
- (2) *A product supplier which is an authorised financial services provider, and which has entered into an intermediary contract or similar contractual relationship with another provider (not being a representative) for the purpose of rendering a financial service in respect of its financial products, must within a reasonable time after being requested to do so by such other provider, provide such other provider with sufficient particulars to enable the provider to comply with the disclosure requirements of this Code relating to the furnishing of details of the product supplier and the product in question.*
- (3) *A provider must, where the relevant licence, terms of employment or mandate enables such provider to provide clients with financial services in respect of a choice of product suppliers, exercise judgment objectively in the interest of the client concerned.*

- (4) *A provider may not, in dealing with a client, compare different financial products, product suppliers, providers or representatives, unless the differing characteristics of each are made clear, and may not make inaccurate, unfair or unsubstantiated criticisms of any financial product, product supplier, provider or representative.*



**General Code of Conduct for Authorised Financial Services Providers  
and their Representatives**

**Part IV**

**Information on Providers**

**Section 5**

5. *Where a provider other than a direct marketer renders a financial service to a client, the provider must at the earliest reasonable opportunity furnish the client with full particulars of the following information and, where such information is provided orally, must confirm such information within 30 days in writing:*
- (a) *Full business and trade names, registration number (if any), postal and physical addresses, telephone and, where applicable, cellular phone number, and internet and e-mail addresses, in respect of the relevant business carried on, as well as the names and contact details of appropriate contact persons or offices;*
  - (b) *concise details of the legal and contractual status of the provider, including details as regards the relevant product supplier (or, in the case of a representative, as regards the relevant provider and product supplier), to be provided in a manner which can reasonably be expected to make it clear to the client which entity accepts responsibility for the actions of the provider or representative in the rendering of the financial service involved and the extent to which the client will have to accept such responsibility;*
  - (c) *names and contact details of the relevant compliance department or, in the case of a representative, such detail concerning the provider to which the representative is contracted;*
  - (d) *details of the financial services which the provider is authorised to provide in terms of the relevant licence and of any conditions or restrictions applicable thereto;*
  - (e) *whether the provider holds guarantees or professional indemnity or fidelity insurance cover or not.*
  - (f) *whether a representative of a provider is rendering services under supervision as defined in the Determination of Fit and Proper Requirements; and*
  - (g) *the existence of a specific exemption that the Registrar may have granted to the provider with regard to any matter covered by the Act.*



**General Code of Conduct for Authorised Financial Services Providers  
and their Representatives**

**Part VI  
Information about Financial Services  
Section 7**

- (1) *Subject to the provisions of this Code, a provider other than a direct marketer, must-*
- (a) *provide a reasonable and appropriate general explanation of the nature and material terms of the relevant contract or transaction to a client, and generally make full and frank disclosure of any information that would reasonably be expected to enable the client to make an informed decision;*
  - (b) *whenever reasonable and appropriate, provide to the client any material contractual information and any material illustrations, projections or forecasts in the possession of the provider;*
  - (c) *in particular, at the earliest reasonable opportunity, provide, where applicable, full and appropriate information of the following:*
    - (i) *Name, class or type of financial product concerned;*
    - (ii) *nature and extent of benefits to be provided, including details of the manner in which such benefits are derived or calculated and the manner in which they will accrue or be paid;*
    - (iii) *where the financial product is marketed or positioned as an investment or as having an investment component-*
      - (aa) *concise details of the manner in which the value of the investment is determined, including concise details of any underlying assets or other financial instruments;*
      - (bb) *separate disclosure (and not mere disclosure of an all-inclusive fee or charge) of any charges and fees to be levied against the product, including-*
        - (A) *the amount and frequency thereof;*
        - (B) *the identity of the recipient;*
        - (C) *the services or other purpose for which each fee or charge is levied;*
        - (D) *where any charges or fees are to be levied in respect of investment performance, details of the frequency, performance measurement period (including any part of the period prior to the client's particular investment) and performance benchmarks or other criteria applicable to such charges or fees; and*
        - (E) *where the specific structure of the product entails other underlying financial products, disclosure must be made in such a manner as to enable the client to determine the net investment amount ultimately invested for the benefit of the client; and*
- [Subpara. (bb) substituted by BN 43/2008 with effect from 14 August 2008]*

- (cc) on request, information concerning the past investment performance of the product over periods and at intervals which are reasonable with regard to the type of product involved including a warning that past performances are not necessarily indicative of future performances;
- (dd) any rebate arrangements and thereafter on a regular basis (but not less frequently than annually): Provided that where the rebate arrangement is initially disclosed in percentage terms, an example using actual monetary amounts must be given and disclosure in specific monetary terms must be made at the earliest reasonable opportunity thereafter: Provided further that for the purposes of this subparagraph, "rebate means a discount on the administration, management or any other fee that is passed through to the client, whether by reduced fees, the purchase of additional investments or direct payment, and that the term "rebate" must be used in the disclosure concerned, to describe any arrangement complying with this definition, and the disclosure must include an explanation of the arrangement in line with this definition;  
[Subpara. (dd) inserted by BN 43/2008 with effect from 14 August 2008]
- (ee) any platform fee arrangements, which may be disclosed by informing the client that a platform fee of up to a stated percentage may be paid by the product supplier to the administrative financial services provider concerned, rather than disclosing the actual monetary amount: Provided that for the purposes of this subparagraph, "platform fee" means a payment by a product supplier to an administrative financial services provider for the administration and/or distribution and/or marketing cost savings represented by the distribution opportunity presented by the administrative platform, and may be structured as a stipulated monetary amount or a volume based percentage of assets held on the platform, and that the term "platform fee" must be used in the disclosure concerned, to describe any arrangement complying with this definition, and the disclosure must include an explanation of the arrangement in line with this definition.  
[Subpara. (ee) inserted by BN 43/2008 with effect from 14 August 2008]
- (iv) the nature and extent of monetary obligations assumed by the client, directly or indirectly, in favour of the product supplier, including the manner of payment or discharge thereof, the frequency thereof, the consequences of non-compliance and, subject to subparagraph (xiv), any anticipated or contractual escalations, increases or additions;
- (v) the nature and extent of monetary obligations assumed by the client, directly or indirectly, in favour of the provider, including the manner of payment or discharge thereof, the frequency thereof, and the consequences of non-compliance
- (vi) the nature, extent and frequency of any incentive, remuneration, consideration, commission, fee or brokerages ("valuable consideration"), which will or may become payable to the provider, directly or indirectly,

*by any product supplier or any person other than the client, or for which the provider may become eligible, as a result of rendering of the financial service, as well as the identity of the product supplier or other person providing or offering the valuable consideration: Provided that where the maximum amount or rate of such valuable consideration is prescribed by any law, the provider may (subject to clause 3(1)(a)(vii)) elect to disclose either the actual amount applicable or such prescribed maximum amount or rate.;*

- (vii) concise details of any special terms or conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided;*
  - (viii) any guaranteed minimum benefits or other guarantees;*
  - (ix) to what extent the product is readily realisable or the funds concerned are accessible;*
  - (x) any restrictions on or penalties for early termination of or withdrawal from the product, or other effects, if any, of such termination or withdrawal;*
  - (xi) material tax considerations;*
  - (xii) whether cooling off rights are offered and, if so, procedures for the exercise of such rights;*
  - (xiii) any material investment or other risks associated with the product, including any risk of loss of any capital amount(s) invested due to market fluctuations; and*  
*[Para. (xiii) substituted by BN 152/2008]*
  - (xiv) in the case of an insurance product in respect of which provision is made for increase of premiums, the amount of the increased premium for the first five years and thereafter on a five year basis but not exceeding twenty years;*
- (d) fully inform a client in regard to the completion or submission of any transaction requirement-*
- (i) that all material facts must be accurately and properly disclosed, and that the accuracy and completeness of all answers, statements or other information provided by or on behalf of the client, are the client's own responsibility;*
  - (ii) that if the provider completes or submits any transaction requirement on behalf of the client, the client should be satisfied as to the accuracy and completeness of the details;*
  - (iii) of the possible consequences of the misrepresentation or non-disclosure of a material fact or the inclusion of incorrect information; and*
  - (iv) that the client must on request be supplied with a copy or written or printed record of any transaction requirement within a reasonable time.*
- (2) No provider may in the course of the rendering of a financial service request any client to sign any written or printed form or document unless all details required to be inserted thereon by the client or on behalf of the client have already been inserted.*
- (3) A provider must, where applicable, at the request of a client, provide the client with a statement of account in connection with any financial service rendered to the client.*

(4) *A provider who has provided advice to a client or is rendering ongoing financial services to the client in respect of one or more financial products, must on a regular basis (but not less frequently than annually) provide the client with a written statement identifying such products where they are still in existence, and providing brief current details (where applicable), of -*

(a) *any ongoing monetary obligations of the client in respect of such products;*

(b) *the main benefits provided by the products;*

(c) *where any product was marketed or positioned as an investment or as having an investment component, the value of the investment and the amount of such value which is accessible to the client; and*

(d) *any ongoing incentives, consideration, commission, fee or brokerage payable to the provider in respect of such products:*

*Provided that such a statement need not be provided where the client is aware, or ought reasonably to be aware, that the provider concerned does not render or has ceased rendering ongoing financial services in respect of the client or the products concerned.*

*[Subsec. (4) inserted by BN 43/2008 with effect from 14 August 2008]*



**General Code of Conduct for Authorised Financial Services Providers  
and their Representatives**

**Part VII  
Furnishing of Advice  
Section 8**

**8. Suitability**

(1) *A provider other than a direct marketer, must, prior to providing a client with advice-*

(a) *take reasonable steps to seek from the client appropriate and available information regarding the client's financial situation, financial product experience and objectives to enable the provider to provide the client with appropriate advice;*

(b) *conduct an analysis, for purposes of the advice, based on the information obtained;*

(c) *identify the financial product or products that will be appropriate to the client's risk profile and financial needs, subject to the limitations imposed on the provider under the Act or any contractual arrangement; and*

(d) *where the financial product ("the replacement product") is to replace an existing financial product wholly or partially ("the terminated product") held by the*

*client, fully disclose to the client the actual and potential financial implications, costs and consequences of such a replacement, including, where applicable, full details of-*

*(i) fees and charges in respect of the replacement product compared to those in respect of the terminated product;*

*[Subpara (i) substituted by BN 43/2008 with effect from 14 May 2008]*

*(ii) special terms and conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided, which may be applicable to the replacement product compared to those applicable to the terminated product;*

*[Subpara (ii) substituted by BN 43/2008 with effect from 14 May 2008]*

*(iii) in the case of an insurance product, the impact of age and health changes on the premium payable;*

*(iv) differences between the tax implications of the replacement product and the terminated product;*

*(v) material differences between the investment risk of the replacement product and the terminated product;*

*(vi) penalties or unrecovered expenses deductible or payable due to termination of the terminated product;*

*(vii) to what extent the replacement product is readily realisable or the relevant funds accessible, compared to the terminated product;*

*[Subpara (vii) substituted by BN 43/2008 with effect from 14 May 2008]*

*(viii) vested rights, minimum guaranteed benefits or other guarantees or benefits which will be lost as a result of the replacement; and;*

*[Subpara (viii) substituted by BN 43/2008 with effect from 14 May 2008]*

*(ix) any incentive, remuneration, consideration, commission, fee or brokerages received, directly or indirectly, by the provider on the terminated product and any incentive, remuneration, consideration, commission, fee or brokerages payable, directly or indirectly, to the provider on the replacement product where the provider rendered financial services on both the terminated and replacement product.*

*[Subpara (ix) inserted by BN 43/2008 with effect from 14 May 2008]*

*(e) take reasonable steps to establish whether the financial product identified is wholly or partially a replacement for an existing financial product of the client and if it is such a replacement, the provider must comply with subparagraph (d).*

*[Para (e) added by BN 43/2008 with effect from 14 May 2008]*

*(2) The provider must take reasonable steps to ensure that the client understands the advice and that the client is in a position to make an informed decision.*

*(3) A provider providing advice to a client to replace an existing long-term insurance contract or policy with any other financial product must at the earliest practicable opportunity after providing such advice, but in any event no later than the date on which any transaction requirement is submitted to a product supplier in respect of any replacement product, notify the issuer of the existing and the replacement long-term insurance contract or policy of such advice.*

*[Subs (3) substituted by BN 43/2008 with effect from 14 May 2008]*



(4) *Where a client-*

- (a) *has not provided all information requested by a provider furnishing advice, as part of the analysis referred to in subsection (1)(b), or where the provider has been unable to conduct such an analysis because in the light of the circumstances surrounding the case, there was not reasonably sufficient time to do so, the provider must fully inform the client thereof and ensure that the client clearly understands that-*
- (i) *a full analysis in respect of the client referred to in subsection (1)(b) could not be undertaken;*
  - (ii) *there may be limitations on the appropriateness of the advice provided; and*
  - (iii) *the client should take particular care to consider on its own whether the advice is appropriate considering the client's objectives, financial situation and particular needs; or*
- (b) *elects to conclude a transaction that differs from that recommended by the provider, or otherwise elects not to follow the advice furnished, or elects to receive more limited information or advice than the provider is able to provide, the provider must alert the client as soon as reasonably possible of the clear existence of any risk to the client, and must advise the client to take particular care to consider whether any product selected is appropriate to the client's needs, objectives and circumstances.*



**General Code of Conduct for Authorised Financial Services Providers  
and their Representatives**

**Part VII  
Furnishing of Advice  
Section 9**

**9. Record of advice**

- (1) *A provider must, subject to and in addition to the duties imposed by Section 18 of the Act and Section 3(2) of this Code, maintain a record of the advice furnished to a client as contemplated in Section 8, which record must reflect the basis on which the advice was given, and in particular-*
- (a) *a brief summary of the information and material on which the advice was based;*
  - (b) *the financial product which were considered;*  
*[Para (b) substituted by BN 43/2008 with effect from 14 May 2008]*
  - (c) *the financial product or products recommended with an explanation of why the product or products selected, is or are likely to satisfy the client's identified needs and objectives; and*  
*[Para (c) substituted by BN 43/2008 with effect from 14 May 2008]*

*Provided that such record of advice is only required to be maintained where, to the knowledge of the provider, a transaction or contract in respect of a financial product is concluded by or on behalf of the client as a result of the advice furnished to the client in accordance with Section 8.*

*(d) where the financial product or products recommended is a replacement product as contemplated in Section 8(1)(d)-*

*(aa) the comparison of fees, charges, special terms and conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided, between the terminated product and the replacement product; and*

*(bb) the reasons why the replacement product was considered to be more suitable to the client's needs than retaining or modifying the terminated product:.*

*[Para (d) inserted by BN 43/2008 with effect from 14 May 2008]*

*(2) A provider, other than a direct marketer, must provide a client with a copy of the record contemplated in 9(1) in writing.*



***General Code of Conduct for Authorised Financial Services Providers  
and their Representatives***

***Part VIII***

***Custody of Financial Products and Funds***

***Section 10***

*(1) Subject to the provisions of any other applicable Act, a provider who receives or holds financial products or funds of or on behalf of a client must account for such products or funds properly and promptly and-*

*(a) when documents of title are lodged with the provider on behalf of the client, the provider must immediately provide written confirmation of receipt thereof which contains a description of the documents that is sufficient to identify them;*

*(b) when a provider receives funds into safe custody without the mediation of a bank, the provider must on receipt of the money, issue a written confirmation of receipt thereof;*

*(c) where the provider, or a third party on behalf of either of them, is in control of such financial products or funds, take reasonable steps to ensure that they are adequately safeguarded;*

*(d) open and maintain a separate account, designated for client funds, at a bank and-*

*(i) must within one business day of receipt pay into the account all funds held on behalf of clients;*

*(ii) ensure that the separate account only contains funds of clients and not those of the provider;*

*(iii) pay all bank charges in respect of the separate account except that bank*

- charges specifically relating to a deposit or withdrawal of the funds of the client are for the client's own account; and*
- (iv) ensure that any interest accruing to the funds in the separate account is payable to the client or the owner of the funds;*
  - (e) take reasonable steps to ensure-*
    - (i) that at all times such financial products or funds are dealt with strictly in accordance with the mandate given to the provider;*
    - (ii) that client financial products or funds are readily discernible from private assets or funds of the provider; and*
    - (iii) that, subject to any applicable contractual or statutory provisions, a client has ready access to any amount paid into the separate account, less any deductions which are authorised, and charges and fees required or authorised to be paid by law.*
- (2) Where a transaction or agreement has been recorded in writing, the provider who dealt with the client must ensure that the original agreement is delivered to the client for safe custody.*
- (3) Section 10(1)(d) is not applicable to a provider-*
- (a) who receives, holds or in any other matter deals with premiums payable under a short-term reinsurance policy; or*
  - (b) who is subject to Section 45 of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), if the provider complies with the requirements contemplated in that section.*



***General Code of Conduct for Authorised Financial Services Providers  
and their Representatives***

***Part IX***

***Risk Management***

***Section 12***

***12. Specific control objectives***

*A provider, excluding a representative, must, without limiting the generality of Section 11, structure the internal control procedures concerned so as to provide reasonable assurance that-*

- (a) the relevant business can be carried on in an orderly and efficient manner;*
- (b) financial and other information used or provided by the provider will be reliable;  
and*
- (c) all applicable laws are complied with.*



**General Code of Conduct for Authorised Financial Services Providers  
and their Representatives**

**Part IX  
Risk Management  
Section 13**

**13. Insurance**

*A provider, excluding a representative, must, if, and to the extent, required by the Registrar maintain in force suitable guarantees or professional indemnity or fidelity insurance cover.*



**General Code of Conduct for Authorised Financial Services Providers  
and their Representatives**

**Part X  
Advertising and Direct Marketing  
Section 14**

- (1) *An advertisement by any provider must –*
- (a) *not contain any statement, promise or forecast which is fraudulent, untrue or misleading;*
  - (b) *if it contains-*
    - (i) *performance data (including awards and rankings), include references to their source and date;*
    - (ii) *illustrations, forecasts or hypothetical data*
      - (aa) *contain support in the form of clearly stated basic assumptions (including but not limited to any relevant assumptions in respect of performance, returns, costs and charges) with a reasonable prospect of being met under current circumstances;*
      - (bb) *make it clear that they are not guaranteed and are provided for illustrative purposes only; and*
      - (cc) *also contain, where returns or benefits are dependent on the performance of underlying assets or other variable market factors, clear indications of such dependence;*
    - (iii) *a warning statement about risks involved in buying or selling a financial product, prominently render or display such statement; and*
    - (iv) *information about past performances, also contain a warning that past performances are not necessarily indicative of future performances; and*
  - (c) *if the investment value of a financial product mentioned in the advertisement is not guaranteed, contain a warning that no guarantees are provided.*

- (2) *Where a provider advertises a financial service by telephone-*
- (a) *an electronic, voice logged record of all communications must be maintained. Where no financial service is rendered as a result of the advertisement, such record need not be maintained for a period exceeding 45 days;*
  - (b) *a copy of all such records must be provided on request by the client or the Registrar within seven days of the request;*
  - (c) *all the information required by Sections 4(1)(a) and (c) and 5(a) and (c) shall not be required: Provided that the client is provided with basic details (such as business name and telephone number or address) of the provider or relevant product supplier, and of their relevant compliance departments: Provided further that, if the promotion results in the rendering of a financial service, the full details required by those sections are provided to the client in writing within 30 days of the relevant interaction with the client.*
- (3) *Where a provider advertises a financial service by means of a public radio service, the advertisement must include the business name of the provider.*



***General Code of Conduct for Authorised Financial Services Providers  
and their Representatives***

***Part XI  
Complaints  
Section 16***

**16. General**

- (2) *A provider must-*
- (a) *request that any client who has a complaint against the provider must lodge such complaint in writing;*
  - (b) *maintain a record of such complaints for a period of five years;*
  - (c) *handle complaints from clients in a timely and fair manner;*
  - (d) *take steps to investigate and respond promptly to such complaints; and*
  - (e) *where such a complaint is not resolved to the client's satisfaction, advise the client of any further steps which may be available to the client in terms of the Act or any other law.*



**General Code of Conduct for Authorised Financial Services Providers  
and their Representatives**

**Part XI  
Complaints  
Section 18**

**18. Resolution of complaints**

18. *The internal complaint resolution system and procedures of the provider excluding a representative must be designed to ensure the existence and maintenance of at least the following for purposes of effective and fair resolution of complaints:*

- (a) availability of adequate manpower and other resources;*
- (b) adequate training of all relevant staff, including imparting and ensuring full knowledge of the provisions of the Act, the Rules and this Code with regard to resolution of complaints;*
- (c) ensure that responsibilities and mandates are delegated to facilitate complaints resolution of a routine nature;*
- (d) ensure that there is provision for the escalation of non-routine serious complaints and the handling thereof by staff with adequate expertise;*
- (e) internal follow-up procedures to ensure avoidance of occurrences giving rise to complaints, or to improve services and complaint systems and procedures where necessary; and*



**General Code of Conduct for Authorised Financial Services Providers  
and their Representatives**

**Part XI  
Complaints  
Section 19**

**19. Specific obligations**

(1) *Subject to the other provisions of this Part, the internal complaint resolution system and procedures of a provider excluding a representative must contain arrangements which-*

- (a) must -*
  - (i) reduce the details of the internal complaint resolution system and procedures of the provider, including all subsequent updating or upgrading thereof, to writing;*
  - (ii) provide that access to the procedures is at all times available to clients at*

- any relevant office or branch of the provider, or by electronic medium, and that such availability is appropriately made known by public press or electronic announcements or separate business communications to existing clients;*
- (iii) include in the details envisaged in subparagraph (i), a reference to the duties of the provider and the rights of a client set out in Rule 6(a) and (b) of the Rules;*
  - (iv) include in such details a clear summary of the provisions of the Act, which will apply whenever the client, after dismissal of a complaint by the provider, wishes to pursue further proceedings before the Ombud; and*
  - (v) include in such details the name, address and other contact particulars of the Ombud;*
- (b) must stipulate that complaints must, if possible, be submitted in writing and must contain all relevant information, and that copies of all relevant documentation must be attached thereto;*
- (c) must provide that the receipt of complaints is promptly acknowledged in writing to the client, with communication particulars of contact staff to be involved in the resolution of the complaint, and are properly internally recorded by the relevant staff for purposes of compliance with Section 18(b) and (d) of the Act;*
- (d) must make provision that after the receipt and recording of a particular complaint, the complaint will as soon as practically possible be forwarded to the relevant staff appointed to consider its resolution, and that-*
- (i) the complaint receives proper consideration;*
  - (ii) appropriate management controls are available to exercise effective control and supervision of the consideration process;*
  - (iii) the client is informed of the results of the consideration within the time referred to in Rule 6(b) of the Rules: Provided that if the outcome is not favourable to the client, full written reasons must be furnished to the client within the time referred to in Rule 6(b) of the Rules, and the client must be advised that the complaint may within six months be pursued with the Ombud whose name, address and other contact particulars must simultaneously be provided to the client.*
- (2) In any case where a complaint is resolved in favour of a client, the provider must ensure that a full and appropriate level of redress is offered to the client without any delay.*



**General Code of Conduct for Authorised Financial Services Providers  
and their Representatives**

**Part XII  
Termination of Agreement or Business  
Section 20**

**20. Subject to the Act, and Sections 3(2) and (3) of this Code-**

- (a)
- (i) a provider must, subject to any contractual obligations, give immediate effect to a request of a client who voluntarily seeks to terminate any agreement with the provider or relating to a financial product or advice;
  - (ii) where the client makes the request on the advice of the provider, the provider must take reasonable steps to ensure that the client fully understands all the implications of the termination;
- (b) a provider, other than a representative who ceases to operate as such, must immediately notify all affected clients accordingly and take, where reasonably necessary or appropriate in consultation with the clients and product suppliers concerned, reasonable steps to ensure that any outstanding business is completed promptly or transferred to another provider; and
- (c) where a representative ceases to operate as a representative of a provider, such provider must immediately take, where reasonably necessary or appropriate in consultation with the clients and product suppliers concerned, reasonable steps to notify all affected clients accordingly and ensure that outstanding business is completed or transferred to such provider or another representative of that provider.



