



# inseta

INSURANCE SECTOR EDUCATION  
AND TRAINING AUTHORITY

<b>Learner Name</b>	
<b>ID Number</b>	
<b>Organisation</b>	

## FORMATIVE ASSESSMENT: LEARNER WORK FILE VERSION 1

Unit Standard Title: **Describe issues of compliance or non-activity that could result in civil or criminal liability in terms of business law**

Unit Standard No: **120127**  
Unit Standard Credits: **2**  
NQF Level: **4**

### Mark information:

Specific Outcome/Section	1	2	3	4	5	Total	%	C / NYC
Maximum marks	38	19	25	18		100	100	

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## Formative Activities

### Section 1: 38 marks

#### Activity 1

(10)

Complete the following table. Name 5 pieces of legislation that impact on your company and state the intention of each Act.

Name of specific piece of legislation	Brief overview of the intention of the Act:
1.	
2.	
3.	
4.	
5.	

**Activity 2** (6)

Explain the difference between the following:

2.1 Legal compliance (2)

2.2 Ethical compliance (2)

2.3 Civil compliance (2)

**Activity 3**

For each of the 3 types of compliance listed above, identify an area of potential liability that may arise within your company and state what the consequences will be of such non-compliance or non-activity. (9)

Type of compliance	Liability (1 mark each)	Consequences (2 marks each)