**Code of Conduct for Authorised Financial Services Providers  
and their Representatives involved in Forex Investment Business, 2004**

**Part II  
General Prohibitions and Duties applying to Forex Investment Intermediaries  
Section 3**

**3. General duties of a forex investment intermediary**

*A forex investment intermediary must-*

- (h) avoid any conflict between own interests and the interests of a client and where a conflict of interest does arise, the forex investment intermediary must-
- (i) adequately disclose details of such conflict to the client while maintaining the confidentiality of other clients; or
  - (ii) decline to act for that client;



- (j) *disclose to a client non-cash incentives offered or other indirect consideration payable by another provider, a product supplier or any other person to the forex investment intermediary as a result of intermediating on the investments of that client;*



***Code of Conduct for Authorised Financial Services Providers  
and their Representatives involved in Forex Investment Business, 2004***

***Part III***

***Special Provisions applying to Forex Investment Intermediaries***

***Section 5***

***5. Mandate from client***

- (1) *A forex investment intermediary must enter into a written mandate with a client irrespective of whether the client invests in a managed forex account or in a self-directed forex account. The intermediary and the client may agree to enter into an electronic mandate, provided that appropriate controls and personal identification procedures have been put in place. The mandate records the arrangements made between the parties, and must-*

- (h) *state whether the forex investment intermediary receives commission, incentives, fee reductions or rebates from a foreign forex services provider or any other applicable institution for placing a client's funds with them;*



***Notice on Codes of Conduct for Administrative and Discretionary FSPs 2003***

***Chapter II***

***Code of Conduct for Discretionary FSPs***

***Part III***

***Operational Requirements***

***Section 5***

***5. Mandates***

- 5.1 *A discretionary FSP must obtain a signed mandate from a client, before rendering any intermediary service to that client: Provided that the parties may agree to complete an electronic mandate in respect of which appropriate controls and personal identification procedures have been put in place that ensures security of information, and that the mandate records the arrangements made between the parties, and must -*

- (h) *state whether the discretionary FSP receives commission, incentives, fee reductions or rebates from an administrative FSP or product supplier for placing a client's funds with them;*



**Notice 58 of 2010**  
**Financial Services Board**  
**Financial Advisory and Intermediary Services Act, 2002**

***Amendment of the General Code of Conduct for Authorised Financial Services Providers and Representatives***

***Section 3 (amended)***

***The General Code says:***

***3A. Financial interest and conflict of interest management policy***

***(1) A provider or its representatives may only receive or offer the following financial interest from or to a third party -***

- (i) commission authorised under the Long-term Insurance Act, 1998 (Act No. 52 of 1998) or the Short-term Insurance Act, 1998 (Act No. 53 of 1998);***
- (ii) commission authorised under the Medical Schemes Act, 1998 (Act No. 131 of 1998);***
- (iii) fees authorised under the Long-term Insurance Act, 1998 (Act No. 52 of 1998), the Short-term Insurance Act, 1998 (Act No. 53 of 1998) or the Medical Schemes Act, 1998 (Act No. 131 of 1998), if those fees are reasonably commensurate to a service being rendered;***
- (iv) fees for the rendering of a financial service in respect of which commission or fees referred to in subparagraph (i), (ii) or (iii) is not paid, if those fees*
  - (aa) are specifically agreed to by a client in writing; and***
  - (bb) may be stopped at the discretion of that client;*****
- (v) fees or remuneration for the rendering of a service to a third party, which fees or remuneration are reasonably commensurate to the service being rendered;***
- (vi) subject to any other law, an immaterial financial interest; and***
- (vii) a financial interest, not referred to under subparagraph (i) to (vi), for which a consideration, fair value or remuneration that is reasonably commensurate to the value of the financial interest, is paid by that provider or representative at the time of receipt thereof.***

***[Para. (a) inserted by BN 58/2010 w.e.f. 19 October 2010]***

***(b) A provider may not offer any financial interest to a representative of that provider for***

- (i) giving preference to the quantity of business secured for the provider to the exclusion of the quality of the service rendered to clients; or***
- (ii) giving preference to a specific product supplier, where a representative may recommend more than one product supplier to a client; or***
- (iii) giving preference to a specific product of a product supplier, where a representative may recommend more than one product of that product supplier to a client.***

***[Para. (b) inserted by BN 58/2010 w.e.f. 19 April 2011]***

(c) *For the purposes of this section, where the same legal entity is a product supplier and a provider, paragraph (a) does not apply to the representatives of that entity. That entity is subject to Section 3A(1)(b), in respect of its representatives.*

*[Para. (c) inserted by BN 58/2010 w.e.f. 19 October 2010]*

(2)

(a) *Every provider, other than a representative, must adopt, maintain and implement a conflict of interest management policy that complies with the provisions of the Act.*

(b) *A conflict of interest management policy must –*

(i) *provide for the management of conflicts of interest as defined in section 1, and –*

(aa) *mechanisms for the identification of conflicts of interest;*

(bb) *measures for the avoidance of conflicts of interest, and where avoidance is not possible, the reasons therefor and the measures for the mitigation of such conflicts of interest;*

(cc) *measures for the disclosure of conflicts of interest;*

(dd) *processes, procedures and internal controls to facilitate compliance with the policy; and*

(ee) *consequences of non-compliance with the policy by the provider's employees and representatives; and*

(ii) *specify the type of and the basis on which a representative will qualify for a financial interest that the provider will offer a representative and motivate how that financial interest complies with Section 3A(1)(b);*

(iii) *include a list of all its associates;*

(v) *include the names of any third parties in which the provider hold an ownership interest;*

(vi) *include the names of any third parties that holds an ownership interest in the provider; and*

(vii) *include the nature and extent of the ownership interest referred to in subparagraph (v) and (vi); and*

(viii) *be drafted in an easily comprehensible form and manner.*

(c) *A conflict of interest management policy must be adopted by the sole proprietor of a provider, the board of directors of a provider or, in the case where a provider is not a company, the governing body of the provider.*

(d) *A provider must ensure that its employees, representatives and, where appropriate, associates are aware of the contents of its conflict of interest management policy and provide for appropriate training and educational material in this regard.*

(e) *A provider must continuously monitor compliance with its conflict of interest management policy and annually conduct a review of the policy.*

(f) *A provider must publish its conflict of interest management policy in appropriate*

*media and ensure that it is easily accessible for public inspection at all reasonable times.*

*[Subs. (2) inserted by BN 58/2010 w.e.f. 19 April 2011]*

(3) *A provider or representative may not avoid, limit or circumvent or attempt to avoid, limit or circumvent compliance with this section through an associate or an arrangement involving an associate.*

*[Subs. (3) inserted by BN 58/2010 w.e.f. 19 October 2010]*

(4)

(a) *A compliance officer or, where the provider need not, in terms of the Act, have a compliance officer, the provider, must include a report on the provider's conflict of interest management policy in compliance reports submitted to the Registrar under the Act.*

(b) *The report referred to in paragraph (a) must report on at least the implementation, monitoring and compliance with, and the accessibility of the conflict of interest management policy.*



**Notice 58 of 2010**  
**Financial Services Board**  
**Financial Advisory and Intermediary Services Act, 2002**

**Amendment of the General Code of Conduct for Authorised Financial Services Providers and Representatives**

**Section 1**

**Associate** includes

*In the case of a Natural Person,*

- *the spouse (including partner, civil union partner,*
- *child (including stepchild, adopted child, out of wedlock child and spouse of child),*
- *parent or stepparent of the Natural Person (and spouse of parent),*
- *the person managing the affairs of the Natural person (and spouse of that person),*
- *the commercial partner of the Natural Person.*

*In the case of a Juristic Person, an Associate is:*

- *In the event of a Company - any subsidiary or holding company of the company, subsidiary of the holding company and other company of which the holding company is a subsidiary.*
- *In the event of a Close Corporation – any member of the CC;*
- *Where the juristic person is neither a Company nor a Close Corporation, an Associate includes another juristic person which would have been a subsidiary or holding company of the Juristic Person if there was a company;*

- *Any person who instructs and/or directs the Board or Governing Body of the Juristic Person;*

*Trusts controlled or administered by the person.*

***Financial interest includes*** *Cash, Cash equivalent, Voucher, Gift, Service, Advantage, Benefit, Discount, Domestic/foreign travel, Hospitality, Accommodation, Sponsorship, Other incentive, Valuable consideration (Some defined benefit, such as money or performance, that is promised as part of an agreement.).*

***Financial interest excludes*** *an ownership interest, training (as long as it is not exclusive) on products, legal matters relating to products, general financial & industry info, 3rd party systems which you need but excluding travel & accommodation in relation to the training.*

***Third Party includes*** *product suppliers, another provider, **associate** of a product supplier or provider, distribution channel, anyone who has an agreement with the above to provide financial interest to a provider or its representatives.*

***Immaterial financial interest is***

- *any financial interest which in Rand value does not exceed R1 000 over a calendar year period and*
- *which is paid by the same third party, during that year and*
- *which is received by a sole proprietor, a representative for his/her direct benefit, a provider who for its benefit or for the benefit of some/all its representatives, aggregates the immaterial financial interest paid to its representatives.*

## Summary

In this topic you studied the requirements imposed by the FAIS General Code of Conduct on FSPs and their representatives.

The importance of disclosures is the fact that it enables clients to make informed decisions about financial services and products. The Code prescribes disclosure requirements for FSPs, product suppliers and on financial services – the latter's focus is mainly on product disclosures.

Information to be disclosed on FSPs:

- Name of the business and registration number
- Information regarding the services the FSP is authorised to provide
- Addresses and contact numbers including email addresses, etc.
- Information about the legal relationship between the FSP, product supplier and representative where applicable

- A representative must confirm his contractual relationship with the FSP
- Details about the compliance department of the FSP
- Information about any restrictions or conditions on the licence of the FSP
- Information regarding indemnity insurance
- If applicable, the fact that a representative of an FSP acts under supervision.

Information to be disclosed on the product supplier:

- Name, address and contact numbers of the product supplier
- Information about the contractual relationship between the FSP, product supplier and whether the FSP has other relationships with other product suppliers
- Contact details of the compliance department
- Information about the complaints procedure of the product supplier
- information about any restrictions or conditions the supplier has in respect of the products marketed by the FSP
- Information where the FSP holds more than a 10% share in the product supplier
- Information where the FSP has received more than 30% of its total remuneration from a product supplier.

Information to be disclosed on the product:

- Name, class and type of financial product
- The extent of the benefits
- The method of valuation, underlying assets, fees and charges, past performance history
- Monetary obligations of the client in relation to the financial product, i.e. the nature, extent and frequency of (premium) payments and the consequences of non-compliance in favour of the provider and product supplier
- Monetary obligations of the product supplier or any person other than the client in relation to the financial product, i.e. any incentive, remuneration, consideration, commission, fees or brokerage, which will become payable to the provider.
- Information about any special terms (e.g. waiting periods, benefits exclusions)
- Information about the guaranteed benefits
- Information about the liquidity of the product

- Information about the restrictions and penalties on termination of the product
- Tax considerations
- Information about the applicability of cooling-off periods and the procedure
- Information about the risk of the product
- Pre-determined premium increases must be projected on five-yearly basis but only up to 20 years and must be disclosed to the client.

Disclosures pose additional duties on FSPs which require additional resources, such as the appointment of compliance officers and a compliance admin infrastructure.

When client funds or premiums are received FSPs have to comply with certain obligations and requirements. These include that client funds should be kept in a separate account.

The Code ensures transparency and the management of a conflict of interests by requiring FSPs to disclose if they are shareholders in a product supplier or if they have received a specified amount as income from such a product supplier.

A client who has a complaint about a financial service rendered to him should lodge such complaint with the FSP. The nature of complaints lodged with the Ombud is usually either when a client has suffered or is likely to suffer a financial loss or if the client has been treated unfairly (but may not have lost money).

The FSP must try and find a solution to the problem within six weeks. If the FSP is unable to settle the matter, the client should be informed that he can approach the Ombud for Financial Services Providers (FAIS Ombud).

An FSP/representative has to take the following steps when providing advice:

- Reasonable steps must be taken to obtain appropriate and available information from the client regarding his financial situation, financial product experience and objectives. This is necessary to enable the FSP to provide the client with appropriate advice.
- An analysis must be conducted for purposes of the advice based on the information obtained.
- The financial product or products must be identified that will be appropriate to the client's risk profile and financial needs.

- Where the financial product is to replace an existing financial product wholly or partially held by the client, fully disclose to the client the actual and potential financial implications, costs and consequences of the replacement.
- Explain the provisions of the General Code relating to ethical conduct, which is the ability to distinguish between right and wrong, based on the norms and standards in society, and to make decisions based on that knowledge. In the financial services industry the General Code of Conduct provides the norms and standards for ethical behaviour. The role of the FSP in terms of ethical conduct in the financial services industry is therefore to comply with the requirements of this Code.

## Self-Assessment Questions

Please note that the questions which follow are formative in nature. The questions were not developed by the FSB's examination bodies and as such cannot be used as an indication of the nature/structure/level of the questions that you will encounter in the FSB's regulatory examination.

1. One of the requirements of the General Code of Conduct with regard to the handling of clients' funds is that:
  - a) a separate account should be kept to deposit clients' funds into.
  - b) clients' funds may be deposited in the provider's own account as long as a receipt has been issued to the client.
  - c) clients should have ready access to any amount paid into the provider's own account.
  - d) funds should be paid into the client's account within five business days.
2. Disclosures that were supplied verbally must be confirmed in writing within:
  - a) 60 days
  - b) 10 days
  - c) 30 days
  - d) 5 days



3. Which of the following does **not** have to be disclosed by FSPs?
    - a) Name of the business and registration number
    - b) Information regarding indemnity insurance
    - c) Details about the compliance department of the FSP
    - d) Income from product sales in the previous year
  
  4. Which of the following does **not** have to be disclosed by product suppliers?
    - a) The types of products available from the product supplier
    - b) Contact details of the compliance department
    - c) Information about the complaints procedure of the product supplier
    - d) Whether the FSP holds more than a 10% share in the product supplier
  
  5. Which of the following does **not** have to be disclosed about products?
    - a) Name, class and type of financial product
    - b) The extent of the benefits
    - c) The name of the product developer
    - d) Monetary obligations of the client in relation to the financial product
  
  6. The purpose of disclosures is to:
    - a) enable the client to make an informed decision.
    - b) enable the insurer to evaluate the risk.
    - c) be used as an agenda for a discussion with the client.
    - d) inform the representative of the attitude of the client towards the recommended product.
  
  7. Which of the following is not included as a duty of a provider with regard to complaints?
    - a) Maintain an internal complaint resolution system and procedures.
    - b) The complaint resolution policy must be transparent and visible.
    - c) A policy for the process of internal resolutions should be included in the complaint resolution system.
    - d) Staff have to be trained on the external resolution processes.
-

8. Where a complaint is not resolved to the satisfaction of the client, the provider has to:
  - a) inform the client of other alternatives in terms of the FAIS Act and law.
  - b) tell the client that nothing further can be done about it.
  - c) terminate the relationship with the client.
  - d) refer the client to another provider.
  
9. When a provider provides advice, the following steps have to be followed:
  - a) Conduct an analysis and recommend suitable financial products.
  - b) Obtain information, conduct an analysis, identify suitable financial products and make the necessary disclosures regarding product replacements.
  - c) Obtain information, identify suitable financial products and make the necessary disclosures regarding product replacements (if applicable).
  - d) Identify suitable financial products and make the necessary recommendations.
  
10. If a client has a complaint against the provider, the provider:
  - a) has three months before he has to respond.
  - b) must maintain a record of such complaints for a period of ten years.
  - c) must request the client to lodge such a complaint in writing.
  - d) must maintain a record of such complaints for a period of three years.
  
11. Kyla, a representative of a bank, made the required disclosures to the customer in a telephonic conversation.

What else must she do to ensure compliance with the requirements of FAIS?

- a) Confirm the details of the discussion to the customer in writing, within 30 days of the date of the phone call.
  - b) Send an email, letter or fax to the customer within seven days of the phone call to confirm the details of their conversation.
  - c) Immediately make an endorsement on his copy of the Record of Advice.
  - d) No further action is required.
-

12. Claude did not disclose the name of the product provider to his customer, because the customer just informed him that she had a very bad experience with that particular product provider. He knows that the policy is the best match for the customer's need and trusts the integrity of the product provider.

Choose the option that reflects the FAIS perspective on this interaction:

- a) Claude has acted in the best interest of his customer and the FSP by providing a well-matched financial solution to the client.
- b) Claude has acted without integrity by not being completely honest with his client, and he could face disciplinary action or debarment.
- c) Claude has not breached any FAIS requirements, since the client does not need to know the name of a product supplier to make a decision.
- d) Claude has breached a FAIS requirement in failing to provide his client with the opportunity to make a fully informed decision.



## Apply knowledge of financial products

### 4.1 INTRODUCTION

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In your role as an FSP or representative you render financial services. These services concern, amongst others, the purchasing of financial products by clients.

It is therefore very important that you have a good knowledge of the different types of financial services and financial products that an FSP or representative may deal with. In addition, you need to have an understanding of the relationships between the role-players that are involved in the development and provision of financial products and the rendering of financial advice.

Once you have gained the knowledge and insights that will be discussed in this topic, you will see where your role and function fit into the bigger picture. It will become clear to you how you contribute to FAIS-compliant processes with regard to financial products and advice in your organisation.

In this topic, you will gain knowledge in the following areas:

1. Provide an overview of the different types of financial services and financial products an FSP can deal with.
2. Explain the relationship between different industry players.

The following skills criteria are related to the knowledge criteria listed above:

1. Apply knowledge of the financial products and role players within the financial services environment.

## 4.2 THE DIFFERENT TYPES OF FINANCIAL SERVICES AND FINANCIAL PRODUCTS

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### 4.2.1 Types of financial services that an FSP can deal with

Financial services are defined as the rendering of advice and/or intermediary services in terms of FAIS. In Topic 1 we learnt about the meaning of advice and of intermediary services.

### Reminder

“Advice” means any recommendation, guidance or proposal of a financial nature given to a client in respect of purchasing or investing in a financial product; incurring a liability on a financial product (i.e. cessions/loans) or varying/replacing/terminating a financial product.

The above definition is valid regardless of whether or not advice given was incidental to the financial planning of the affairs of a client or whether it results in any transaction, purchase, investment, variation, replacement or termination being affected.

The definition of advice excludes factual advice or information given which is basically of an administrative nature, for example:

- on the procedure for entering into a transaction in respect of any financial product
- in relation to the description of a financial product
- in response to routine administrative queries
- in the form of objective information about a particular financial product
- by the display or distribution of promotional material.

In terms of FAIS, “advice” also excludes:

- an analysis or report on a financial product without any express or implied recommendation as to its suitability for a client
- advice given by a board member or management of a pension fund organisation or friendly society or trustees or board member of a medical scheme to its members, on the benefits enjoyed or to be enjoyed by such members.

## Reminder

An “intermediary service” occurs when a person performs any act, other than giving advice, for or on behalf of a client or product supplier. One could also say that an intermediary service means the facilitation of a financial transaction where the service is not a recommendation or guidance or proposal regarding financial products.

To understand the difference between advice and intermediary services one has to understand that advice helps the client to make a decision in relation to a financial product while intermediary services facilitate the administration of the product.

Let's now have a look at the situations where different types of advice are given:

- Where comprehensive advice is given
- Where a policy is replaced
- Where no analysis is performed.

### **Furnishing of comprehensive advice**

This is where advice is based on a full needs analysis of the client's financial circumstances. In this and any other situation where an FSP (not a direct marketer) provides a client with advice, the following steps have to be taken:

- Reasonable steps must be taken to obtain appropriate and available information from the client regarding his financial situation, financial product experience and objectives. This is necessary to enable the FSP to provide the client with appropriate advice.
- An analysis must be conducted for purposes of the advice based on the information obtained.
- The financial product or products must be identified that will be appropriate to the client's risk profile and financial needs.
- Where the financial product is to replace an existing financial product wholly or partially held by the client, fully disclose to the client the actual and potential financial implications, costs and consequences of the replacement.

Where the client:

- elects to conclude a transaction that differs from that recommended by the provider; or
- has not followed the advice furnished by the provider; or
- elects to receive more limited information/advice than what the provider is able to provide, the provider must:
  - alert the client of the clear existence of any risk to the client; and
  - advise the client to take particular care to ensure that any product selected is appropriate to his needs, objectives and circumstances

Where a client has not provided all the information requested or there was not reasonably enough time to do so, the provider must fully inform the client thereof and ensure that the client understand that:

- a full analysis could not be done;
- there may be limitation to the advice given by the provider; and
- he must take particular care to consider on his own whether the advice is appropriate to his:
  - objectives.
  - financial situation.
  - particular financial needs.

### **Furnishing of advice regarding replacements**

Section 8 of the General Code of Conduct defines a replacement contemplated in FAIS as the replacement of an existing financial product with another. Accordingly, the meaning of replacement is not confined to the replacement of a long-term policy with another long-term policy.

A provider advising a client to replace an existing financial product with any other financial product must at the earliest practicable opportunity after providing such advice, but in any event no later than the date on which any transaction requirement is submitted to a product supplier in respect of any replacement product, notify the issuer of the existing and the replacement long-term insurance contract or policy of such advice.

In the process of giving advice, the provider must give written motivation as to why a specific financial product is recommended to the client, he must ensure



that the client understands the advice, so that the client is in a position to make an informed decision.

In the event of a replacement, the provider must disclose to the client the financial implications, costs and consequences, including:

- Fees and charges in respect of the replacement product
- Special terms and conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided, which may be applicable to the replacement product
- In the case of an insurance product, the impact of age and health changes on the premium payable
- Differences between the tax implications of the replacement product and the terminated product
- Material differences between the investment risk of the two products
- Penalties or unrecouped expenses deductible or payable due to termination of the terminated product
- To what extent the replacement product is readily realisable compared to the terminated product
- Vested rights, minimum guaranteed benefits or other guarantees or benefits which will be lost as a result of the replacement
- Any incentive, remuneration, consideration, commission, fee or brokerage received.

#### 4.2.2 Types of financial products that an FSP can deal with

##### The product categories in FAIS

Each authorised FSP is licensed to sell certain financial products.

FSPs may have various licences in respect of different product categories. The product category may also have different products falling in the main category and these are called product sub-categories.

The category descriptions (for FSPs) in the FAIS Act are as follows:

- **"Category I"**, in relation to a financial services provider, means all persons, other than persons referred to in Categories II, IIA, III and IV, who are authorised to render the financial services (other than financial services mentioned in Categories II, IIA, III and IV) as set out in the relevant application.

- “**Category II**”, in relation to a financial services provider, means all persons who are authorised as **discretionary FSPs** as set out in the relevant application.
- “**Category IIA**”, in relation to a financial services provider, means all persons who are authorised as **hedge fund FSPs** as set out in the relevant application.
- “**Category III**”, in relation to a financial services provider, means all persons who are authorised as **administrative FSPs** as set out in the relevant application.
- “**Category IV**”, in relation to a financial services provider, means all persons who require licences as Assistance Business FSP.

**Table 4.1 Product Sub-categories in Category 1**

<b>Category 1: Sub-categories</b>	
1.1	Long-term Insurance Sub-category A
1.2	Short-term Insurance Personal Lines
1.3	Long-term Insurance Sub-category B1
1.4	Long-term Insurance Sub-category C
1.5	Retail Pension Benefits
1.6	Short-term Insurance Commercial Lines
1.7	Pension Fund Benefits
1.8	Securities and instruments: Shares
1.9	Securities and Instruments: Money market instruments
1.10	Securities and Instruments: Debentures and securitised debt
1.11	Securities and Instruments: Warrants, certificates and other instruments acknowledging debt
1.12	Securities and Instruments: Bonds
1.13	Securities and Instruments: Derivative instruments excluding warrants
1.14	Participatory Interests in one or more collective investment schemes
1.15	Forex Investment Business
1.16	Health Service Benefits
1.17	Long-term Deposits
1.18	Short-term Deposits
1.19	Friendly Society Benefits
1.20	Long-term Insurance Sub-category B2

**Table 4.2 Product sub-categories in Category II**

<b>Category II: Sub-categories</b>	
2.1	Long-term Insurance Sub-category B1
2.2	Long-term Insurance Sub-category C
2.3	Retail Pension Benefits
2.4	Pension Fund Benefits
2.5	Securities and instruments: Shares
2.6	Securities and Instruments: Money market instruments
2.7	Securities and Instruments: Debentures and securitised debt
2.8	Securities and Instruments: Warrants, certificates and other instruments acknowledging debt
2.9	Securities and Instruments: Bonds
2.10	Securities and Instruments: Derivative instruments excluding warrants
2.11	Participatory Interests in one or more collective investment schemes
2.12	Forex Investment Business
2.13	Long-term Deposits
2.14	Short-term Deposits
2.15	Category IIA: Hedge fund FSP
2.16	Long-term Insurance Sub-category B2

#### 4.3 EXPLAIN THE RELATIONSHIP BETWEEN DIFFERENT INDUSTRY PLAYERS WITH REGARD TO FINANCIAL PRODUCTS

Before we can consider the relationship between the different industry players regarding financial products, we have to identify these role-players and investigate their functions.

##### **Product supplier**

FAIS defines a product supplier as any person who issues a financial product. The requirement that the product must have been issued by virtue of an authority, approval or right granted to such person under any law, was removed from the FAIS Act with effect 28 February 2014.

In practice one may find that product suppliers may act as FSPs. These product suppliers may be exempt by the Registrar from having to submit all the information required for authorisation in terms of FAIS. Authorisation will be granted in addition to, but separate from, the product supplier's authorisation to act as a financial institution.

If a financial service is rendered to a client by a person not authorised as a financial services provider (or by any other person acting on behalf of the unauthorised person), then the agreement between the product supplier and the client is not unenforceable between the product supplier and the client merely by reason of the lack of authorisation.

### **Financial services provider**

FSPs provide advice and/or intermediary services.

### **Representative**

In Topic 1 we discussed the role of representatives and said that they provide financial services on behalf of an FSP.

### **Key individual**

The key individual manages and oversees the activities of the FSP.

### **Compliance officer**

Compliance officers monitor and report on compliance of the FSP with the FAIS Act.

### **Office staff (other than representatives)**

The admin staff of an FSP deals with the processing of applications for financial products.

### **Clients**

FAIS defines a client as a specific person or group of persons, to whom a financial service is or may be rendered intentionally. It may also be the successor in title of such a person or the beneficiary of such a service. This definition excludes the general public.

#### **Example:**

John is advised to take out a whole life policy to provide cash for his family should he die. John is the owner of the policy and he nominates his wife, Susan, as beneficiary of the policy.

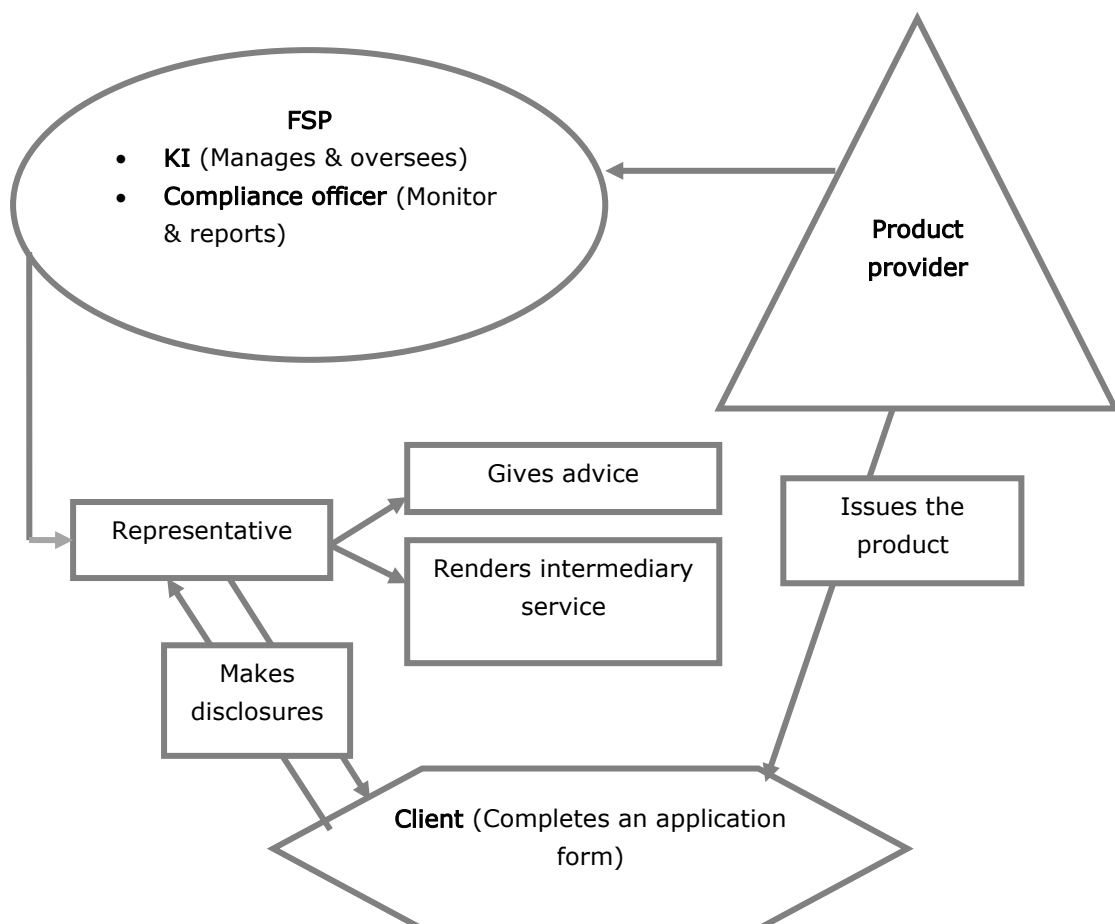
John asks the financial adviser to contact his daughter, Mandy. She owns a business and took out a funeral policy that provides cover for her daughter as well as for John and Susan. Mandy has to arrange for someone to take over the funeral policy should she die first. She has decided this person should be John.

**Comparison of the example with the definition of "client":**

In this example John is the client to whom a financial service is rendered. Mandy is the client to whom a financial service is to be rendered in future. Susan, as the beneficiary on John's policy, is also regarded as a client.

John, who will be nominated as the "successor in title" of Mandy's funeral policy, is another example of a client.

Let's now look at the relationship between these role-players. The following diagram illustrates these relationships.



**Figure 4.1**

You can see that the product supplier provides the FSP with products. The product supplier may be an external supplier or else the FSP may have its own internal product development department that provides its own products.

The FSP's representative then contacts clients to render financial services to them. In this process the clients purchase appropriate financial products that would meet their financial needs. In the course of doing so, the client completes an application form which the representative hands over to the FSP's office staff for processing. Once the application has been approved, the product supplier (who may also be an FSP) issues the policy contract (product) to the client.

The key individual manages and oversees all the processes described above to ensure that every activity complies with FAIS.

## Relevant Legislation

### *Long-term Insurance Act*

#### *Section 1*

*"long-term policy" means an assistance policy, a disability policy, fund policy, health policy, life policy or sinking fund policy, or a contract comprising a combination of any of those policies; and includes a contract whereby any such contract is varied;*



### *Financial Advisory and Intermediary Services Act 37 of 2002*

#### *Introductory Provisions*

#### *Section 1*

#### **1. Definitions and application**

(1) *In this Act, unless the context indicates otherwise*

*"advice" means, subject to subsection (3)(a), any recommendation, guidance or proposal of a financial nature furnished, by any means or medium, to any client or group of clients -*

(a) *in respect of the purchase of any financial product; or*

(b) *in respect of the investment in any financial product; or*

(c) *on the conclusion of any other transaction, including a loan or cession, aimed at the incurring of any liability or the acquisition of any right or benefit in respect*

*of any financial product; or*

- (d) *on the variation of any term or condition applying to a financial product, on the replacement of any such product, or on the termination of any purchase of or investment in any such product, and irrespective of whether or not such advice -*
- (i) *is furnished in the course of or incidental to financial planning in connection with the affairs of the client; or*
  - (ii) *results in any such purchase, investment, transaction, variation, replacement or termination, as the case may be, being effected;*

**"representative"** *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 a financial services provider, in terms of conditions of employment or any other mandate, but excludes a person rendering clerical, technical, administrative, legal, accounting or other service in a subsidiary or subordinate capacity, which service-*

- (a) *does not require judgment on the part of the latter person; or*
- (b) *does not lead a client to any specific transaction in respect of a financial product in response to general enquiries;*

**"financial service"** *means any service contemplated in paragraph (a), (b) or (c) of the definition of "financial services provider", including any category of such services;*

**"financial services provider"** *means any person, other than a representative, who as a regular feature of the business of such person -*

- (a) *furnishes advice; or*
- (b) *furnishes advice and renders any intermediary service; or*
- (c) *renders an intermediary service;*

**"intermediary service"** *means, subject to subsection (3)(b), any act other than the furnishing of advice, performed by a person for or on behalf of a client or product supplier -*

- (a) *the result of which is that a client may enter into, offers to enter into or enters into any transaction in respect of a financial product with a product supplier; or*
- (b) *with a view to -*
  - (i) *buying, selling or otherwise dealing in (whether on a discretionary or non-discretionary basis), managing, administering, keeping in safe custody, maintaining or servicing a financial product purchased by a client from a product supplier or in which the client has invested;*
  - (ii) *collecting or accounting for premiums or other moneys payable by the client to a product supplier in respect of a financial product; or*

(iii) *receiving, submitting or processing the claims of a client against a product supplier;*

**"key individual"**, *in relation to an authorised financial services provider, or a representative, carrying on business as -*

(a) *a corporate or unincorporated body, a trust or a partnership, means any natural person responsible for managing or overseeing, either alone or together with other so responsible persons, the activities of the body, trust or partnership relating to the rendering of any financial service; or*

(b) *a corporate body or trust consisting of only one natural person as member, director, shareholder or trustee, means any such natural person;*

**"client"** *means a specific person or group of persons, excluding the general public, who is or may become the subject to whom a financial service is rendered intentionally, or is the successor in title of such person or the beneficiary of such service;*

**"product supplier"** *means any person who issues a financial product.*



***General Code of Conduct for Authorised Financial Services Providers and Representatives,  
2003***

***Part VII  
Furnishing of Advice  
Section 8***

**8. *Suitability***

(1) *A provider other than a direct marketer, must, prior to providing a client with advice-*

(a) *take reasonable steps to seek from the client appropriate and available information regarding the client's financial situation, financial product experience and objectives to enable the provider to provide the client with appropriate advice;*

(b) *conduct an analysis, for purposes of the advice, based on the information obtained;*

(c) *identify the financial product or products that will be appropriate to the client's risk profile and financial needs, subject to the limitations imposed on the provider under the Act or any contractual arrangement; and*

(d) *where the financial product ("the replacement product") is to replace an existing financial product wholly or partially ("the terminated product") held by the client, fully disclose to the client the actual and potential financial implications, costs and consequences of such a replacement, including, where applicable, full details of-*



- (i) *fees and charges in respect of the replacement product compared to those in respect of the terminated product;*  
[Subpara (i) substituted by BN 43/2008 with effect from 14 May 2008]
- (ii) *special terms and conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided, which may be applicable to the replacement product compared to those applicable to the terminated product;*  
[Subpara (ii) substituted by BN 43/2008 with effect from 14 May 2008]
- (iii) *in the case of an insurance product, the impact of age and health changes on the premium payable;*
- (iv) *differences between the tax implications of the replacement product and the terminated product;*
- (v) *material differences between the investment risk of the replacement product and the terminated product;*
- (vi) *penalties or unrecovered expenses deductible or payable due to termination of the terminated product;*
- (vii) *to what extent the replacement product is readily realisable or the relevant funds accessible, compared to the terminated product;*  
[Subpara (vii) substituted by BN 43/2008 with effect from 14 May 2008]
- (viii) *vested rights, minimum guaranteed benefits or other guarantees or benefits which will be lost as a result of the replacement; and;*  
[Subpara (viii) substituted by BN 43/2008 with effect from 14 May 2008]
- (ix) *any incentive, remuneration, consideration, commission, fee or brokerages received, directly or indirectly, by the provider on the terminated product and any incentive, remuneration, consideration, commission, fee or brokerages payable, directly or indirectly, to the provider on the replacement product where the provider rendered financial services on both the terminated and replacement product.*  
[Subpara (ix) inserted by BN 43/2008 with effect from 14 May 2008]

- (e) *take reasonable steps to establish whether the financial product identified is wholly or partially a replacement for an existing financial product of the client and if it is such a replacement, the provider must comply with subparagraph (d).*  
[Para (e) added by BN 43/2008 with effect from 14 May 2008]

- (2) *The provider must take reasonable steps to ensure that the client understands the advice and that the client is in a position to make an informed decision.*
- (3) *A provider providing advice to a client to replace an existing long-term insurance contract or policy with any other financial product must at the earliest practicable opportunity after providing such advice, but in any event no later than the date on which any transaction requirement is submitted to a product supplier in respect of any replacement product, notify the issuer of the existing and the replacement long-term insurance contract or policy of such advice.*
- (4) *Where a client-*
  - (a) *has not provided all information requested by a provider furnishing advice, as*

*part of the analysis referred to in subsection (1)(b), or where the provider has been unable to conduct such an analysis because in the light of the circumstances surrounding the case, there was not reasonably sufficient time to do so, the provider must fully inform the client thereof and ensure that the client clearly understands that-*

- (i) a full analysis in respect of the client referred to in subsection (1)(b) could not be undertaken;*
- (ii) there may be limitations on the appropriateness of the advice provided; and*
- (iii) the client should take particular care to consider on its own whether the advice is appropriate considering the client's objectives, financial situation and particular needs; or*

- (b) elects to conclude a transaction that differs from that recommended by the provider, or otherwise elects not to follow the advice furnished, or elects to receive more limited information or advice than the provider is able to provide, the provider must alert the client as soon as reasonably possible of the clear existence of any risk to the client, and must advise the client to take particular care to consider whether any product selected is appropriate to the client's needs, objectives and circumstances.*

## Summary

This topic deals with the skills needed to be able to apply knowledge of products. This includes knowledge of financial services as well as the relationships between role-players in terms of financial products and advice.

As far as financial services are concerned, we considered the different types of advice, namely comprehensive advice, advice in the case of policy replacements and advice when a needs analysis could not be done. In all cases where advice is rendered, a record of advice must be kept by the FSP/representative.

There is a long list of financial products specified by FAIS. Product suppliers develop and provide these products. They are then purchased by clients who receive financial advice from representatives. The FSP's office staff process product applications and the compliance officer oversees the compliance processes.

## Self-Assessment Questions

Please note that the questions which follow are formative in nature. The questions were not developed by the FSB's examination bodies and as such cannot be used as an indication of the nature/structure/level of the questions that you will encounter in the FSB's regulatory examination.

1. Financial services include:
  - a) Instructions on the development of products
  - b) The rendering of advice and/or intermediary services
  - c) The processing of policy applications
  - d) Overseeing of the compliance processes
  
2. The different types of advice include:
  - a) Comprehensive advice, advice on policy replacements and advice when no analysis is performed
  - b) Comprehensive advice and advice on financial products
  - c) Comprehensive advice and advice when no analysis is performed
  - d) Comprehensive advice and advice on second-hand policies
  
3. Which one of the following is not included in the steps that an FSP has to follow when providing advice?
  - a) Obtain appropriate and available information from the client
  - b) Conduct an analysis based on the information obtained as a basis for advice
  - c) Inform the client who the product supplier is and by whom the recommended product was developed
  - d) Identify the financial products that are suitable to the needs of the client
  
4. FAIS defines a replacement as:
  - a) the replacement of a financial product with only a long-term policy
  - b) the replacement of a financial product with another financial product
  - c) the replacement of a long-term policy with only another long-term policy
  - d) the replacement of a financial product with only a funeral policy

5. A record of advice does not have to include:
    - a) a brief summary of the information and material on which the advice was based
    - b) the qualifications of the representative
    - c) the financial products considered
    - d) the financial products recommended and why these products are suitable for the client
  
  6. Which of the following are not included in the definition of a financial product in terms of FAIS?
    - a) Shares and debentures
    - b) Money market instruments
    - c) Health service benefits
    - d) Property
  
  7. If a client purchases a product from someone who is not an authorised FSP, then the agreement between the product supplier and the client will be:
    - a) unenforceable
    - b) enforceable
    - c) cancelled
    - d) amended
  
  8. Which of the following persons are not included in the FAIS definition of a "client"?
    - a) Specific person or group of persons to whom a financial service is rendered
    - b) The beneficiary of a financial service
    - c) The successor in title of a person to whom a financial service is rendered
    - d) Members of the general public
  
  9. Which of the following is not contained in the list of specific disclosures required for a replacement product?
    - a) Fees and charges in respect of the replacement product
    - b) Special terms and conditions which may be applicable to the replacement product
    - c) The impact of age and health changes on the premium payable in the case of insurance products
    - d) Who the product supplier of the replacement product is
-

10. Which scenario is not applicable when advice is given but no analysis is performed?
- a) The adviser refused to do an analysis.
  - b) The client has elected to conclude a transaction that differs from that recommended by the provider.
  - c) The client has not provided all the information requested.
  - d) There was not sufficient time to conduct the analysis.
11. Which one of the following statements is correct with reference to the relationship between FAIS role-players?
- a) A product supplier will always act as a financial services provider.
  - b) A representative will always be an employee or someone mandated by a financial services provider.
  - c) The compliance officer of a financial services provider will always be an employee.
  - d) A representative is always part of the administrative staff of a financial services provider.
12. Select the statement that correctly describes the involvement of **all** the relationships between industry players with regard to financial products, as defined in FAIS:
- a) The FSP requests a product supplier to design a product which can be sold to clients, and the compliance officer oversees this process to ensure compliance with FAIS.
  - b) The product supplier designs products, tests their suitability with representatives of an FSP and markets the products once they have been approved by the FSP's compliance officer.
  - c) The FSP designs its own products, asks a product provider to test the product for compliance with the FAIS Act and then the FSP's representatives may sell the product to their clients.
  - d) The FSP/product supplier provides the product, which the representative sells to a client, the admin staff will process the application and the compliance officer oversees the process to ensure compliance with FAIS.



# 5

## Awareness of consequences for representatives that have been found to act fraudulently or committed any other act that gives rise to debarment

### 5.1 INTRODUCTION

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Representatives who have been found to act fraudulently, or committed any other act that gives rise to debarment (except where there is allowance to obtain qualifications and experience), may not be able to continue with their careers in the field of providing financial advice. It is therefore essential that representatives should be informed about the reasons for debarment as well as the recourse that they may have in such a situation.

In this topic, you will gain knowledge in the following areas:

1. Discuss the purpose of debarment.
  2. Describe the reasons why debarment would be considered.
  3. Discuss the process that would be followed in such instances.
  4. Explain what recourse a representative may have.
  5. Explain the process and timeframe in which the FSP should notify the Registrar that a representative has been debarred.
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The following skills criteria are related to the knowledge criteria listed above:

1. Check that the employment/mandatory agreement with representatives include the reasons for possible debarment.

## 5.2 DEBARMENT OF REPRESENTATIVES

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### 5.2.1 Discuss the purpose of debarment

In everyday terms, *debarment* means that a person is *excluded* from something or from doing something.

Representatives, who no longer comply with the fit and proper requirements, have to be excluded by their FSP from providing financial services. This means that they should be debarred by the FSP.

The purpose of debarment is to remove a representative in certain circumstances from rendering financial services to clients. Debarment is a requirement of the FAIS Act and Section 14 of the FAIS Act requires an FSP to ensure that a representative who is **no longer fit and proper**, or who has **contravened the FAIS Act** in a material manner is prohibited by the FSP to provide any new financial services.

The FSP must do this by:

- withdrawing the authority of the representative to act for and on behalf of the FSP; and
- removing the name of the representative from the representative register.

The FSP must also:

- take immediate steps to ensure that the debarment does not prejudice the interests of the clients of the representative; and
- ensure that unconcluded business of the representative is properly concluded.

### 5.2.2 Debarment by an FSP

Reasons for debarment will be non-compliance with any of the relevant fit and proper requirements, or if the representative has contravened or failed to

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comply with any other provisions of the FAIS Act. In considering the reasons for debarment, the FSP may take into consideration any information provided by the Registrar, the Ombud or anyone else.

### **5.2.3 Debarment by the FAIS Registrar**

The FAIS Registrar can also debar a person, including a representative, in terms of Section 14A of the Act.

The Registrar can debar a person from providing financial services for a specific period of time if the person:

- does not meet the fit and proper requirement of honesty and integrity; or
- contravened or did not comply with a provision of the Act.

The Registrar may publish the debarment or the lifting of the debarment.

#### **Recourse of a debarred representative (when the Registrar instigates debarment)**

When the Registrar wants to debar a representative, the Registrar must inform the representative of the following:

- The grounds for the intention to debarment and give the representative a reasonable opportunity to make a submission in response thereto;
- Any terms to be attached to the intended period of suspension, including:
  - a prohibition on concluding any new business by the representative as from the effective date of the debarment and, in relation to unconcluded business, such measures as the Registrar may determine for the protection of the interests of clients of the licensee; and
  - terms designed to facilitate the lifting of the debarment.

The Registrar must consider any response received. He may thereafter decide to debar or not to debar the representative and must notify the representative of the decision.

An FSP must, within a period of five days after being informed by the Registrar of the debarment, remove the names of that representative and key individuals from the register.

#### 5.2.4 Discuss the process and time frame that an FSP has to adhere to should a representative have to be debarred

An authorised FSP must debar intermediaries by withdrawing the authority granted to the representative to act on its behalf. This has to be done before terminating the service or other agreement between the FSP and the representative.

This process begins when the FSP removes the representative's name from its register of representatives. When debarring a representative the FSP must ensure that he/she/it complies with the applicable labour laws. The representative **should** be informed in writing of the debarment and **should** be told the reasons for the debarment as well as the conditions for lifting it, if that process is adopted within the organisation.

It may be a condition of service (or included in the contractual mandates) that representatives and key individuals of representatives will be debarred in certain circumstances and representatives should be made aware of the conditions.

It follows that representatives should not be listed as debarred unfairly as they will have full legal recourse to the FSP (the key individual will be held responsible as he is responsible for management and oversight of the business of the FSP which renders financial service).

The FSP must then, within 15 days of the removal of the representative's name from the register, inform the Registrar of the removal in writing. This notification must include the details of the reasons for the debarment and must be in the prescribed format. Remember that the Registrar does not (ordinarily) debar representatives, but only updates the central register after having been notified by FSPs of the debarment of representatives.

A representative may be linked to more than one FSP. If such a representative has been debarred by FSP 1 then FSP 2 will be notified by the Registrar that the said representative has been debarred by FSP 1.

The Registrar may make known any debarment as well as the reasons for it on the official web site or in any appropriate public media. This is to ensure that the public is informed of representatives who are unfit to render a financial service and are no longer authorised to do so.

The process also requires that the FSP should take steps immediately to ensure that clients of the representative are not disadvantaged and that any unfinished business is properly concluded.

### **5.2.5 Recourse for a representative after debarment**

If a representative is debarred he may be reappointed provided that he complies with the requirements of reappointment as determined by the Registrar in the Government Gazette.

Before a debarred representative can be reappointed, he needs to meet the following requirements:

- Twelve months must have elapsed since the debarment date. However, if debarment results from lack of competence and personal character qualities then the debarment can be lifted as soon as full competence is achieved, even if it is before 12 months have elapsed. However it is difficult to see how a person who has been debarred for not being honest or having integrity would be able to be reappointed after 12 months only. This is due to the nature of the honesty and integrity requirements, as discussed earlier.
- All unconcluded business of the debarred representative must have been properly concluded.
- All complaints or legal proceedings (if any) submitted by clients to the applicant or the debarring provider, or the Ombud or any court of law; or other administrative or legal procedures or proceedings in terms of the FAIS Act or any other law, arising out of any acts or omissions in which the applicant was directly or indirectly involved prior to the debarment date, have been properly and lawfully resolved or concluded, as the case may be, and that the applicant has fully complied with any decision, determination or court order in connection therewith, given or issued in respect of the applicant.
- All fit and proper requirements must be met.

# Relevant Legislation



## *Financial Advisory and Intermediary Services Act 37 of 2002*

### *Chapter III*

#### *Representatives of Authorised Financial Services Providers*

#### *Section 14*

#### **14. Debarment of representatives**

(1) *An authorised financial services provider must ensure that any representative of the provider who no longer complies with the requirements referred to in Section 13(2)(a) or has contravened or failed to comply with any provision of this Act in a material manner, is prohibited by such provider from rendering any new financial service by withdrawing any authority to act on behalf of the provider, and that the representative's name, and the names of the key individuals of the representative, are removed from the register referred to in Section 13(3): Provided that any such provider must immediately take steps to ensure that the debarment does not prejudice the interest of clients of the representative, and that any unconcluded business of the representative is properly concluded.*

*[Subs. (1) substituted by Section 53 of Act 22/2008]*

(2) *For the purposes of the imposition of a prohibition contemplated in subsection (1), the authorised financial services provider must have regard to information regarding the conduct of the representative as provided by the Registrar, the Ombud or any other interested person.*

*[Subs. (2) substituted by Section 53 of Act 22/2008]*

(3)

(a) *The authorised financial services provider must within a period of 15 days after the removal of the names of a representative and key individuals from the register as contemplated in subsection (1), inform the Registrar in writing thereof and provide the Registrar with the reasons for the debarment in such format as the Registrar may require.*

(b) *The Registrar may make known any such debarment and the reasons therefor by notice on the official web site or by means of any other appropriate public media.*

*[Para. (b) substituted by Section 187 of Act 45/2013 w.e.f. 28 February 2014]*

*[Subs. (3) substituted by Section 53 of Act 22/2008]*

#### **14A. Debarment by Registrar**

(1) *The Registrar may, subject to subsection (2), at any time debar a person, including a representative, for a specified period from rendering financial services if satisfied on the basis of available facts and information that the person-*

(a) *does not meet, or no longer meets, the requirements contemplated in Section*

*§(1)(a); or*

*(b) has contravened or failed to comply with any provision of this Act.*

*(2) The provisions of Section 9(2), regarding a decision to suspend a licence, apply with the necessary changes to the debarment of a person contemplated in subsection (1).*

*(3) An authorised financial services provider must within a period of five days after being informed by the Registrar of the debarment of a representative or key individual, remove the names of that representative and key individuals from the register as contemplated in Section 13(3).*

*(4) The Registrar may make known any such debarment and the reasons therefor, or the lifting thereof, by notice on the official web site or by means of any other appropriate public media.*

*[Subs. (4) substituted by Section 188 of Act 45/2013 w.e.f. 28 February 2014]*

*[Section 14A inserted by Section 54 of Act 22/2008]*

## Summary

Representatives are debarred when an authorised FSP withdraws the authority granted to the representative to act on its behalf. This will be the consequence of the intermediary having acted fraudulently or having committed any other act that gives rise to debarment. In certain instances, the FAIS Registrar may also debar a person.

The purpose of debarment is to remove a representative in certain circumstances from rendering financial services to clients.

A representative who is to be debarred must be informed by the FSP and although no hearing will be held, will be able to state his case. The FSP is obliged to inform the Registrar in writing of the removal within 15 days of the removal of the representative's name from the FSP's register. The FSP must also take care of the debarred person's clients and finalise any uncompleted business.

The Registrar may publish the names of debarred representatives in order to inform the public of people they should not have dealings with in terms of financial services.

A debarred representative may be reappointed given that he has met certain requirements.

## Self-Assessment Questions

Please note that the questions which follow are formative in nature. The questions were not developed by the FSB's examination bodies and as such cannot be used as an indication of the nature/structure/level of the questions that you will encounter in the FSB's regulatory examination.

1. Debarment happens when:
  - a) an FSP grants the authority to a representative to act on its behalf.
  - b) an FSP withdraws the authority granted to a representative to act on its behalf.
  - c) a representative retires.
  - d) a representative resigns.
  
2. The FSP must inform the Registrar in writing of the removal of a representative's name from its register within:
  - a) 5 days of the removal of the representative's name.
  - b) 30 days of the removal of the representative's name.
  - c) 10 days of the removal of the representative's name.
  - d) 15 days of the removal of the representative's name.
  
3. The person responsible for the debarment of a representative is the:
  - a) FSP.
  - b) Registrar of banks.
  - c) compliance officer.
  - d) money laundering officer.
  
4. Which one of the following is a condition for reappointment after debarment as a result of causes other than a lack of competence?
  - a) Six months must have elapsed since the debarment date.
  - b) Only the fit and proper requirement of competency must have been met.
  - c) 12 months must have elapsed since the debarment date.
  - d) Only the fit and proper requirement of honesty and integrity must have been met.

5. Reasons for debarment include the following:
    - a) Non-compliance with any of the relevant fit and proper requirements or if the representative has contravened or failed to comply with any other provisions of the FAIS Act
    - b) Poor work performance
    - c) Only if the representative has contravened or failed to comply with any provisions (other than the fit and proper provisions) of the FAIS Act
    - d) Only non-compliance with any of the relevant fit and proper requirements
  
  6. When an FSP removes a representative's name from its register for the purpose of debarment, the FSP has to inform:
    - a) the representative in writing of the debarment only.
    - b) the representative in writing of the debarment, inform him of the reasons for the debarment as well as the conditions for lifting it.
    - c) him of the reasons for the debarment only.
    - d) him of the conditions for lifting it only.
  
  7. When a representative is linked to FSP A and FSP B and is debarred by FSP B, then FSP A will be informed of the debarment by:
    - a) FSP B.
    - b) the Registrar.
    - c) the compliance officer.
    - d) the Ombud.
  
  8. The reason that the Registrar is allowed to publish information on the debarment of representatives is:
    - a) because it is an official duty of the Registrar in terms of FICA.
    - b) because it is newsworthy.
    - c) because it is an official duty of the Registrar in terms of FAIS.
    - d) to ensure that the public is informed of representatives who contravene the FAIS Act or who are no longer licensed to operate.
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9. Once an FSP has debarred a representative, the FSP has to take steps to ensure that:
- a) uncompleted business of the debarred representative is cancelled.
  - b) clients of the debarred representative are informed that no further financial services could be rendered to them.
  - c) clients of the debarred representative are not disadvantaged and that any uncompleted business is properly concluded.
  - d) all records of the debarred representative's clients are destroyed.
10. An employment contract between an FSP and a representative should at least state non-compliance with the following fit and proper requirements as possible reasons for debarment:
- a) Honesty and integrity only
  - b) Competency only
  - c) Continuous professional development
  - d) Honesty and integrity and competency
11. Mia, an employee of Excel Life, did not make the necessary disclosures in a very lucrative deal, and realised that her actions warranted dismissal. She immediately handed in her resignation, which was accepted, and started working for Prudent Bank Ltd. When the client suffered huge losses and complained to Excel Life, they could have responded as follows:
- a) They are unable to proceed with debarment, as Mia is no longer in their employ, but they could inform the Registrar.
  - b) They could have collected and submitted evidence to the FSB, recommending that Mia be debarred.
  - c) They could have advised the client to lodge their complaint with the Ombud for Financial Services Providers (FAIS Ombud) as Mia was no longer in their employment.
  - d) They could have provided Prudent Bank Ltd with the evidence, recommending that they proceed with her debarment.



12. Jackie was debarred nine months ago due to incompetence, and has applied for reappointment. You advise her that her debarment can be lifted if:
- a) full competence has been achieved and all other requirements have been met.
  - b) full competence has been achieved and all fit and proper requirements have been met.
  - c) Twelve months have lapsed since the debarment date and she meets all the fit and proper requirements.
  - d) Twelve months have lapsed since the debarment date and all unconcluded business has been properly concluded.
13. Mary, a representative, was debarred in 2010 when her FSP discovered that she had not disclosed the fact that she was found guilty on two counts of fraudulent behaviour in 2008. What was the basis for Mary's debarment in terms of FAIS?
- a) She did not meet the fit and proper requirement of competence.
  - b) She did not meet the requirements of reporting money-laundering activities.
  - c) She did not meet the fit and proper requirement of honesty and integrity.
  - d) She was guilty of non-disclosure of information in terms of the FAIS Act.



# 6

## Align execution of duties and actions with the compliance requirements

### 6.1 INTRODUCTION

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The accountability for compliance with FAIS rests with the FSP. However, the FSP may (and in some cases must) appoint a compliance officer to align execution of duties and actions with compliance requirements. The purpose of this topic is to inform you of how the compliance officer ensures that the FSP's organisation remains FAIS compliant.

In this topic, you will gain knowledge in the following areas:

1. Describe the role and function of a compliance officer.

The following skills criteria are related to the knowledge criteria listed above:

1. Confirm that where the compliance officer found any instances of non-compliance that this is addressed and rectified.

### 6.2 THE ROLE AND FUNCTION OF THE COMPLIANCE OFFICER

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A compliance officer is the individual appointed by the FSP to monitor compliance to the FAIS Act and to report to the Registrar on compliance issues.

An FSP must ensure that a compliance function exists or is established as part of the risk management framework of the business.

In the case where the FSP has **more than one key individual**, or **one or more representatives** (in addition to the key individual), this function must be supervised by an approved compliance officer.

In the case of a sole proprietor FSP where there is only one person who will at all times know whether his own actions are compliant, the compliance function may also be carried out by the sole proprietor if no compliance officer is appointed to supervise the compliance function.

It is possible for the FSP to outsource the compliance function – in other words, not having to appoint a full-time employee to act as compliance officer. Care must be taken to ensure that the outsourced compliance practice has adequate staff, resources, skills, etc. and that the approval requirements are met.

Compliance officers are responsible for the compliance functions as required by the FAIS Act, in relation to the particular categories and sub-categories in terms of the FSP licence for which they are approved by the Registrar. Compliance officers must comply with the fit and proper requirements.

Remember the establishment of the compliance function is the responsibility of the FSP/key individual and it includes the appointment of a compliance practice.

An FSP is ultimately accountable to the Registrar for the compliance of his organisation. This accountability cannot be delegated to a compliance officer. They are only appointed to assist FSPs and key individuals in their role to establish and maintain a compliance function.

As with key individuals, the FSP appoints compliance officers and the Registrar approves the appointments – in accordance with the criteria and guidelines determined by him. The FSP and compliance officer must apply for approval on the relevant application forms to the Registrar.

### **6.2.1 Approval**

A compliance officer must be approved by the Registrar, in accordance with the criteria and guidelines determined by the Registrar. The Registrar may amend such criteria and guidelines, and the compliance officer has to comply with amended criteria and guidelines within the period determined by the Registrar.

Board Notice 127 of 2010 contains the criteria for Phase I and Phase II approval by the Registrar as well as the required fit and proper requirements

for compliance officers regarding personal character qualities, financial soundness, qualifications, regulatory examinations, experience and CPD.

A compliance officer must:

- hold a qualification on the list of recognised compliance qualifications.
- have passed the regulatory examination.
- have at least three years' experience in performing a compliance or risk management function.
- comply with personal character qualities of honesty and integrity.
- have at least one year's experience in performing a compliance or risk management function in respect of the specific category of providers the applicant seeks to obtain approval in respect of to render compliance services.
- not be an unrehabilitated insolvent, have entered into a compromise with creditors or have been provisionally sequestered or liquidated.
- have adequate access to communication facilities, including at least a telephone or cellphone service and typing and document duplication facilities.

### **6.2.2 Withdrawal**

The Registrar may at any time withdraw the approval of the compliance officer if he has evidence that the compliance officer:

- has contravened or failed to comply with any provision of the Act;
- does not meet or no longer meets the fit and proper requirements; or
- does not comply, or no longer complies with any of the criteria and guidelines as set by the Registrar.

The Registrar may make known any approval or withdrawal of approval and the reasons therefor by notice on the official web site or by means of any other appropriate public media.

### **6.2.3 Role**

The compliance officer must:

- oversee the provider's compliance function;
- monitor compliance with the Act by providers and representatives;
- take responsibility for liaison with the Registrar; and
- submit reports to the Registrar as required by the Act.

- The Regulations (Chapter IV, paragraph 5) also requires the compliance officer to make recommendations to the provider as regards any aspect of the required compliance or monitoring functions.

## Oversee

The FAIS Act requires the compliance officer to 'oversee' the compliance function. In essence, this means that the FSP is responsible for the establishment of the compliance function, including all the control requirements and the compliance officer is responsible for all the related compliance functions.

The compliance officer must in effect only ensure that the requirements of the Act are met through the procedures which the FSP (key individual) must establish – hence the requirement for the compliance officer to 'oversee'.

However, there must be adequate measures in place to ensure that non-compliance issues identified by the compliance officer are rectified. Compliance officers may also conduct training on compliance matters to the FSP and its representatives in support of its supervision function.

## Monitor

One of the main functions of a compliance officer is to monitor compliance by all the role-players with the FAIS Act. What does "monitor" mean?

In compliance terms, **monitoring** is to:

- **identify and improve weak/vulnerable** areas in business.
- ensure that the **compliance controls in business are effective and implemented.**
- constantly **test/review the integrity** of the compliance controls.

The monitoring duties of the compliance officer must be performed within the scope and application of the categories and sub-categories for which the FSP is licensed.



The compliance officer will **submit written reports to the FSP** on compliance issues relating to the business and make recommendations as required. This should enable both FSP (key individual) and compliance officer to assess compliance with the FAIS Act and to identify and implement remedial steps where required.

## Submit reports to Registrar

A compliance officer (or in the absence of a compliance officer, the FSP) must submit reports to the Registrar as determined by the Registrar. The compliance officer's report on the FSP must also include reporting any irregularity or suspected irregularity in the conduct of the FSP business to the Registrar, of which the compliance officer is aware and that the compliance officer regards as material. This must also be done if the services of the compliance officer have been terminated by the FSP.

The reporting duties of a compliance officer in terms of the FAIS Act go wider than just compliance with the FAIS Act and include reporting on the FICA as well.

## Relevant Legislation

 <p style="text-align: center;"><b>FAIS Regulations</b></p> <p><b>5. Establishment of compliance function</b></p> <p>(1) <i>Subject to the provisions of the Act, an authorised financial services provider shall ensure that a compliance function exists or is established as part of the risk management framework of the business, supervised by an approved compliance officer (where required in terms of the Act), or otherwise managed under control and responsibility of the provider alone.</i></p> <p>(3) <i>An approved compliance officer (where required by the Act) must provide a provider with written reports on the course of, and progress achieved with, compliance monitoring duties and make recommendations to the provider as regards any aspect of the required compliance or monitoring functions.</i></p>
 <p style="text-align: center;"><b>Financial Advisory and Intermediary Services Act 37, 2002</b> <b>Chapter V</b> <b>Duties of Authorised Financial Services Providers</b> <b>Section 17</b></p> <p><b>17. Compliance officers and compliance arrangements</b></p> <p>(a) <i>Any authorised financial services provider with more than one key individual or one or more representatives must, subject to Section 35(1) (c) and subsections (1)(b) and (2)(a)(i), appoint one or more compliance officers to oversee the provider's compliance function and to monitor compliance with this Act by the provider and such representative or representatives, particularly in accordance with the procedures contemplated in subsection (3), and to take responsibility</i></p>

*for liaison with the Registrar.*

*[Para. (a) substituted by Section 190 of Act 45/2013 w.e.f. 28 February 2014]*

*(b) Such person must comply with the fit and proper requirements.*

*[Para. (b) substituted by Section 57 of Act 22/2008 and by Section 190 of Act 45/2013 w.e.f. 28 February 2014]*

*(bA) The provisions of Section 8A apply with the necessary changes to a compliance officer.*

*[Para. (bA) inserted by Section 190 of Act 45/2013 w.e.f. 28 February 2014]*

*(c) The provisions of Section 19(4), (5) and (6), relating to an auditor of an authorised financial services provider, apply with the necessary changes to a compliance officer.*

*[Para. (c) substituted by Section 57 of Act 22/2008]*

*(2)*

*(a)*

*(i) A compliance officer must be approved by the Registrar in accordance with the criteria and guidelines determined by the Registrar.*

*(ii) The Registrar may amend such criteria and guidelines, and an approved compliance officer must comply with the amended criteria and guidelines within such period as may be determined by the Registrar.*

*(b) The Registrar may at any time withdraw the approval if satisfied on the basis of available facts and information that the compliance officer-*

*(i) has contravened or failed to comply with any provision of this Act;*

*(ii) does not meet or no longer meets the fit and proper requirements; or*

*(iii) does not comply or no longer complies with the criteria and guidelines contemplated in paragraph (a).*

*(c) The provisions of Section 9(2) and (6) regarding a decision to withdraw an authorisation (excluding such provisions relating to periods and terms) apply with the necessary changes to a withdrawal of an approval contemplated in paragraph (b).*

*(d) The Registrar may make known any withdrawal of approval under this subsection and the reasons therefor by notice on the official web site or by means of any other appropriate public media.*

*[Subs. (2) substituted by Section 57 of Act 22/2008 and Section 190 of Act 45/2013 w.e.f. 28 February 2014]*

*(3) An authorised financial services provider must establish and maintain procedures to be followed by the provider and any representative concerned, in order to ensure compliance with this Act.*

*(4)*

*(a) A compliance officer or, in the absence of such officer, the authorised financial services provider concerned, must submit reports to the Registrar in the manner*



*and regarding the matters, as from time to time determined by the Registrar by notice on the official web site for different categories of compliance officers.*

*(b) An authorised financial services provider must ensure that the reports referred to in paragraph (a) are submitted in accordance with the provisions of that paragraph.*

*[Subs. (4) substituted by Section 190 of Act 45/2013 w.e.f. 28 February 2014]*

*(5) The provisions of subsections (3) and (4) apply with the necessary changes to any authorised financial services provider who carries on a business with only one key individual or without any representative.*



## ***Financial Advisory and Intermediary Services Act 37 of 2002***

### ***Chapter V***

#### ***Duties of Authorised Financial Services Providers***

##### ***Section 19***

#### ***19 Accounting and audit requirements***

*(1) Except to the extent exempted by the registrar, an authorised financial services provider must, in respect of the business carried on by the provider as authorised under the provider's licence -*

*(a) maintain full and proper accounting records on a continual basis, brought up to date monthly; and*

*(b) annually prepare, in respect of the relevant financial year of the provider, financial statements reflecting -*

*(i) the financial position of the entity at its financial year end;*

*(ii) the results of operations, the receipt and payment of cash and cash equivalent balances;*

*(iii) all changes in equity for the period then ended, and any additional components required in terms of South African Generally Accepted Accounting Practices issued by the Accounting Practices Board or International Financial Reporting Standards issued by the International Accounting Standards Board or a successor body; and*

*(iv) a summary of significant accounting policies and explanatory notes on the matters referred to in paragraphs (i) to (iii);*

*[Para. (b) substituted by Section 58 of Act 22/2008]*

*(3) The authorised financial services provider must maintain records in accordance with subsection (1)(a) in respect of money and assets held on behalf of clients, and must, in addition to and simultaneously with the financial statements referred to in subsection (2), submit to the registrar a report, by the auditor who performed the audit, which confirms, in the form and manner determined by the registrar by notice on the official web site for different categories of financial services providers-*

*[Words preceding para. (a) substituted by Section 191 of Act 45/2013 w.e.f. 28 February 2014]*

- (a) *the amount of money and financial products at year end held by the provider on behalf of clients;*
- (b) *that such money and financial products were throughout the financial year kept separate from those of the business of the authorised financial services provider, and report any instance of non-compliance identified in the course of the audit and the extent thereof; and*
- (c) *any other information required by the registrar.*  
*[Subs. (3) substituted by Section 58 of Act 22/2008]*
- (4) *Despite anything to the contrary contained in any law, the auditor of an authorised financial services provider must report to and inform the Registrar in writing of any irregularity or suspected irregularity in the conduct or the affairs of the authorised financial services provider concerned of which the auditor became aware in performing functions as auditor and which, in the opinion of the auditor, is material.*

## Summary

The role of the compliance officer is to ensure compliance with the FAIS Act within the business of the FSP. A compliance officer must:

- hold a qualification on the list of recognised compliance qualifications.
- have passed the regulatory examination.
- have at least three years' experience in performing a compliance or risk management function.
- comply with personal character qualities of honesty and integrity.
- have at least one year's experience in performing a compliance or risk management function in respect of the specific category of providers the applicant seeks to obtain approval in respect of to render compliance services.
- not be an unrehabilitated insolvent, have entered into a compromise with creditors or have been provisionally sequestered or liquidated.
- have adequate access to communication facilities, including at least a telephone or cell phone service and typing and document duplication facilities.

A compliance officer may be appointed from internal staff or the function may be outsourced to an external compliance officer.

Once the appointment is approved by the Registrar, the compliance officer is responsible for assisting with the compliance function. An FSP may not delegate his accountability with regard to FAIS to a compliance officer.

A compliance officer has three main functions, namely oversight, monitoring, and liaison. He also has to submit reports to the Registrar.

## Self-Assessment Questions

Please note that the questions which follow are formative in nature. The questions were not developed by the FSB's examination bodies and as such cannot be used as an indication of the nature/structure/level of the questions that you will encounter in the FSB's regulatory examination.

1. An FSP has to appoint a compliance officer if it has:
  - a) more than one key individual or one or more representatives.
  - b) a key individual.
  - c) only representatives.
  - d) one or more representatives.
  
2. The appointment of the compliance officer has to be approved by the:
  - a) Ombud.
  - b) FSP.
  - c) managing director.
  - d) Registrar.
  
3. Which of the following is not one of the main functions of a compliance officer?
  - a) Monitoring
  - b) Administrative services
  - c) Oversight
  - d) Liaison
  
4. Which one of the following tasks forms part of the monitoring function of the compliance officer?
  - a) Submission of compliance reports and other compliance-related reports to the Registrar and to the FSP
  - b) Performance evaluations of representatives
  - c) Drafting of job descriptions
  - d) Identifying training needs

5. Which one of the following tasks forms part of the oversight function of the compliance officer?
- a) Monitoring representatives' behaviour
  - b) Implementing advice processes
  - c) Liaising with the Registrar
  - d) Identification of training needs
6. Who must submit compliance reports to the Registrar?
- a) The compliance officer
  - b) The FSP
  - c) The compliance officer, or in his absence, the authorised FSP
  - d) The key individual
7. The function of the compliance officer:
- a) may be outsourced to an external compliance officer.
  - b) must be outsourced to an external compliance officer.
  - c) must only be performed by an internal staff member.
  - d) may not be outsourced to an external compliance officer.
8. ABC Brokers, a brokerage with 20 representatives, does not currently have a compliance officer.

Which of the following tasks will they not be able to perform?

- a) Completing branch audits
  - b) Resolving customer service-related queries
  - c) Fulfilling required compliance functions
  - d) Meeting individual training needs
9. When Rafiq was appointed as the compliance officer of ABC Life, he decided to plan his quarterly visit to each of the 39 ABC Life offices throughout the country.

On what should he focus during these visits?

- a) Building rapport with all the branch managers and staff to foster a good working relationship
- b) Training of the staff about the FAIS Act and its provisions and requirements for ABC Life
- c) Checking the FAIS registers, required disclosures and fit and proper status of those giving advice
- d) Comparing how this branch, and other branches in ABC Life and the rest of the industry comply with FAIS

## Carry out the proper record-keeping activities

### 7.1 INTRODUCTION

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The FAIS Act imposes various duties on FSPs and of course on representatives as well. One of these duties is that of record-keeping. The continuity of your business as either an FSP or a representative depends on whether you are compliant with the FAIS legislation, and specifically with regard to record-keeping. The purpose of this topic is to inform you of the knowledge and skills needed to be compliant in this aspect of FAIS.

In this topic, you will gain knowledge in the following areas:

1. Explain the record-keeping obligations as imposed by the FAIS Act.
  2. Explain the requirements regarding the maintenance of records in terms of the FAIS Act.
  3. Explain the requirements regarding records and the maintenance thereof in terms of other applicable legislative requirements, including FICA.
  4. Describe the requirements imposed when record-keeping is outsourced to a third party.
  5. Explain in what format the records should be stored and retrieved in accordance to the industry standard.
  6. Explain what the security requirements for these records are in terms of confidentiality and access to records.
-

The following skills criteria are related to the knowledge criteria listed above:

1. Follow the process in place to provide the management information that is required to complete the reports in terms of legislation.
2. Execute the third party outsourcing agreement correctly, where applicable.
3. Carry out the record-keeping function correctly, including the retrieval of records.

## 7.2 RECORD-KEEPING

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The requirements for record-keeping are discussed in detail in Section 1.9 and will be briefly revisited below, before we discuss record keeping under FICA.

### 7.2.1 Explain the record-keeping obligations as imposed by the FAIS Act

The FAIS General Code of Conduct determines that a provider must have appropriate procedures and systems in place to:

- record any verbal and written communications relating to a financial service rendered to a client.
- store and retrieve such records and any other material documentation relating to the client or financial service rendered to the client.
- keep such client records and documentation safe from destruction and keep it for a period of five years after the rendering of the financial service.

### 7.2.2 Requirements regarding the maintenance of records in terms of the FAIS Act

Section 18 of FAIS requires that an authorised financial services provider must, except if exempted by the Registrar, maintain records for a minimum period of five years after termination (to the knowledge of the financial services provider) of the product concerned or, in any other case, after the rendering of the financial service concerned.

The documents that must be maintained are those regarding:

- known premature cancellations of transactions regarding financial products by clients of the provider.
- complaints received together with an indication whether or not any such complaint has been resolved.
- the continued compliance with the requirements referred to in Section 8 which refers to the application for licence authorisation to act or offer to act as a financial services adviser.
- cases of non-compliance with this Act, and the reasons for such non-compliance, and
- the continued compliance by representatives with the requirements referred to in Sections 13(1) and (2) of the Act (which refers to the duties of authorised financial services providers).

### **7.2.3 Requirements regarding records and the maintenance thereof in terms of other applicable legislative requirements, including FICA**

#### **Note**

The following section on the maintenance of records in terms of FICA is also provided in Topic 8 (Paragraph 8.5.3) because it is a criterion for that topic as well.

FICA requires the following records to be kept whenever an accountable institution establishes a business relationship or concludes a transaction with a client, whether the transaction is a single transaction or concluded in the course of a business relationship:

- The identity of the client
- If the client is acting on behalf of another person, the identity of the person on whose behalf the client is acting and the client's authority to act on behalf of the other person; if another person is acting on behalf of the client, the identity of the person acting on behalf of the client and that other person's authority to act on behalf of the client
- The manner in which the identity was established
- The nature of the business relationship or transaction
- In the case of a transaction, the amount involved and the parties to that transaction

- All accounts that are involved in transactions concluded by that accountable institution in the course of that business relationship and the single transaction
- The name of the person who obtained the information on behalf of the accountable institution
- Documents used to identify and verify the client or the other person.

The records mentioned above may be kept in electronic form. Records that relate to the establishment of a business relationship should be kept for five years from the date on which the business relationship is terminated. Records which relate to transactions should be kept for at least five years from conclusion of the transaction.

FICA also allows for third parties to keep records on behalf of the accountable institution, provided that the accountable institution has free and easy access to the records. Should the third party fail to keep proper records, the accountable institution is liable for that failure. If an accountable institution decides to make use of a third party to keep records, the particulars of such third party needs to be provided to the Financial Intelligence Centre. (Refer to Topic 8.)

### **Accessibility of information**

An authorised representative of the Financial Intelligence Centre has access to records kept by an accountable institution during ordinary working hours and may examine, make extracts or make copies of such records.

Where such records are not available to the general public, a warrant issued by a judge or magistrate of the region in which the accountable institution conducts business is required by the representative of the FIC. Such a warrant will only be issued if there are reasonable grounds to believe that the records will assist in identifying the proceeds of unlawful activities. An accountable institution which fails to provide this assistance, is guilty of an offence, punishable with imprisonment for a period not exceeding 15 years, or a fine not exceeding R100 million.

## **Note**

In terms of the FIC Act, the penalties increased as from 1 December 2010 to 15 years imprisonment or a fine not exceeding R100 million.



**Example:**

Let's assume that the authorities have been investigating Client X in terms of unlawful activities.

The Financial Intelligence Centre can obtain a warrant to access records kept by an accountable institution such as a long-term insurer, provided that there are reasonable grounds to believe that the records will assist in identifying the proceeds of unlawful activities. The insurer will be obliged to provide all necessary assistance to FIC in this process.

**7.2.4 Requirements imposed when record-keeping is outsourced to a third party**

Providers are not required to keep the records themselves but must ensure that they are available for inspection within seven days of the Registrar's request if record-keeping is outsourced.

An FSP that utilizes any third party to render administrative or system functions in relation to the rendering of financial services on its behalf must have in place a detailed service-level agreement, specifying the agreed services, time standards, roles and responsibilities and any penalties that might be applicable.

**7.2.5 Format for the storage and retrieval of records**

Records may be kept in an appropriate electronic or recorded format, which are accessible and readily reducible to written or printed form. FSPs must ensure that records are available for inspection within seven days of the Registrar's request.

**7.2.6 The security requirements for these records in terms of Confidentiality and access**

A provider may not disclose any confidential information acquired or obtained from a client or a product supplier in regard to such client or supplier, unless:

- written consent of the client or product supplier has been obtained beforehand, or
- disclosure of the information is required in the public interest or under any law.

# Relevant Legislation



## *General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003*

### *Part VII Furnishing of Advice Section 9*

#### **9. Record of advice**

(1) *A provider must, subject to and in addition to the duties imposed by Section 18 of the Act and Section 3(2) of this Code, maintain a record of the advice furnished to a client as contemplated in Section 8, which record must reflect the basis on which the advice was given, and in particular-*

(a) *a brief summary of the information and material on which the advice was based;*

(b) *the financial product which were considered;*  
*[Para (b) substituted by BN 43/2008 with effect from 14 May 2008]*

(c) *the financial product or products recommended with an explanation of why the product or products selected, is or are likely to satisfy the client's identified needs and objectives; and*  
*Para (c) substituted by BN 43/2008 with effect from 14 May 2008]*

*Provided that such record of advice is only required to be maintained where, to the knowledge of the provider, a transaction or contract in respect of a financial product is concluded by or on behalf of the client as a result of the advice furnished to the client in accordance with Section 8.*

(d) *where the financial product or products recommended is a replacement product as contemplated in Section 8(1)(d)-*

(aa) *the comparison of fees, charges, special terms and conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided, between the terminated product and the replacement product; and*

(bb) *the reasons why the replacement product was considered to be more suitable to the client's needs than retaining or modifying the terminated product;*  
*[Para (d) inserted by BN 43/2008 with effect from 14 May 2008]*

(2) *A provider, other than a direct marketer, must provide a client with a copy of the record contemplated in 9(1) in writing.*



**Financial Advisory and Intermediary Services Act 37 of 2002**  
**Chapter V**

**Duties of Authorised Financial Services Providers**  
**Section 18**

**18. Maintenance of records**

*An authorised financial services provider must, except to the extent exempted by the Registrar, maintain records for a minimum period of five years regarding -*

- (a) known premature cancellations of transactions or financial products by clients of the provider;*
- (b) complaints received together with an indication whether or not any such complaint has been resolved;*
- (c) the continued compliance with the requirements referred to in Section 8;*
- (d) cases of non-compliance with this Act, and the reasons for such non-compliance; and*
- (e) the continued compliance by representatives with the requirements referred to in Section 13(1) and (2).*



**General Code of Conduct for Authorised Financial Services Providers and Representatives,**  
**2003**

**Part II**  
**General Provisions**  
**Section 3**

**3. Specific duties of provider**

- (2)*
  - (c) Providers are not required to keep the records themselves but must ensure that they are available for inspection within seven days of the Registrar's request.*
  - (d) Records may be kept in an appropriate electronic or recorded format, which are accessible and readily reducible to written or printed form*
- (3) A provider may not disclose any confidential information acquired or obtained from a client or, subject to Section 4(1), a product supplier in regard to such client or supplier, unless the written consent of the client or product supplier, as the case may be, has been obtained beforehand or disclosure of the information is required in the public interest or under any law.*



## FICA Regulations

### *Section 20*

- 1) *If an accountable institution appoints a third party to keep on its behalf any records which that institution must retain in terms of the Act, that institution must without delay provide the Centre with –*
  - a) *the third party's –*
    - i) *full name, if the third party is a natural person; or*
    - ii) *registered name, if the third party is a close corporation or company;*
  - b) *the name under which the third party conducts business;*
  - c) *the full name and contact particulars of the individual who exercises control over access to those records;*
  - d) *the address where the records are kept;*
  - e) *the address from where the third party exercises control over the records; and*
  - f) *the full name and contact particulars of the individual who liaises with the third party on behalf of the accountable institution concerning the retention of the records.*

## Summary

In this topic we learnt about the record-keeping obligations imposed by the FAIS Act, which include the obligations imposed by the General Code of Conduct. We identified the appropriate procedures and systems that a provider must have in place to store records. Providers have to maintain specified records for a minimum period of five years. FICA has similar requirements for record-keeping.

Both FICA and FAIS allow providers to outsource the record-keeping function but records must be accessible should any authorised person want to access them at the third party's storage facility.

The industry standard for the storage and retrieval of records is an appropriate electronic or recorded format which can easily be converted into a written or printed format.

Written consent of a client is required if confidential information is to be made available.

To conclude, one can see that very strict requirements are in place to ensure safe but accessible record-keeping.

## Self-Assessment Questions

Please note that the questions which follow are formative in nature. The questions were not developed by the FSB's examination bodies and as such, cannot be used as an indication of the nature/structure/level of the questions that you will encounter in the FSB's regulatory examination.

1. Which of the following is an example of a document that should be maintained in terms of the FAIS Act?
  - a) A cancellation of an endowment policy one year before it pays out
  - b) An application for a retirement annuity
  - c) A record of premium payments towards a policy
  - d) A copy of a change of address received by a client
  
2. When Life Insurer A outsources their record-keeping function in terms of FAIS they have to ensure that these documents can be accessed by the Registrar for inspection within what number of days?
  - a) Five
  - b) Seven
  - c) Six
  - d) Three
  
3. The industry standard for the method of storing and retrieving records is an:
  - a) appropriate electronic format which can easily be converted into a written or printed format.
  - b) appropriate written format.
  - c) appropriate electronic or recorded format which can easily be converted into a written or printed format.
  - d) electronic format only.

4. If a provider wants to disclose any confidential information obtained from a client:
    - a) he has to obtain written consent from the client beforehand.
    - b) he does not need to obtain consent from the client.
    - c) he has to obtain verbal consent from the client beforehand.
    - d) he has to obtain verbal consent from the client at the time of the disclosure.
  
  5. FICA requires the FSP to keep records of:
    - a) proceeds of insurance products or investments that are paid out on maturity.
    - b) the number of representatives working for it.
    - c) documents used to identify and verify the client.
    - d) annual reports.
  
  6. When an accountable institution outsources its record-keeping duty to a third party, it has to notify the FIC of:
    - a) the date on which the outsourcing commences.
    - b) the particulars of the third party.
    - c) the time period for which this function will be outsourced.
    - d) the reasons for the outsourcing of this function.
  
  7. If an accountable institution fails to provide assistance to the FIC to access its records, it is guilty of an offence punishable with:
    - a) imprisonment for a maximum period of 15 years.
    - b) a fine not exceeding R10 million.
    - c) imprisonment for a maximum period of 15 years or a fine of a maximum amount of R100 million.
    - d) imprisonment for a maximum period of 30 years.
  
  8. The money laundering reporting officer has to report a suspicious transaction to the FIC within:
    - a) 15 working days of learning of it.
    - b) 15 working days of learning of it or from when the suspicion arose.
    - c) 15 working days from when the suspicion arose.
    - d) 30 working days of learning of it.
-

9. Where records of an accountable institution are not available to the public and a representative of the FIC needs access to these records, a warrant issued by a judge or magistrate will only be issued if:
- a) it is uncertain whether the records will assist in identifying the proceeds of unlawful activities.
  - b) the records contain factual evidence of the proceeds of unlawful activities.
  - c) the records have been kept for two years only.
  - d) there are reasonable grounds to believe that the records will assist in identifying the proceeds of unlawful activities.
10. Which of the following is **not** a requirement in terms of The FAIS General Code of Conduct regarding procedures and systems to keep records?
- a) The records of verbal and written communications relating to a financial service rendered to a client
  - b) The storage and retrieval of such records relating to the client or financial service rendered to the client
  - c) The dispatch of documents to clients regarding a financial service rendered to the client
  - d) Keeping such client records and documentation safe from destruction and keeping it for a period of five years after the rendering of the financial service

11. You have to advise a new financial services provider on the FAIS requirements for the maintenance and accessibility of records. The financial services provider has limited space in his office and cannot store the hard copy records that have to be kept for five years. What advice would you give him?
- a) The financial services provider has to find space in his office as he is obliged to keep the hard copy records on his premises for five years to ensure that they are available for inspection within seven days of the Registrar's request.
  - b) The financial services provider may outsource record-keeping, but it has to be available for inspection within seven days of the Registrar's request. The financial services provider may also keep the records in appropriate electronic or recorded format if they are accessible and readily reducible to written or printed format.
  - c) The financial services provider may not outsource record-keeping and he should, therefore, convert the records into appropriate electronic format, so that they will be available on his premises at all times.
  - d) The financial services provider may outsource record-keeping on condition that the records are stored in appropriate electronic or recorded format, and they should be readily reducible to written or printed format.
12. Charlie conducted a needs analysis for a client, after which the client purchased an endowment policy. Charlie showed the client the quotation as well as his report, which indicated that the client needs a savings plan to provide for his children's studies. What information should Charlie provide to the client in this instance?
- a) The only information that Charlie has to give is that information regarding the financial product(s) considered and recommended, with a reason for why the endowment meets his client's needs and objectives.
  - b) The only information that Charlie has to give is a summary of his report, a copy of the quote and the FAIS disclosures.
  - c) A brief summary of his report and a quote on which his advice was based, the financial product(s) considered and recommended with a reason for why the endowment meets his needs and objectives.
  - d) The only information that Charlie has to give is a brief summary of his report and a copy of the quote and the completed application form for the endowment.



13. An FSP must have appropriate procedures and systems in place to fulfil its record-keeping obligations in terms of FAIS.

Which one of the following is **not** part of these record-keeping obligations?

- a) Recording of verbal and written communications related to a financial service rendered to a client
- b) Storing and retrieving of such records and any other material documentation relating to the client or the financial service rendered to the client
- c) Safe-keeping of such client documentation and records, to prevent its destruction, for a period of five years after the rendering of the financial service
- d) Safe-keeping of the compliance reports relating to client contact compiled by the compliance officer and provided to the FSP every quarter



# 8

Adhere to the requirements of FICA and other relevant anti-money laundering legislation, as it applies to the FSP

## 8.1 INTRODUCTION

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Money laundering is one of the biggest challenges facing governments throughout the world today as a result of terrorism and organised crime. Both are real threats to civilisation as we know it. Money laundering has been used by terrorist organisations to fund their activities. The original purely criminal focus of anti-money laundering measures has been broadened in recent years to cover terrorism and organised crime as well.

In South Africa, this led to the implementation of the Prevention of Organised Crime Act (POCA), the Financial Intelligence Centre Act (FICA) and the Protection of Constitutional Democracy Against Terrorism and Related Activities Act, known by its clumsy acronym as POCDATARA.

The purpose of this topic is to provide you with insight and a good knowledge of the implications of these Acts on your work in the financial services industry. Most importantly, you need to know the requirements that these Acts impose on FSPs and representatives so that you can comply with it on a daily basis. Non-compliance may lead to harsh penalties.

In this topic you are going to learn how to comply with the requirements of FICA and other relevant anti-money laundering legislation as it applies to the FSP and yourself. There are two very important underlying concepts with regard to FICA that you have to understand before you can continue with this topic. These concepts are “money-laundering” and “unlawful activities”.

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In this topic, you will gain knowledge in the following areas:

1. Explain what FICA governs and requires.
2. Describe how the FSP is impacted by FICA.

The following skills criteria are related to the knowledge criteria listed above:

1. Comply with the identification, verification, record-keeping and reporting obligations under Act No. 30 of 2001.

## 8.2 THE CONCEPTS OF “MONEY LAUNDERING” AND “UNLAWFUL ACTIVITIES”

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### 8.2.1 What is a money-laundering activity?

A money laundering activity is any activity that has, or is likely to have, the effect of concealing or disguising the nature, source, location, disposition or movement of the proceeds of unlawful activities. By definition, any interest which anyone has in such proceeds as listed above is also guilty of money laundering and includes any activity which constitutes an offence in terms of Section 64 of the Financial Intelligence Centre Act (FICA) No. 38 of 2001 or Sections 4, 5 or 6 of the Prevention of Organised Crime Act, 1989 (known as POCA).

Money laundering is a three-stage process. The process can be illustrated as follows:

1. The first stage is placement, where the origin of illegal money is usually mixed with the origin of legitimate money. The proceeds of unlawful business are in the form of cash, making it relatively simple to get the illegal money back into the financial system by mixing it with the proceeds of a cash business.

This “dirty” money is therefore disguised and the illegal funds avoid detection. A further aim is to convert the nature of the profits, usually cash, into some other asset, such as property, or certain financial instruments, such as life assurance investments or travellers’ cheques.

**Example: Mr Naidoo**

Mr Naidoo has illegitimate funds offshore. He transfers this money to South Africa where he purchases a property. (*Disguising the illegal money.*)

2. In the second stage, money launderers try to achieve four main objectives:
  - a) Disguise the ownership
  - b) Disguise the origin
  - c) Disguise the audit trail
  - d) Disguise the profit and source of crime.

This is achieved by conducting layers of complicated financial transactions, usually using electronic transactions. Transactions include dealing with shares, commodity and futures brokers.

**Example: Mr Naidoo**

A couple of months later he registers a bond over the property and withdraws the maximum capital amount from the bond. He is now able to show a legitimate source of funds, namely the bond registered on his property.

3. The third stage consists of a series of more transactions, designed to make the funds available to the criminal again.

This is achieved by accessing the funds and using it for legitimate purposes. The funds are now fully integrated into the financial system.

**More examples of money-laundering:**

1. Mr Johnson has received the proceeds of an illegal activity. In order to legitimise the money, he invests in a single-premium endowment policy with Life Insurer A. Four months later he surrenders the policy and receives the full surrender value. He is now able to show a legitimate source of the funds.

2. Mrs Botha has received the cash proceeds of an illegal activity. She pays cash for a brand-new Mercedes Benz. Two months later she sells the car and receives the proceeds of the sale in her bank account. She is now able to show a legitimate source to the bank, namely the sale of her car.

Money laundering has a negative effect on legitimate business and economic development and is often strongest in the weakest economies.

### 8.2.2 What are “unlawful activities”?

Any conduct that constitutes a crime or which contravenes any law, whether the conduct occurred before or after the commencement of the South African legislation, or in South Africa or elsewhere, constitutes unlawful activity.

#### Examples:

Tax evasion, drug trafficking, theft, robbery, fraud, abduction, extortion.

Proceeds of unlawful activities are defined as any property or service, advantage, benefit or reward which was derived, received or retained, directly or indirectly, in South Africa or elsewhere, at any time, before or after the commencement of the POCA Act from unlawful activities.

## 8.3 BACKGROUND TO ANTI-MONEY LAUNDERING LEGISLATION

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Money laundering is often not included in official economic statistics, making it difficult to judge its precise extent. The fact that it is considered to be the third biggest industry in the world gives one an understanding of the extent of the problem.

Governments of the world have therefore united in the fight against these sources with an international agreement setting up the Financial Action Task Force (FATF).

FATF was founded in 1989 by the countries with the world’s largest economies, known as the G7 countries (there were originally seven) to combat money laundering. Its activities now cover combating money laundering for criminal and terrorist purposes. Today FATF members represent most countries around

the world and generally these members have money-laundering legislation in place in their countries, or are in the process of introducing it or refining it.

FATF has issued 40 recommendations for action against money laundering that form the basis for legislation in many countries. These recommendations are constantly being reviewed and updated, as is legislation worldwide to keep it on track.

International pressure on countries to adopt measures that met with FATF requirements led to the Financial Intelligence Centre Act 2001 (FICA). FICA added to POCA and repealed certain parts of POCA, meaning the two Acts have to be read in conjunction with each other. POCDATARA was added in 2004.

## 8.4 THE MONEY LAUNDERING LEGISLATION

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The first thing to understand about money laundering legislation is that it does not act upon the crime itself that has brought about illegal money, for example drug dealing. It deals with the **proceeds** of that crime.

The three main laws dealing with money laundering in South Africa, in chronological order, are the Prevention of Organised Crime Act (POCA) No. 121 of 1998, the Financial Intelligence Centre Act (FICA) No. 38 of 2000, and the Protection of Constitutional Democracy Against Terrorism and Related Activities (POCDATARA) Act, 2004.

Let us investigate what each of these Acts govern and require.

### 8.4.1 The Prevention of Organised Crime Act (POCA)

The purpose of POCA is to introduce measures to combat organised crime, money laundering and criminal gang activities.

#### Objectives of POCA

- To criminalise racketeering and offences relating to activities of criminal gangs
  - To criminalise money laundering and a number of serious offences in respect of laundering and racketeering
  - To create a general reporting obligation for businesses coming into possession of suspicious property
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- To create a mechanism for criminal confiscation of proceeds of crime and for civil forfeiture of proceeds.

### **Money laundering offences under POCA**

POCA creates the following money laundering offences:

- Offences involving proceeds of all forms of crime
- Offences involving proceeds of a pattern of racketeering.

The Act includes a number of offences:

- Receiving or keeping property derived from racketeering (swindling/committing fraud), and using or investing any part of that property in the acquisition of any interest in, or the establishment or operation or activities of, any enterprise
- Receiving property from an enterprise, knowing (or should have known) that the property results from racketeering.

Penalties can be as stiff as a maximum fine of R100 million or imprisonment for 30 years.

### **8.4.2 The Financial Intelligence Centre Act (FICA)**

FICA's purpose is to combat money laundering activities and the financing of terrorist and related activities.

The 2001 FICA Act creates the requirements to ensure that money laundering is controlled. It is aimed at identifying suspicious transactions so that the people who engage in money laundering activities can be charged under POCA.

Suspicious transactions must be reported under FICA, which now provides the infrastructure to curb money-laundering activities.

The Act also requires "accountable institutions" that could serve as a conduit for "dirty money" to comply with certain legal duties relating to combating money laundering.



## **Accountable institutions**

The main purpose of FICA is requiring a long list of accountable institutions (defined in the Act) to follow certain procedures and report suspicious activities or unusual transactions relating to combating money laundering.

The essential characteristic of an accountable institution is its possible use for money laundering. Accountable institutions themselves are not necessarily statutory bodies, but include people and institutions that can be used for money-laundering purposes.

The list of accountable institutions defined in FICA includes, amongst others, banks, estate agents, attorneys, trust companies, collective investment schemes and long-term insurance companies (including an insurance broker and a representative of an insurer).

FICA provides for a Financial Intelligence Centre (FIC) [lending its name to the Act] and a Money laundering Advisory Council to help combat money laundering.

## **Financial Intelligence Centre**

The principal objective of the FIC is to assist in the identification of the proceeds of unlawful activities and the combating of money laundering activities. All accountable institutions are required by the Act to report all information regarding money-laundering activities to the FIC, where it is handed over to the appropriate authorities for further recourse.

Other objectives of the Centre include:

- to make information collected by it available to investigating authorities, the intelligence services and the South African Revenue Services to facilitate the administration and enforcement of the laws of the Republic.
- to exchange information with similar bodies in other countries regarding money-laundering activities and similar offences.

## **Money Laundering Advisory Council**

Section 17 of FICA establishes the Money-laundering Advisory Council, an advisory body on combating money laundering. It advises the Minister of Finance on policies and best practices to combat money laundering and to

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identify the proceeds of unlawful activities. It also acts as a forum in which associations representing categories of accountable institutions, organs of State and supervisory bodies that report to the Financial Intelligence Centre can consult one another. The Council should also advise the Financial Intelligence Centre on the performance of its functions.

In simple terms, FICA requires the creation of a paper trail, with detailed records of the origins of money placed with an accountable institution and the people involved. Internationally, this paper trail makes it more difficult to launder money.

#### **8.4.3 The Protection of Constitutional Democracy Against Terrorism and Related Activities Act (POCDATARA)**

Money laundering has also been used by terrorist organisations to fund their activities. The original purely criminal focus of anti-money laundering measures has been broadened in recent years to cover this as well. In South Africa, this led to the 2004 Protection of Constitutional Democracy Against Terrorism and Related Activities Act, known as POCDATARA.

It introduced a new Section 28A of FICA which requires the reporting of any property associated with terrorist and related activity to the Financial Intelligence Centre.

The aim of POCDATARA is therefore to introduce an obligation to report certain offences linked to terrorist activities, including terrorist financing.

#### **8.4.4 What is the relationship between POCA and FICA?**

FICA added to POCA and repealed certain parts of POCA. This means that the two Acts have to be read in conjunction with each other. The relationship between FICA and POCA can best be described by looking at an example:

##### **Example:**

Mr du Toit is involved in perlemoen (abalone) smuggling. He has an amount of cash that he needs to legitimise. He contacts his financial adviser, Mr Samuels, to investigate the possibilities of investing in a single premium endowment policy. While talking to Mr Samuels, he inquires about the possible surrender of such a policy after a number of months.

Mr Samuels is suspicious, partly because he knows that Mr du Toit often visits Gansbaai and the greater Hermanus area over weekends for “business” – which could be illegal perlemoen smuggling. However, he decides that he values Mr du Toit’s business and that he will therefore not report the transaction.

If caught, Mr du Toit will be guilty under POCA, Section 4, as he knowingly laundered the proceeds of unlawful activities. Mr Samuels, on the other hand, will be guilty under FICA, Section 29, as he did not report a suspicious transaction.

**Example:**

Mr Coetzee is a licensed financial services provider and he is also a silent partner in a local night club. His partner in this business, Mr Daniels, has been earning extra money in drug trafficking in the club. He always uses the proceeds of these activities to purchase insurance policies with Mr Coetzee, who then earns commission on the large cash transactions. Mr Coetzee is well aware of the origins of the money invested, but since he is earning a good living off this scheme, he has no intention of ever reporting any of these deals.

If caught, both Mr Coetzee and Mr Daniels will be charged under POCA. Mr Daniels has knowingly laundered the proceeds of unlawful activities. Mr Coetzee has contravened the same section of POCA in that he proceeded with selling a client an insurance policy with the knowledge that the money for such policy has been derived from the proceeds of a crime. Mr Coetzee has also contravened the provisions of FICA, since he did not report his suspicions.

## 8.5 THE IMPACT OF FICA ON FSPs

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The FICA creates the following four money laundering control obligations for all accountable institutions:

1. Duty to identify and verify clients
  2. Duty to keep records of business relationships and transactions
  3. Reporting duties and obligations to give and allow access to information
  4. Adoption of measures designed to promote compliance by accountable institutions.
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In terms of these requirements, an FSP who is an accountable institution, as defined in the FICA, must have in place all the necessary policies, procedures and systems to ensure full compliance with that Act and other applicable anti-money laundering or terrorist-financing legislation.

It is, therefore, imperative that FSPs have adequate staff training in place and proper systems and procedures to assist them to comply with the FICA. Banks and long-term insurance companies are regarded as accountable institutions in terms of the FICA.

The compliance report requires information relating to an FSP's adherence to the FAIS General Code with regard to "the necessary policies, procedures and systems to ensure full compliance with FICA and other applicable anti-money laundering or terrorist-financing legislation". This includes client identification, identification and reporting of suspicious transactions and risk-rating of clients.

### **The four money laundering control obligations in more detail**

The impact of FICA on financial services providers and representatives (in their role as accountable institutions) is determined by the additional duties that it imposes on them. The main duties of accountable institutions, including those that are FSPs and representatives, as described in FICA, include:

- Identifying and verifying clients
- Reporting suspicious transactions
- Keeping records
- Training staff
- Reporting cash transactions over the prescribed limit
- Formulating and implementing internal rules.

Let us look at each of these duties in depth so that you can understand what FSPs and representatives have to do to be compliant with this legislation.

#### **8.5.1 The duties of an FSP relating to its employees in terms of FICA**

The two duties that FICA imposes on an FSP (as an accountable institution) relating to its employees are the training of staff and the formulation and implementation of internal rules. Let's investigate how these duties impact on the FSP.

1. **Training staff** FSPs have to ensure that staff is suitably trained. In addition, they have to put in place a reporting of suspicious transactions procedure. Harsh penalties are set out, either for the individual who does not comply or for the organisation that does not comply, namely maximum imprisonment for a period not exceeding five years or a fine not exceeding R10 000 000.
2. **Formulating and implementing internal rules** The Act requires that the FSP formulate and implement internal rules relating to:
  - a) the identification and verification of a person's identity
  - b) the record-keeping requirements prescribed in the Act
  - c) steps to be taken to decide whether a transaction is reportable or not.

These internal rules must be made available to all employees and the FIC.

In addition to the above, an FSP (as an accountable institution) also needs to be aware of the obligations created in the following:

- The common law
- Industry-specific and sector-specific legislation
- The 40 FATF recommendations as changed from time to time
- International best practices within the industry.

### **8.5.2 The duty of the identification and verification of clients**

Some of the duties listed that FICA imposes on FSPs also become your duties when you work for the FSP as a representative.

Getting to know the client is an essential element in combating money laundering. This is expressed simply and effectively as 'know your client' (KYC).

The term "client" can be regarded as anyone who uses the services of an accountable institution. Client categories include natural persons, companies, close corporations, trusts, partnerships and the like.

An FSP or its representatives may not establish a business relationship or conclude a single transaction with a client unless the necessary steps have been taken to identify and verify the identity of the client.

The accountable institution has to obtain the client’s full names, date of birth, ID number, income tax number (where applicable) and address. If the client is represented by another person, the identity of the other person as well as the authority of that person to act on behalf of the client need to be established.

It is important to note that the Act requires an accountable institution to identify and verify clients not only when a single transaction is about to be concluded, but also when the accountable institution and the client intend to establish an ongoing business relationship.

“Business relationship” means an arrangement between a client and an accountable institution for the purpose of concluding transactions on a regular basis. If the accountable institution established a business relationship before the commencement of FICA, it has to take steps to verify and identify clients before a new transaction is entered into in terms of the relationship.

There are, therefore, guidance notes as to what constitutes knowledge of your client – for example: copy of the ID book, copy of a utility bill to prove residential address, a copy of tax form showing tax registration number, copy of payslip, which gives you an idea of how onerous the legislation is and how serious South Africa is about money laundering.

**Table 8.1**

<p><b>Identification of new clients</b></p>	<p>Section 21(1) of FICA requires accountable institutions to identify new clients and verify their particulars before any transaction may be concluded/any business relationship is established with them, except in respect of a business relationship or single transaction where the person has already been identified by another accountable institution (the primary accountable institution) and that institution has confirmed to the secondary accountable institution in writing that it has identified and verified the identity of the client.</p>
<p><b>Verification of new clients</b></p>	<ul style="list-style-type: none"> <li>• The Money Laundering Control Regulations prescribe the identification and verification requirements for clients of accountable institutions, ranging from South African citizens and residents, foreign nationals, corporations, South African companies, close foreign companies, partnerships and trusts.</li> <li>• The information obtained from legal persons, such as companies, close corporations and trusts must be verified by comparing it to the registration documents</li> </ul>

	<p>of these legal entities.</p> <ul style="list-style-type: none"> <li>The identification procedures in respect of the legal persons referred to above must also be extended to directors, shareholders, members and trustees. Documents serving to confirm their authority to act on behalf of these legal entities must also be obtained.</li> </ul>
<b>Identification and verification of existing clients</b>	<ul style="list-style-type: none"> <li>Section 21(2) of FICA requires a similar process for existing clients as for new clients.</li> <li>It also states that, if an accountable institution had established a business relationship with a client before FICA took effect, it may not conclude further transactions in the course of that business relationship, unless prescribed steps are taken to ensure that the identities of the clients are established and verified – a time period was granted for compliance with this requirement.</li> </ul>
<b>Additional measures when a person represents or acts on authority of another</b>	<ul style="list-style-type: none"> <li>Regulation 17 states that, if a person wants to establish a business relationship or conclude a single transaction with an accountable institution on behalf of another person, the accountable institution must, in addition to the normal identification and verification requirements, obtain information from that person, which provides proof of that person’s authority to act on behalf of the client. Information that can be obtained includes mandate, power of attorney, etc.</li> </ul>
<b>Verification in the absence of contact person (non-face-to-face clients)</b>	<ul style="list-style-type: none"> <li>Regulation 18 stipulates that, if the accountable institution obtained identification and verification information from a natural or legal person without personal contact with such a natural person or representative of that legal person, the accountable institution must take reasonable steps to establish the existence and verify the identity of that natural person or legal person.</li> <li>Authorised FSPs are encouraged to establish procedures for dealing with non-face-to-face clients, and must incorporate them into their main client acceptance procedure manual.</li> </ul>

Documentation used for identification and verification of clients differs slightly for natural persons and legal entities. A further distinction is also made between South African citizens, residents and legal entities (such as

companies, trusts and close corporations) on the one hand, and foreign nationals and legal entities on the other.

#### **Documents required for identification and verification:**

- For a **natural person** (RSA citizen), a copy of the ID document will serve as verification of his identity. Residential address verification can be obtained from a utility bill, a bank statement from another bank reflecting the name and address, a municipal rates and taxes invoice, a telephone or cell phone account reflecting the name and residential address of the person, etc.
- A **foreign national** may be identified from an identity document or passport, in addition to a letter of confirmation from a person in authority (for example from the relevant embassy) which confirms authenticity of that person's identity document.
- For a **private company** the following may be used: Registered name and registration number, address, registered trade name and address, documentation to verify tax and VAT number (any SARS document), personal details of manager/CEO or both, details of shareholders holding 25% or more voting rights, mandate authorising person acting on behalf of company in entering into business relationships, most recent version of certificate of incorporation (CM1), notice of registration of office and postal address (CM22).
- For a **company listed on the JSE**, only a registration number and the name of the company are required.
- For a **close corporation** the following may be required: Registered name and registration number, address, registered trade name and address, documentation to verify tax and VAT number, most recent version of the founding statement (CK1), notice of registration of office and postal address (CM22), the member's agreement, a resolution authorising the person to act, personal details of each member of the CC.
- For a **trust** the following are required: The identifying name and number of the trust, the address of the Master where it is registered, the trust deed or other founding document, letter of authority from the Master of the High Court in South Africa, the income tax registration number, trustees' resolution authorising person to act, personal details of each trustee, each beneficiary referred to by name in the trust deed, the founder and the person authorised to act.

(More information available on [www.fic.gov.za](http://www.fic.gov.za))



## Exemptions

FICA provides for certain exemptions in terms of circumstances where accountable institutions **do not have to** identify and verify clients.

There are general exemptions that apply to certain accountable institutions, where a business relationship/single transaction is established or concluded with a second accountable institution after the primary institution has identified and verified the client.

There are also specific exemptions:

- Any long-term insurance policy which provides benefits only upon the death, disability, sickness or injury of the life insured
- Any long-term insurance policy which is a fund policy or a fund member policy as defined in the Long-term Insurance Act, 1998 and the regulations thereto and in respect of which the policyholder is a pension fund, provident fund or retirement annuity fund approved in terms of the Income Tax Act, 1962.

### Example:

Financial adviser K does not have to verify and identify his client when he sells a pure life-cover policy or a retirement annuity to the client.

- Any long-term insurance policy, unit trust or linked product in respect of which recurring premiums/contributions are paid, which will amount to an annual total not exceeding R25 000, subject to the condition that the client will have to be identified and verified if:
  - the recurring premium is increased so that the R25 000 p.a. is exceeded.
  - the policy/investment is surrendered/liquidated within three years.
  - a loan is granted against the policy within three years.

### Example:

Client X is about to invest R300 per month in a recurring premium endowment policy. His financial adviser does not have to follow the rules of identification and verification.

- Any long-term insurance policy, unit trust or linked product in respect of which a single premium/contribution not exceeding R50 000 is payable, subject to the condition that the client will have to be identified and verified if:
  - the policy/investment is surrendered/liquidated within three years after its commencement.
  - a loan is granted against the security of such a policy within three years after its commencement.

#### **Example:**

Client Y invests R60 000 in a single-premium sinking fund with Company X. The financial adviser will have to identify and verify the client in this scenario, as the single premium is more than R50 000.

- Any other long-term policy where the surrender value of the policy does not exceed 20% of the value of the premiums paid in respect of the policy within the first three years of the policy.
- Any compulsory purchase annuity.

### **8.5.3 The recording function**

FICA requires the following records to be kept whenever an accountable institution establishes a business relationship or concludes a transaction with a client, whether the transaction is a single transaction or concluded in the course of a business relationship:

- The identity of the client
- If the client is acting on behalf of another person, the identity of the person on whose behalf the client is acting and the client's authority to act on behalf of the other person; if another person is acting on behalf of the client, the identity of the person acting on behalf of the client and that other person's authority to act on behalf of the client
- The manner in which the identity was established
- The nature of the business relationship or transaction
- In the case of a transaction, the amount involved and the parties to that transaction
- All accounts that are involved in transactions concluded by that accountable institution in the course of that business relationship and the single transaction

- The name of the person who obtained the information on behalf of the accountable institution
- Documents used to identify and verify the client or the other person.

The records mentioned above may be kept in electronic form. Records which relate to the establishment of a business relationship should be kept for five years from the date on which the business relationship is terminated. Records which relate to transactions should be kept for at least five years from conclusion of the transaction.

FICA also allows for third parties to keep records on behalf of the accountable institution, provided that the accountable institution has free and easy access to the records. Should the third party fail to keep proper records, the accountable institution is liable for that failure. If an accountable institution decides to make use of a third party to keep records, the particulars (name or business name, address, individual who exercises control) of such third party needs to be provided to the Financial Intelligence Centre. The accountable institution also has to provide details of the individual who liaises with the third party on behalf of the accountable institution.

### **Accessibility of information**

An authorised representative of the Financial Intelligence Centre has access to records kept by an accountable institution during ordinary working hours and may examine, make extracts or make copies of such records.

Where such records are not available to the general public, a warrant issued by a judge or magistrate of the region in which the accountable institution conducts business is required by the representative of the FIC. Such a warrant will only be issued if there are reasonable grounds to believe that the records will assist in identifying the proceeds of unlawful activities.

An accountable institution which fails to provide this assistance, is guilty of an offence, punishable with imprisonment for a period not exceeding 15 years, or a fine not exceeding R100 million.

**Example:**

Let's assume that the authorities have been investigating Client X in terms of unlawful activities.

The Financial Intelligence Centre can obtain a warrant to access records kept by an accountable institution such as a long-term insurer, provided that there are reasonable grounds to believe that the records will assist in identifying the proceeds of unlawful activities. The insurer will be obliged to provide all necessary assistance to FIC in this process.

**8.5.4 The duty to report certain transactions****Reporting suspicious transactions**

A person liaising with a client on behalf of the business is required to report any suspicion on his part of receiving proceeds of unlawful activities from a client. A person who has reported a suspicious transaction may not inform the client that such a report has been made (so-called "tipping off"). In practice, this process is mostly handled by the money laundering reporting officer of an institution.

**The role of the money laundering officer**

The employees of the institution will report suspicious or unusual transactions to the money laundering reporting officer in that institution. The procedure for making the report must be laid down in the internal rules that the institution has put in place to ensure compliance with FICA.

The Reporting Officer will investigate the transaction to determine whether in fact it was suspicious and/or unusual. If so, the money laundering reporting officer must report the transaction to the Financial Intelligence Centre within 15 working days of learning of it or from when the suspicion arose. The FIC may ask for additional information on the matter.

**Possible indicators of a suspicious transaction**

The following are examples of possible suspicious or unusual transactions – they may be perfectly legitimate, but they are often used to cover money laundering:

- Payments to be made to third parties
- Transfer of funds to other product providers
- Constant movement of money among different business entities
- Transactions that have no apparent business purpose
- Transactions involving large cash amounts
- Surrendering of policies and second-hand (traded) policies shortly after they have been purchased
- Loans against new-generation products (loans can then be repaid with 'dirty' money in order to 'clean' the money).

Suspicious transaction may not always be easy to spot. The Financial Intelligence Centre ([www.fic.gov.za](http://www.fic.gov.za)) has published guidelines to assist banks with the verification and identification process. In this document, the following are some of the high risk factors listed in terms of suspicious clients:

- A client appears to have bank accounts with several banks in the area.
- A client makes cash deposits to a general account of a foreign correspondent bank.
- A client wishes to have credit and debit cards sent to destinations other than his address.
- A client has numerous accounts and makes or receives cash deposits in each of them amounting to a large aggregated amount.
- A client frequently exchanges currencies.
- A client wishes to have unusual access to safe-deposit facilities.
- A client's account shows virtually no normal business-related activities, but is used to receive or disburse large sums.
- A client has accounts that have a large volume of deposits in bank cheques, postal orders or electronic funds transfers.
- A client is reluctant to provide complete information regarding these activities.
- A client's financial statements differ noticeably from those of similar businesses.
- A client makes a large volume of cash deposits from a business that is not normally cash intensive.

### **Period for reporting suspicious or unusual transactions**

Suspicious and unusual transactions: must be reported no later than 15 days after the person became aware of the suspicious or unusual transaction.

Section 34 (Intervention by Centre): The FIC, in terms of the above, can direct an accountable or reportable institution not to proceed with a transaction for a

period of not more than five days (this does not include Saturdays, Sundays and Public Holidays).

The following case studies were taken from the Financial Action Task Force reports on money laundering typologies ([www.fatf-gafi.org](http://www.fatf-gafi.org)).

## Case study 1

A company director from Company W, Mr H, set up a money laundering scheme involving two companies, each one established under two different legal systems. Both of the entities were to provide financial services and providing financial guarantees for which he would act as director.

These companies wired the sum of \$1.1 million to the accounts of Mr H in Country S. It is likely that the funds originated in some sort of criminal activity and had already been introduced in some way into the financial system. Mr H. also received transfers from Country C.

Funds were transferred from one account to another (several types of accounts were involved, including both current and savings accounts). Through one of these transfers, the funds were transferred to Country U from a current account in order to make payments on life insurance policies. The investment in these policies was the main mechanism in the scheme of laundering the funds. The premiums paid for the life insurance policies in Country U amounted to some \$1.2 million and represented the last step in the laundering operation.

## Case study 2

A person (later arrested for drug trafficking) made a financial investment (life insurance) of R250 000 through an insurance broker. He acted as follows: he contacted the broker and delivered an amount of R250 000 in three cash instalments. The insurance broker did not report the delivery of that amount and deposited the three instalments in the bank. These actions raised no suspicion at the bank, since the broker was known to them as being connected to the insurance branch. The broker delivered, afterwards, to the insurance company responsible for making the investment, three cheques from a bank account under his name, totalling R250 000, thus avoiding raising suspicion with the insurance company.

In this case, it is clear that the insurance broker should have reported the transaction as suspicious, due to the fact that the amount was delivered in cash. Furthermore, once the section on reporting cash transactions became effective (see below), the bank employee would also have to report the transaction if it was in excess of the prescribed cash limit.

### Reporting cash transactions

The Act requires accountable institutions and reporting institutions (motor vehicle and Kruger Rand dealers) to report cash transactions above the prescribed limit (as at 2011: R24 999.99 or an aggregate of smaller amounts which, combined, add up to this amount if it appears that the transactions involving these amounts are linked to be considered fractions of one transaction). This reporting duty is applicable where the accountable or reportable institution receives the cash amount from a client, as well as where the accountable or reportable institution pays a cash amount above the prescribed limit to the client.

#### Example:

Client Y wants to deposit R100 000 cash at Bank A. In terms of FICA, Bank A, as an accountable institution, is obliged to report the transaction to the Financial Intelligence Centre. The cashier will report it to Bank A's reporting officer/department, who in turn will report it to the Financial Intelligence Centre.

When cash transactions above the prescribed limit are reported, a report must be sent to the FIC no later than two days after the person became aware of the cash transaction, or series of cash transactions exceeding the prescribed limit.

## 8.6 THE CONSEQUENCES OF NON-COMPLIANCE

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In terms of FICA, penalties for offences range from five years' imprisonment or a fine of R10 000 000, to 15 years' imprisonment or a fine of R100 000 000. Offences subject to the penalties include, amongst others:

- Failure to identify persons – R100 million or 15 years' imprisonment
  - Failure to keep records – R100 million or 15 years' imprisonment
  - Destroying or tampering with records – R100 million or 15 years' imprisonment
-

- Failure to give assistance to the FIC – R100 million or 15 years' imprisonment
- Failure to report cash transactions as prescribed
- Failure to report suspicious or unusual transactions – R100 million or 15 years' imprisonment
- Failure to train staff or to appoint a compliance officer, or to implement internal rules – R10 million or five years' imprisonment.

These offences affect different parties. Some are committed by an accountable institution (e.g. failure to keep records); others are committed by any other person (e.g. tampering with records).

## Relevant Legislation



### *Financial Intelligence Centre Act 38 of 2001*

#### **1 Definitions**

***"money laundering" or "money laundering activity"***

*means an activity which has or is likely to have the effect of concealing or disguising the nature, source, location, disposition or movement of the proceeds of unlawful activities or any interest which anyone has in such, proceeds, and includes any activity which constitutes an offence in terms of Section 64 of this Act or Sections 4, 5 or 6 of the Prevention Act;*

***"unlawful activity"***

*has the meaning attributed to that term in Section 1 of the Prevention Act.*

- 2) *For the purposes of this Act a person has knowledge of a fact if –*
- a) *the person has actual knowledge of that fact; or*
  - b) *he court is satisfied that :*
    - i) *the person believes that there is a reasonable possibility of the existence of that fact, and*
    - ii) *the person fails to obtain information to confirm or refute the existence of that fact.*
- 3) *For the purposes of this Act a person ought reasonably to have known or suspected a fact; if the conclusions that he or she ought to have reached, are those which would have been reached by a reasonably diligent and vigilant person having both –*
- a) *the general knowledge, skill, training and experience that may reasonably be expected of a person in his or her position; and*



b) *the general knowledge, skill, training and experience that he or she in fact has.*



***Financial Intelligence Centre Act 38 of 2001***

***Chapter 4  
Offences and Penalties***

64. *Conducting transactions to avoid reporting duties*  
*Any person who conducts, or causes to be conducted, two or more transactions with the purpose, in whole or in part, of avoiding giving rise to a reporting duty under this Act, is guilty of an offence.*



***Financial Intelligence Centre Act 38 of 2001***

***Schedule 1  
List of Accountable Institutions***

*The FIC Act requires "accountable institutions" to verify client details and report suspicious transactions.*

*The following accountable institutions are included from Schedule 1 of the Act:*

- *A practitioner who practices as defined in Section 1 of the Attorneys Act, 1979 (Act 53 of 1979)*
- *A board of executors or a trust company or any other person that invests, keeps in safe custody, controls or administers trust property within the meaning of the Trust Property Control Act, 1998 (Act 57 of 1988)*
- *An estate agent as defined in the Estate Agency Affairs Act, 1976 (Act 112 of 1976)*
- *An authorised user of an exchange as defined in the Securities Service Act, 2004 (Act 36 of 2004)*
- *A manager registered in terms of the Collective Investment Schemes Control Act, 2002 (Act 45 of 2002), but excludes managers who only conduct business in Part VI of the Collective Investment Schemes Control Act, 2002 (Act 45 of 2002)*
- *A person who carries on the 'business of a bank' as defined in the Banks Act, 1990 (Act 94 of 1990)*
- *A mutual bank as defined in the Mutual Banks Act, 1993 (Act 124 of 1993)*
- *A person who carries on a "long-term insurance business" as defined in the Long-Term Insurance Act, 1998 (Act 52 of 1998).*
- *A person who carries on the business of making available a gambling activity as contemplated in Section 3 of the National Gambling Act, 2004 (Act 7 of 2004) in respect of which a licence is required to be issued by the National Gambling Board or a provincial licensing authority.*
- *A person who carries on the business of dealing in foreign exchange*
- *A person who carries on the business of lending money against the security of securities*
- *A person who carries on the business of a financial services provider requiring*

*authorisation in terms of the Financial Advisory and Intermediary Services Act, 2002 (Act 37 of 2002), to provide advice and intermediary services in respect of the investment of any financial product (but excluding a short-term insurance contract or policy referred to in the Short-term Insurance Act, 1998 (Act 53 of 1998) and a health service benefit provided by a medical scheme as defined in Section 1(1) of the Medical Schemes Act, 1998 (Act 131 of 1998).*

- *A person who issues, sells or redeems traveller's cheques, money orders or similar instruments*
- *The Postbank referred to in Section 51 of the Postal Services Act, 1998 (Act 124 of 1998).*
- *The Ithala Development Finance Corporation Limited.*
- *A person who carries on the business of a money remitter.*



### ***Financial Intelligence Centre Act 38 of 2001***

#### ***Section 3***

*The principal objective of the Centre is to assist in the identification of the proceeds of unlawful activities and the combating of money laundering activities.*

- 2) *The other objectives of the Centre are –*
- a) *to make information collected by it available to investigating authorities, the supervisory bodies, the intelligence services and the South African Revenue Service to facilitate the administration and enforcement of the laws of the Republic;*
  - b) *to exchange information with bodies with similar objectives in other countries regarding money laundering activities, the financing of terrorist and related activities, and other similar activities.*
  - c) *to supervise and enforce compliance with this Act or any directive made in terms of this Act and to facilitate effective supervision and enforcement by supervisory bodies.*



### ***Financial Intelligence Centre Act 38 of 2001***

#### ***Section 22***

- 1) *Whenever an accountable institution establishes a business relationship or concludes a transaction with a client, whether the transaction is a single transaction or concluded in the course of a business relationship which that accountable institution has with the client, the accountable institution must keep record of –*
- a) *the identity of the client;*
  - b) *if the client is acting on behalf of another person –*
    - i) *the identity of the person on whose behalf the client is acting; and*

- ii) *the client's authority to act on behalf of that other person;*
  - c) *if another person is acting on behalf of the client –*
    - i) *the identity of that other person; and*
    - ii) *that other person's authority to act on behalf of the client;*
  - d) *the manner in which the identity of the persons referred to in paragraphs (a), (b) and (c) was established;*
  - e) *the nature of that business relationship or transaction;*
  - f) *in the case of a transaction –*
    - i) *the amount involved; and*
    - ii) *the parties to that transaction;*
  - g) *all accounts that are involved in –*
    - i) *transactions concluded by that accountable institution in the course of that business relationship; and*
    - ii) *that single transaction;*
  - h) *the name of the person who obtained the information referred to in paragraphs (a), (b) and (c) on behalf of the accountable institution; and*
    - i) *any document or copy of a document obtained by the accountable institution in order to verify a person's identity in terms of Section 21(1) or (2).*
- 2) *Records kept in terms of subsection (1) may be kept in electronic form.*



***Financial Intelligence Centre Act 38 of 2001***

***Section 23***

*An accountable institution must keep the records referred to in Section 22 which relate to –*

- a) *the establishment of a business relationship, for at least five years from the date on which the business relationship is terminated;*
- b) *a transaction which is concluded, for at least five years from the date on which that transaction is concluded.*



***Financial Intelligence Centre Act 38 of 2001***

***Section 24***

- 1) *The duties imposed by Section 22 on an accountable institution to keep record of the matters specified in that section may be performed by a third party on behalf of the*

*accountable institution as long as the accountable institution has free and easy access to the records.*

- 2) *If a third party referred to in subsection (1) fails to properly comply with the requirements of Section 22 on behalf of the accountable institution concerned, the accountable institution is liable for that failure.*
- 3) *If an accountable institution appoints a third party to perform the duties imposed on it by Section 22, the accountable institution must forthwith provide the Centre with the prescribed particulars regarding the third party.*



### ***Financial Intelligence Centre Act 38 of 2001***

#### ***Section 29***

- 1) *A person who carries on a business or is in charge of or manages a business or who is employed by a business and who knows or suspects that –*
  - a) *the business has received or is about to receive the proceeds of unlawful activities;*
  - b) *a transaction or series of transactions to which the business is a party –*
    - i) *facilitated or is likely to facilitate the transfer of the proceeds of unlawful activities;*
    - ii) *has no apparent business or lawful purpose;*
    - iii) *is conducted for the purpose of avoiding giving rise to a reporting duty under this Act; or*
    - iv) *may be relevant to the investigation of an evasion or attempted evasion of a duty to pay any tax, duty or levy imposed by legislation administered by the Commissioner for the South African Revenue Service; or*
  - c) *the business has been used or is about to be used in any way for money laundering purposes, must, within the prescribed period after the knowledge was acquired or the suspicion arose, report to the Centre the grounds for the knowledge or suspicion and the prescribed particulars concerning the transaction or series of transactions.*



### ***Financial Intelligence Centre Act 38 of 2001***

#### ***Section 43***

- 1) *An accountable institution must –*
  - a) *provide training to its employees, to enable them to comply with the provisions of this Act and the internal rules applicable to them;*



## *Financial Intelligence Centre Act 38 of 2001*

### **Section 43A**

- 1) *The Centre may, by notice in the Gazette, issue a directive to all institutions to whom the provisions of this Act apply, regarding the application of this Act.*
- 2) *The Centre or a supervisory body may, in writing, issue a directive to any category of accountable institutions or category of reporting institutions or other category of person to whom the provisions of this Act apply, regarding the application of this Act.*
- 3) *The Centre or a supervisory body may in writing, over and above any directive contemplated in subsection (1) or (2), issue a directive to any accountable institution, category of accountable institutions, reporting institution, category of reporting institutions or other person to whom the provisions of this Act apply, to-*
  - a) *provide the Centre or that supervisory body, as the case may be-*
    - i) *with the information, reports or statistical returns specified in the notice, at the time or at the intervals specified in the notice; and*
    - ii) *within the period specified in the notice, with any document in its possession or custody or under its control;*
  - b) *cease or refrain from engaging in any act, omission or conduct in contravention of this Act:*
  - c) *perform acts necessary to remedy an alleged non-compliance with this Act; or*
  - d) *perform acts necessary to meet any obligation imposed by this Act.*
- 4) *The Centre or supervisory body may examine a document submitted to it in terms of subsection (3)(a) or make a copy thereof or part thereof.*
- 5) *The costs incurred in complying with a directive must be borne by the accountable institution, reporting institution or person concerned.*
- 6)
  - a) *The Centre, in respect of any accountable institution or category of accountable institutions regulated or supervised by a supervisory body in terms of this Act or any other law, may issue a directive in accordance with subsections (2) and (3) only if a supervisory body-*
    - i) *failed to issue a directive despite any recommendation of the Centre made in terms of Section 44(b): or*
    - ii) *failed to issue a directive within the period specified by the Centre.*
  - b) *A supervisory body may issue a directive in terms of this section only after consulting the Centre on that directive.*



***Financial Intelligence Centre Act 38 of 2001***

***Section 62***

- 1) *An accountable institution that fails to –*
- a) *provide training to its employees in accordance with Section 43(a); or*
  - b) *appoint the person referred to in Section 43(b), is guilty of an offence.*



***Financial Intelligence Centre Act 38 of 2001***

***Section 68***

- 2) *A person convicted of an offence mentioned in Sections 55, 61 62, 62A, 62B, 62C or 62D, is liable to imprisonment for a period not exceeding five years or to a fine not exceeding R10 million.*



***Financial Intelligence Centre Act 38 of 2001***

***Schedule 3***

***List of Reporting Institutions***

- 1) *A person who carries on the business of dealing in motor vehicles.*
- 2) *A person who carries on the business of dealing in Kruger rands.*

***GN R1596 of 2002 Exemption***

***Section 7(1)(f)***

- (f) *any long term insurance policy which provides benefits only upon the death, disability, sickness or injury of the life insured under the policy;*

## Summary

The activity of money laundering is defined as an activity which has, or is likely to have, the effect of concealing or disguising the nature, source, location, disposition or movement of the proceeds of unlawful activities. This includes any interest accrued to these amounts which anyone has in such proceeds and includes any activity which constitutes an offence in terms of Section 64 of the Financial Intelligence Centre Act (FICA) or Sections 4, 5 or 6 of the Prevention of Organised Crime Act.

The Financial Intelligence Centre Act No. 38 of 2001 is aimed at establishing a Financial Intelligence Centre and a Money Laundering Advisory Council in order to combat money-laundering activities. Further, the Act is used to impose certain duties on accountable institutions and other persons who might be used for money laundering purposes.

FICA determines that accountable institutions need to:

- Identify and verify their clients
- Report suspicious transactions
- Keep records
- Train staff and put reporting procedures in place
- Report cash transactions over a prescribed limit.

FICA amended the Prevention of Organised Crime Act, 1998 and the Promotion of Access to Information Act, 2000 to provide for matters connected therewith.

The original purely criminal focus of anti-money laundering measures has been broadened in recent years to cover money laundering used by terrorist organisations to fund their activities. In South Africa, this led to the 2004 Protection of Constitutional Democracy Against Terrorism and Related Activities Act (POCDATARA). This Act requires the reporting to the Financial Intelligence Centre of any property associated with terrorist and related activity.

The introduction of these Acts has gone a long way in aligning South African with the rest of the international community in the fight against money-laundering.

## Self-Assessment Questions

Please note that the questions which follow are formative in nature. The questions were not developed by the FSB's examination bodies and as such cannot be used as an indication of the nature/structure/level of the questions that you will encounter in the FSB's regulatory examination.

1. Which of the following activities can be seen as a money laundering activity?
    - a) Buying a house with funds generated by the sale of shares
    - b) Investing the proceeds of a life insurance policy in unit trusts
    - c) Buying unit trusts with cash that was generated by perlemoen smuggling
    - d) Buying a business with funds generated from the split up of a partnership
  
  2. Which of the following can be seen as unlawful activities?
    - a) Selling fruit on the street
    - b) Driving a car with a learner's licence
    - c) Fraudulently acquiring land
    - d) Decreasing your taxable income in line with the relevant laws.
  
  3. The focus of money laundering legislation is:
    - a) on the crime that generated illegal money.
    - b) on the proceeds of the crime that generated illegal money.
    - c) on drug trafficking.
    - d) on foreign exchange.
  
  4. The main laws dealing with money laundering in South Africa are:
    - a) FICA + POCA
    - b) FICA + POCDATARA
    - c) POCDATARA + POCA + FICA
    - d) POCDATARA + POCA
  
  5. Penalties for the contravention of POCA can be:
    - a) a maximum fine of R100 million or imprisonment for 15 years.
    - b) imprisonment for 30 years.
    - c) a maximum fine of R100 million or imprisonment for 30 years.
    - d) a maximum fine of R100 million.
  
  6. Which one of the following is not an accountable institution?
    - a) An attorney
    - b) A long-term insurance company
    - c) A representative of a long-term insurance company
    - d) A training organisation in the insurance industry
-



7. The main purpose of the FIC is to:
- a) identify the proceeds of unlawful activities only.
  - b) combat money laundering activities only.
  - c) report information to all accountable institutions.
  - d) identify the proceeds of unlawful activities and to combat money laundering activities.
8. Which one of the following documents may be used to verify a client's residential address?
- a) ID document
  - b) Bank statement
  - c) Passport
  - d) Air ticket
9. Which one of the following statements is true with regard to the record keeping function of records regarding transactions?
- a) Records may be kept in electronic form and should be kept for at least five years from conclusion of the transaction.
  - b) Records may not be kept in electronic form as long as they are kept for at least five years from conclusion of the transaction.
  - c) Records may not be kept in electronic form as long as they are kept for at least ten years from conclusion of the transaction.
  - d) Records may be kept in electronic form and should be kept for at least ten years from conclusion of the transaction.
10. "Unlawful activity" in the context of money laundering means conduct that constitutes a crime or contravenes a law:
- a) provided it took place after the introduction of POCA and FICA.
  - b) irrespective of whether it occurred before or after the introduction of POCA and FICA.
  - c) provided the activity occurred within the borders of South Africa.
  - d) provided it is regarded as an offence recognised by the Financial Action Task Force.

# Answers to Self-Assessment Questions

## TOPIC 1 SELF-ASSESSMENT ANSWERS

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1. Which of the following would qualify as a representative of an FSP in terms of the FAIS Act?  
**d) A contractor who renders financial services**
  
2. The FAIS General Code does not require representatives to:  
**c) keep a log of all car expenses.**
  
3. Which of the following activities do not qualify as CPD activities?  
**d) Passing a regulatory examination**
  
4. Which of the following items does not have to be contained in the FSP's register for representatives?  
**c) Past experience of the representative in terms of financial services**
  
5. Advice as defined in terms of FAIS does not include any recommendation with the intention of getting the client to consider:  
**d) drafting a Will.**
  
6. Elise has been working as a long-term insurance broker for more than eight years. She is well-loved by clients and colleagues due to her professional and friendly attitude. Elise has just finished Financial Planning on NQF Level 6; she has passed the Level 1 Regulatory Examination and would now like to specialise in call centre selling. What is Elise's current status regarding fit and proper requirements?  
**d) Regarded as fully fit and proper as she meets all the current requirement in terms of FAIS**
  
7. Which of the following must be included in the register of representatives and key individuals?  
**d) A person not employed by the FSP, but who operates on behalf of the FSP by virtue of a mandate from the FSP**

8. "Advice", as defined in the FAIS Act, is given with a view to:
- c) **getting a client to consider acquiring or changing a financial product.**
9. Molo, a representative for an insurance company, wants to attend some courses and workshops in his personal capacity and as part of his training plan at work. To establish with the providers which of these would contribute towards his CPD hours, he must establish that the courses and workshops:
- a) **are verifiable and related to his work.**
10. Charne (a representative) is faced with a difficult choice: the FAIS Code of Conduct requires her to act in the interests of the customer and the integrity of the financial services industry. If she tells her customer about a certain feature of Product A, she may lose the sale, but her company needs to boost sales of Product A in order to achieve their strategic objectives. Which one of the following options presents the most appropriate course of action?
- c) **Charne must encourage the customer to purchase the product that suits his needs, even if her sales do not reflect the targets provided.**

## TOPIC 2 SELF-ASSESSMENT ANSWERS

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1. Which one of the following can be regarded as an undesirable business practice?
    - b) **A representative recommends that a client cancels a policy without a valid reason.**
  
  2. The FSP licence is granted by the:
    - d) **Financial Services Board**
  
  3. Which statement reflects all the actions with regard to complaints that are within the power of the Ombud for Financial Services Providers (FAIS Ombud)?
    - c) **The Ombud may dismiss a complaint, uphold it, decline it if it is received three years after the date of the issue of the complaint or refer it to a court of law if more suitable to be heard by the court**
  
  4. If the Registrar has directed that an FSP who carried on with an undesirable business practice should reinstate any damages or loss caused, the FSP has to rectify the matter within:
    - d) **60 days**
  
  5. When the Registrar intends to suspend or withdraw a licence, the licensee is:
    - a) **entitled to be given a reasonable opportunity to make a submission in this regard.**
  
  6. Under which of the following circumstances may a licence lapse:
    - c) **When the licensee has died, is sequestrated or voluntarily surrenders his licence**
  
  7. The FAIS Ombud is the person appointed to resolve disputes between consumers and financial services providers relating to:
    - a) **the quality or nature of the advice given.**
  
  8. If an FSP carries on with an undesirable business practice, the Registrar may direct it to:
    - a) **make up any loss caused by the practice, to the satisfaction of the Registrar.**
-

## TOPIC 3 SELF-ASSESSMENT ANSWERS

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1. One of the requirements of the General Code of Conduct with regard to the handling of clients' funds is that:
    - a) **a separate account should be kept to deposit the clients' funds into.**
  2. Disclosures that were supplied verbally, must be confirmed in writing within:
    - c) **30 days**
  3. Which of the following does not have to be disclosed by FSPs?
    - d) **Income from product sales in the previous year**
  4. Which of the following does not have to be disclosed by product suppliers:
    - a) **The types of products available from the product supplier**
  5. Which of the following does not have to be disclosed about products?
    - c) **The name of the product developer**
  6. The purpose of disclosures is:
    - a) **to enable the client to make an informed decision.**
  7. Which of the following is not included as a duty of a provider with regard to complaints?
    - d) **Staff have to be trained on the external resolution processes.**
  8. Where a complaint is not resolved to the satisfaction of the client, the provider has to:
    - b) **inform the client of other alternatives in terms of the FAIS Act and law.**
  9. When a provider provides advice, the following steps have to be followed:
    - b) **Obtain information, conduct an analysis, identify suitable financial products and make the necessary disclosures regarding product replacements (if applicable).**
  10. If a client has a complaint against the provider, the provider:
    - c) **must request the client to lodge such a complaint in writing.**
-

11. Kyla, a representative of a bank, made the required disclosures to the customer in a telephonic conversation. What else must she do to ensure compliance with the requirements of FAIS?
- a) **Confirm the details of the discussion to the customer in writing, within 30 days of the date of the phone call.**
12. Claude did not disclose the name of the product provider to his customer, because the customer just informed him that she had a very bad experience with that particular product provider. He knows that the policy is the best match for the customer's need and trusts the integrity of the product provider. Choose the option that reflects the FAIS perspective on this interaction:
- d) **Claude has breached a FAIS requirement in failing to provide his client with the opportunity to make a fully informed decision.**

## TOPIC 4 SELF-ASSESSMENT ANSWERS

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1. Financial services include:  
**b) The rendering of advice and/or intermediary services**
  
  2. The different types of advice include:  
**a) Comprehensive advice, advice on policy replacements and advice when no analysis is performed**
  
  3. Which one of the following is not included in the steps that an FSP has to follow when providing advice?  
**c) Inform the client who the product supplier is and by whom the recommended product was developed**
  
  4. FAIS defines a replacement as:  
**b) the replacement of a financial product with another financial product**
  
  5. A record of advice does not have to include:  
**b) the qualifications of the representative**
  
  6. Which of the following are not included in the definition of a financial product in terms of FAIS?  
**d) Property**
  
  7. If a client purchases a product from someone who is not an authorised FSP, then the agreement between the product supplier and the client will be:  
**b) enforceable**
  
  8. Which of the following persons are not included in the FAIS definition of a "client"?  
**d) Members of the general public**
  
  9. Which of the following is not contained in the list of specific disclosures required for a replacement product?  
**d) Who the product supplier of the replacement product is**
  
  10. Which scenario is not applicable when advice is given but no analysis is performed?  
**b) The adviser refused to do an analysis.**
-

11. Which one of the following statements is correct with reference to the relationship between FAIS role-players?
- b) A representative will always be an employee or someone mandated by a financial services provider**
12. Select the statement that correctly describes the involvement of all the relationships between industry players with regard to financial products, as defined in FAIS.
- d) The FSP/product supplier provides the product, which the representative sells to a client, the admin staff will process the application and the compliance officer oversees the process to ensure compliance with FAIS**



## TOPIC 5 SELF-ASSESSMENT ANSWERS

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1. Debarment happens when:
    - b) **an FSP withdraws the authority granted to a representative to act on its behalf.**
  
  2. The FSP must inform the Registrar in writing of the removal of a representative's name from the its register:
    - d) **within 15 days of the removal of the representative's name.**
  
  3. The person responsible for the debarment of a representative is:
    - a) **the FSP**
  
  4. Which one of the following is a condition for reappointment after debarment as a result of causes other than a lack of competence?
    - c) **12 months must have elapsed since the debarment date.**
  
  5. Reasons for debarment include the following:
    - a) **non-compliance with any of the relevant fit and proper requirements or if the representative has contravened or failed to comply with any other provisions of the FAIS Act.**
  
  6. When an FSP removes a representative's name from its register for the purpose of debarment, the FSP has to inform:
    - b) **the representative in writing of the debarment, inform him of the reasons for the debarment as well as the conditions for lifting it.**
  
  7. When a representative is linked to FSP A and FSP B and is debarred by FSP B, then FSP A will be informed of the debarment by:
    - b) **the Registrar.**
  
  8. The reason that the Registrar is allowed to publish information on the debarment of representatives is:
    - d) **to ensure that the public is informed of representatives who contravene the FAIS Act or who are no longer licensed to operate.**
-

9. Once an FSP has debarred a representative, the FSP has to take steps to ensure that:
- c) **clients of the debarred representative are not disadvantaged and that any unconcluded business is properly concluded**
10. An employment contract between an FSP and a representative should at least state non-compliance with the following fit and proper requirements as possible reasons for debarment:
- d) **Honesty and integrity and competency**
11. Mia, an employee of Excel Life, did not make the necessary disclosures in a very lucrative deal, and realised that her actions warranted dismissal. She immediately handed in her resignation, which was accepted, and started working for Prudent Bank Ltd. When the client suffered huge losses and complained to Excel Life, they could have responded as follows:
- b) **They could have collected and submitted evidence to the FSB, recommending that Mia be debarred.**
12. Jackie was debarred nine months ago due to incompetence, and has applied for reappointment. You advise her that her debarment can be lifted if:
- a) **full competence has been achieved and all other requirements have been met.**
13. Mary, a representative, was debarred in 2010 when her FSP discovered that she had not disclosed the fact that she was found guilty on two counts of fraudulent behaviour in 2008. What was the basis for Mary's debarment in terms of FAIS?
- c) **She did not meet the fit and proper requirement of honesty and integrity.**

## TOPIC 6 SELF-ASSESSMENT ANSWERS

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1. An FSP has to appoint a compliance officer if it has:  
a) **more than one key individual or one or more representatives.**
2. The appointment of the compliance officer has to be approved by:  
d) **the Registrar.**
3. Which of the following is not one of the main functions of a compliance officer?  
b) **Administrative services**
4. Which one of the following tasks forms part of the monitoring function of the compliance officer?  
a) **Submission of compliance reports and other compliance-related reports to the Registrar and to the FSP**
5. Which one of the following tasks forms part of the oversight function of the compliance officer?  
d) **Identification of training needs**
6. Who must submit compliance reports to the Registrar?  
c) **The compliance officer, or in his absence, the authorised FSP**
7. The function of the compliance officer:  
a) **may be outsourced to an external compliance officer.**
8. ABC Brokers, a brokerage with 20 representatives, does not currently have a compliance officer. Which of the following tasks will they not be able to perform?  
c) **Fulfilling required compliance functions**
9. When Rafiq was appointed as the compliance officer of ABC Life, he decided to plan his quarterly visit to each of the 39 ABC Life offices throughout the country. On what should he focus during these visits?  
c) **Checking the FAIS registers, required disclosures and fit and proper status of those giving advice**

## TOPIC 7 SELF-ASSESSMENT ANSWERS

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1. Which of the following is an example of a document that should be maintained in terms of the FAIS Act?
    - a) **A cancellation of an endowment policy one year before it pays out**
  
  2. When Life Insurer A outsources their record-keeping function in terms of FAIS they have to ensure that these documents can be accessed by the Registrar for inspection within what number of days?
    - b) **Seven**
  
  3. The industry standard for the method of storing and retrieving records is an:
    - c) **appropriate electronic or recorded format which can easily be converted into a written or printed format.**
  
  4. If a provider wants to disclose any confidential information obtained from a client:
    - a) **he has to obtain written consent from the client beforehand.**
  
  5. FICA requires the FSP to keep records of:
    - c) **documents used to identify and verify the client.**
  
  6. When an accountable institution outsources its record-keeping duty to a third party, it has to notify the FIC of:
    - b) **the particulars of the third party.**
  
  7. If an accountable institution fails to provide assistance to the FIC to access its records, it is guilty of an offence punishable with:
    - c) **imprisonment for a maximum period of 15 years or a fine of a maximum amount of R100 million.**
  
  8. The money laundering reporting officer has to report a suspicious transaction to the FIC within:
    - b) **15 working days of learning of it or from when the suspicion arose.**
-

9. Where records of an accountable institution are not available to the public and a representative of the FIC needs access to these records, a warrant issued by a judge or magistrate will only be issued if:
- d) there are reasonable grounds to believe that the records will assist in identifying the proceeds of unlawful activities.**
10. Which of the following is not a requirement in terms of The FAIS General Code of Conduct regarding procedures and systems to keep records?
- c) The dispatch of documents to clients regarding a financial service rendered to the client**
11. You have to advise a new financial services provider on the FAIS requirements for the maintenance and accessibility of records. The financial services provider has limited space in his office and cannot store the hard copy records that have to be kept for five years. What advice would you give him?
- b) The financial services provider may outsource record-keeping, but it has to be available for inspection within seven days of the Registrar's request. The financial services provider may also keep the records in appropriate electronic or recorded format if they are accessible and readily reducible to written or printed format.**
12. Charlie conducted a needs analysis for a client, after which the client purchased an endowment policy. Charlie showed the client the quotation as well as his report, which indicated that the client needs a savings plan to provide for his children's studies. What information should Charlie provide to the client in this instance?
- c) A brief summary of his report and a quote on which his advice was based, the financial product(s) considered and recommended with a reason for why the endowment meets his needs and objectives.**
13. An FSP must have appropriate procedures and systems in place to fulfil its record-keeping obligations in terms of FAIS. Which one of the following is **not** part of these record-keeping obligations?
- d) Safe-keeping of the compliance reports relating to client contact compiled by the compliance officer and provided to the FSP every quarter**

## TOPIC 8 SELF-ASSESSMENT ANSWERS

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1. Which of the following activities can be seen as a money laundering activity?  
c) **Buying unit trusts with cash that was generated by perlemoen smuggling**
2. Which of the following can be seen as unlawful activities?  
c) **Fraudulently acquiring land**
3. The focus of money laundering legislation is:  
b) **on the proceeds of the crime that generated illegal money.**
4. The main laws dealing with money laundering in South Africa are:  
c) **POCDATARA + POCA + FICA**
5. Penalties for the contravention of POCA can be:  
c) **a maximum fine of R100 million or imprisonment for 30 years.**
6. Which one of the following is not an accountable institution?  
d) **A training organisation in the insurance industry**
7. The main purpose of the FIC is to:  
d) **identify the proceeds of unlawful activities and to combat money laundering activities.**
8. Which one of the following documents may be used to verify a client's residential address?  
b) **Bank statement**
9. Which one of the following statements is true with regard to the record keeping function of records regarding transactions?  
a) **Records may be kept in electronic form and should be kept for at least five years from conclusion of the transaction.**
10. "Unlawful activity" in the context of money laundering means conduct that constitutes a crime or contravenes a law:  
b) **irrespective of whether it occurred before or after the introduction of POCA and FICA.**

# Sample Exam Paper/Self-Assessment Test

## Questions

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This manual includes the following sample exam paper/assessment test and suggested answers:

The following questions are similar in format and content to those you may find in the exam. Do **not** only study these questions, but ensure that you cover the contents of your notes thoroughly.

# Sample Exam Paper/Self-Assessment Test

## SECTION A (30 MARKS) – SHORT QUESTIONS

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Select the correct answer and write it into your answer book next to the question number:

1. Jane has responded to an advertisement for the position of representative with Excel Life. They are quite keen to appoint her because of her legal background and forward an application for her licence to the FSB. The person who considers her application worked with her previously and remembers that she had been found guilty of using a client's funds for personal purposes three years ago.

Choose the correct statement:

- a) Jane will be authorised to act as a representative of Excel Life because the dishonesty occurred more than five years ago.
- b) Jane will be authorised to act as a representative of Excel Life on condition that she is never found guilty of a similar offence.
- c) Jane will not be authorised to act as a representative of Excel Life because she is in breach of the fit and proper requirement of personal character qualities.
- d) Jane will be authorised to act as a representative of Excel Life on condition that she works under supervision.



2. Nkosi has been authorised to act as a representative for Excel Life despite the fact that he does not meet the fit and proper requirement of "qualifications".

Choose the correct statement

- a) Nkosi has to work under supervision until he has completed the qualification requirement within five years of his appointment.
  - b) Nkosi's authorisation has been granted on condition that he completes the qualification requirement within five years of his appointment.
  - c) Nkosi has to work under supervision until he has completed the qualification requirement within six years of his appointment.
  - d) Nkosi's authorisation has been granted on condition that he gains five years' experience instead of having to complete the qualification.
3. The regulatory examinations include a set of core examinations that focus on the:
- a) regulatory framework.
  - b) FAIS Act and FICA.
  - c) regulatory framework, the FAIS Act and FICA.
  - d) regulatory framework, the FAIS Act, FICA, and the regulatory role and responsibilities of the representative.
4. Once Nkosi has met the competency requirements, he then has to meet the CPD fit and proper requirement.

Choose the correct statement:

- a) The CPD fit and proper requirement will require five to 30 notional hours of development over a three-year cycle.
- b) The CPD fit and proper requirement will require 15 to 60 notional hours of development over a five-year cycle.
- c) The CPD fit and proper requirement will require 15 to 60 notional hours of development over a three-year cycle.
- d) The CPD fit and proper requirement will require 15 to 50 notional hours of development over a two-year cycle.

5. Karin acts as a representative for Excel Life. She has done an analysis for a client. When she presents the results of the analysis, she recommends that the client takes out a retirement annuity. She leaves a report on the performance of the specific retirement annuity with the client to support her recommendation.

Choose the correct statement:

- a) Karin provided an intermediary service to the client.
  - b) Karin provided advice to the client.
  - c) Karin provided advice and an intermediary service to the client.
  - d) Karin complied with the steps that a representative has to follow when providing advice.
6. Sarah has been licensed as an FSP for Excel Life for the past two years. A colleague, Ann, who worked with her at Afro Life many years ago has been appointed at Excel Life and realised that Sarah left Afro Life under a cloud because her licence was withdrawn at the time due to dishonesty.

Choose the correct statement:

- a) If Ann reports the previous withdrawal of Sarah's licence to the Registrar, her current licence may be withdrawn on the grounds that she did not disclose all relevant information to the Registrar.
- b) If Ann reports the previous withdrawal of Sarah's licence to the Registrar, it will not have any effect on Sarah's current licence.
- c) If Ann reports the previous withdrawal of Sarah's licence to the Registrar, she will have to continue working under supervision.
- d) If Ann reports the previous withdrawal of Sarah's licence to the Registrar, he may determine that she should do additional CPD hours for the next two years.

7. If you had to explain the difference between the **suspension of a licence** and the **lapsing of a licence**, you could say the following:
- a) Suspension or withdrawal of a licence is the result of factors other than non-compliance with the requirements of the FAIS Act. Lapsing of a licence may be the result of a person's death.
  - b) Suspension or withdrawal of a licence is the result of non-compliance with the requirements of the FAIS Act. Lapsing of a licence is the result of factors other than non-compliance.
  - c) Suspension or withdrawal of a licence is the result of non-compliance with the requirements of the FAIS Act. Lapsing of a licence is the result of a person not meeting the competency fit and proper requirement.
  - d) Suspension or withdrawal of a licence is the result of one's resignation from the services of an FSP. Lapsing of a licence is the result of factors other than non-compliance.

8. Your colleague wants to know which type of complaints the Ombud deals with.

Which of the following examples does **not** correctly explain this type of complaint?

- a) Complaints submitted by a specific client against another client.
  - b) Complaints relating to a financial service rendered by the representative of an FSP.
  - c) Complaints relating to an admin service rendered by an admin manager of an FSP.
  - d) Complaints relating to a financial service rendered by a sole proprietor
9. Disclosures that must be made regarding an endowment policy do not have to include:
- a) the premiums to be paid.
  - b) how often premiums have to be paid.
  - c) the requirements that premiums may only be paid in cash.
  - d) information on what will happen if premiums are not paid.

10. Jackson, who acts as a representative for Afro Life, has a shareholding of R500 000 in a product supplier that supplies products to Afro Life. Their total shareholding has been valued at R4 500 000.

Choose the correct statement:

- a) Jackson has to disclose his shareholding in the product supplier.
  - b) Jackson does not have to disclose his shareholding in the product supplier
  - c) Jackson has to sell his shareholding if he wants to continue working for Afro Life.
  - d) Even if Jackson's shareholding is R3 800 000, he still has to disclose it.
11. In order to be able to provide the client with appropriate advice, the representative should first of all obtain appropriate and available information from the client regarding his:
- a) financial situation.
  - b) financial situation, financial product experience and objectives.
  - c) financial product experience and objectives.
  - d) financial situation and objectives.
12. "Financial services" are defined as the rendering of:
- a) advice only.
  - b) intermediary services only.
  - c) advice and/or intermediary services.
  - d) advice regarding the working of financial products only.
13. Types of advice that may be rendered by a representative include comprehensive:
- a) advice only.
  - b) advice and advice where no analysis is performed.
  - c) advice and advice when a policy is replaced.
  - d) advice, advice on policy replacements and advice when no analysis is performed.

14. Representatives are debarred:
- a) to give them an opportunity to complete their regulatory examinations.
  - b) to protect consumers from dealings with persons who are unfit to render financial services.
  - c) when they work under supervision.
  - d) to enable them to gain experience.
15. The responsibility for debarment of representatives is that of the:
- a) Registrar when he updates the central register after having been informed by the FSP of a debarment.
  - b) FSP when he removes the name of the representative from his register.
  - c) compliance officer when he recommends the debarment of a representative.
  - d) legal department of an FSP.
16. Ethan was debarred as a representative by Afro Life two years ago. He now meets all the fit and proper requirements.

Choose the correct statement:

- a) Ethan may now be reappointed.
- b) Ethan may now be reappointed if all his previous unconcluded business has been properly concluded.
- c) Ethan may now be reappointed if any client complaints, legal or administrative proceedings in any court, before the Ombud, or in terms of any legislation, relating to his actions before debarment have been concluded and he has fully complied with any decision or court order.
- d) Ethan may now be reappointed if all his previous unconcluded business has been properly concluded and if any client complaints, legal or administrative proceedings in any court, before the Ombud, or in terms of any legislation, relating to his actions before debarment have been concluded and he has fully complied with any decision or court order.

17. Excel Life is in the process of debarring Alison.

Before they may remove her name from their register they have to inform Alison:

- a) of the conditions for lifting the debarment only.
- b) in writing of the debarment only.
- c) in writing of the debarment, inform her of the reasons for the debarment as well as the conditions for lifting it.
- d) of the reasons for the debarment only.

18. Wilfred has been appointed as the compliance officer at Excel Life.

His role will be to:

- a) ensure compliance with the FAIS Act.
- b) report to the FSB on compliance issues.
- c) ensure compliance with the FAIS Act and to report to the FSB on compliance issues.
- d) to assist the managing director with his duties.

19. Wilfred's job description should describe the following duties with regard to his role as compliance officer:

- a) Monitoring and training
- b) Monitoring and providing support
- c) Providing support and training
- d) Monitoring, training and providing support

20. An FSP has to appoint a compliance officer if it has:

- a) more than one key individual or one or more representatives.
- b) a key individual.
- c) only representatives.
- d) one or more representatives.

21. You have been asked under which circumstances Afro Life should appoint a compliance officer.

Which of the following would be a correct answer?

- a) If they do not have a key individual
- b) If they have a key individual or one or more representatives
- c) If they have a management team consisting of at least ten members
- d) If they have a total of a 100 employees

22. In terms of the FAIS Act, a provider is obliged to have appropriate procedures and systems in place to keep client records and documentation safe for a period of:
- a) three years after the rendering of the financial service.
  - b) five years after the first contact with the client.
  - c) five years after the rendering of the financial service.
  - d) five years after having conducted the first analysis for the client.

23. Excel Life has outsourced their record-keeping function to ABC Records. The Registrar requested access to some of their records for inspection.

In which of the following scenarios have they complied with the requirements regarding record-keeping?

- a) The records were available for inspection within fifteen days of the Registrar's request.
  - b) The records were available for inspection within fourteen days of the Registrar's request.
  - c) The records were available for inspection within ten days of the Registrar's request.
  - d) The records were available for inspection within seven days of the Registrar's request.
24. Afro Life wants to disclose confidential information concerning a client.

Choose the correct statement:

- a) They may do so irrespective of whether consent of the client has been obtained beforehand.
  - b) They may do so if written consent of the client has been obtained beforehand.
  - c) They may do so if the Registrar has given them permission.
  - d) They may do so if the compliance officer has given them permission.
25. Which of the following is an example of a document that should be maintained in terms of the FAIS Act?
- a) A record of non-compliance with this Act, and the reasons for the non-compliance
  - b) A copy of a change of address received by a client
  - c) An application for a retirement annuity
  - d) A record of premium payments towards a policy

26. The laws dealing with money laundering in South Africa are:
- a) POCA, FICA, POCDATARA and FAIS
  - b) POCA, FICA and POCDATARA
  - c) FICA and FAIS
  - d) POCA and POCDATARA
27. The purpose of POCA is to introduce measures to combat:
- a) organised crime and money laundering.
  - b) money laundering and criminal gang activities.
  - c) organised crime, money laundering and criminal gang activities.
  - d) organised crime and criminal gang activities.
28. Which one of the following statements reflects the description of offences in terms of POCA?
- a) If a person knowingly launders the proceeds of unlawful activities and uses or possesses property that he knows are the proceeds of unlawful activities
  - b) If a person knowingly assists another person to benefit from the proceeds of unlawful activities or acquire, use or possess property that he knows are the proceeds of unlawful activities
  - c) If a person knowingly launders the proceeds of unlawful activities and assist another person to benefit from the proceeds of unlawful activities
  - d) If a person knowingly launders the proceeds of unlawful activities, assists another person to benefit from the proceeds of unlawful activities or acquires, uses or possesses property that he knows are the proceeds of unlawful activities
29. FICA is aimed at identifying suspicious transactions so that the people who engage in money-laundering activities can be charged under:
- a) POCA.
  - b) FICA.
  - c) POCA and FICA.
  - d) FICA and POCDATARA.



# Answers to Sample Exam Paper/Self-Assessment Test

## SECTION A (30 MARKS) – SHORT QUESTIONS

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1. Jane has responded to an advertisement for the position of representative with Excel Life. They are quite keen to appoint her because of her legal background and forward an application for her licence to the FSB. The person who considers her application worked with her previously and remembers that she had been found guilty of using a client's funds for personal purposes three years ago.

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2. Nkosi has been authorised to act as a representative for Excel Life despite the fact that he does not meet the fit and proper requirement of "qualifications".

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- a) Nkosi has to work under supervision until he has completed the qualification requirement within five years of his appointment.
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Choose the correct statement:

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  - b) **financial situation, financial product experience and objectives.**
  - c) financial product experience and objectives.
  - d) financial situation and objectives.

12. "Financial services" are defined as the rendering of:
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- a) Registrar when he updates the central register after having been informed by the FSP of a debarment.
  - b) FSP when he removes the name of the representative from his register.**
  - c) compliance officer when he recommends the debarment of a representative.
  - d) legal department of an FSP.

16. Ethan was debarred as a representative by Afro Life two years ago. He now meets all the fit and proper requirements.

Choose the correct statement:

- a) Ethan may now be reappointed.
- b) Ethan may now be reappointed if all his previous unconcluded business has been properly concluded.
- c) Ethan may now be reappointed if any client complaints, legal or administrative proceedings in any court, before the Ombud, or in terms of any legislation, relating to the his actions before debarment have been concluded and he has fully complied with any decision or court order.
- d) Ethan may now be reappointed if all his previous unconcluded business has been properly concluded and if any client complaints, legal or administrative proceedings in any court, before the Ombud, or in terms of any legislation, relating to his actions before debarment have been concluded and he has fully complied with any decision or court order.**

17. Excel Life is in the process of debarring Alison.

Before they may remove her name from their register they have to inform Alison:

- a) of the conditions for lifting the debarment only.
- b) in writing of the debarment only.
- c) in writing of the debarment, inform her of the reasons for the debarment as well as the conditions for lifting it.**
- d) of the reasons for the debarment only.

18. Wilfred has been appointed as the compliance officer at Excel Life.

His role will be to:

- a) ensure compliance with the FAIS Act.
- b) report to the FSB on compliance issues.
- c) ensure compliance with the FAIS Act and to report to the FSB on compliance issues.**
- d) to assist the managing director with his duties.

19. Wilfred's job description should describe the following duties with regard to his role as compliance officer:
- a) Monitoring and training
  - b) Monitoring and providing support
  - c) Providing support and training
  - d) **Monitoring, training and providing support**
20. An FSP has to appoint a compliance officer if it has:
- a) **more than one key individual or one or more representatives.**
  - b) a key individual.
  - c) only representatives.
  - d) one or more representatives.
21. You have been asked under which circumstances Afro Life should appoint a compliance officer.

Which of the following would be a correct answer?

- a) If they do not have a key individual
  - b) **If they have a key individual or one or more representatives**
  - c) If they have a management team consisting of at least ten members
  - d) If they have a total of a 100 employees
22. In terms of the FAIS Act, a provider is obliged to have appropriate procedures and systems in place to keep client records and documentation safe for a period of:
- a) three years after the rendering of the financial service.
  - b) five years after the first contact with the client.
  - c) **five years after the rendering of the financial service.**
  - d) five years after having conducted the first analysis for the client.

23. Excel Life has outsourced their record-keeping function to ABC Records. The Registrar requested access to some of their records for inspection.

In which of the following scenarios have they complied with the requirements regarding record-keeping?

- a) The records were available for inspection within fifteen days of the Registrar's request.
- b) The records were available for inspection within fourteen days of the Registrar's request.
- c) The records were available for inspection within ten days of the Registrar's request.
- d) **The records were available for inspection within seven days of the Registrar's request.**

24. Afro Life wants to disclose confidential information concerning a client.

Choose the correct statement:

- a) They may do so irrespective of whether consent of the client has been obtained beforehand.
  - b) **They may do so if written consent of the client has been obtained beforehand.**
  - c) They may do so if the Registrar has given them permission.
  - d) They may do so if the compliance officer has given them permission.
25. Which of the following is an example of a document that should be maintained in terms of the FAIS Act?
- a) **A record of non-compliance with this Act, and the reasons for the non-compliance**
  - b) A copy of a change of address received by a client
  - c) An application for a retirement annuity
  - d) A record of premium payments towards a policy

26. The laws dealing with money laundering in South Africa are:

- a) POCA, FICA, POCDATARA and FAIS
- b) **POCA, FICA and POCDATARA**
- c) FICA and FAIS
- d) POCA and POCDATARA



27. The purpose of POCA is to introduce measures to combat:
- a) organised crime and money laundering.
  - b) money laundering and criminal gang activities.
  - c) **organised crime, money laundering and criminal gang activities.**
  - d) organised crime and criminal gang activities.
28. Which one of the following statements reflects the description of offences in terms of POCA?
- a) If a person knowingly launders the proceeds of unlawful activities and uses or possesses property that he knows are the proceeds of unlawful activities
  - b) If a person knowingly assists another person to benefit from the proceeds of unlawful activities or acquire, use or possess property that he knows are the proceeds of unlawful activities
  - c) If a person knowingly launder the proceeds of unlawful activities and assists another person to benefit from the proceeds of unlawful activities
  - d) **If a person knowingly launders the proceeds of unlawful activities, assists another person to benefit from the proceeds of unlawful activities or acquires, uses or possesses property that he knows are the proceeds of unlawful activities**
29. FICA is aimed at identifying suspicious transactions so that the people who engage in money laundering activities can be charged under:
- a) **POCA.**
  - b) FICA.
  - c) POCA and FICA.
  - d) FICA and POCDATARA.

# Annexures

1. Form FSP 2
2. FSB Preparation Guide for representatives
3. FSB Preparation Guide: Appendix A

# FORM FSP 2

The FSB's Form FSP 2 can be downloaded from the web site [www.fsb.co.za](http://www.fsb.co.za).

## FSB Preparation Guide for representatives

The FSB's Preparation Guide for Level 1 Regulatory Examination (RE 1 and RE 5) can be downloaded from the web site [www.fsb.co.za](http://www.fsb.co.za) (under the heading "FAIS").

## FSB Preparation Guide: APPENDIX A

The following is an extract from Appendix A: Qualifying Criteria/Reference to legislation Map in respect of the role of representatives. This table indicates the legislation covered under each knowledge/skill criteria.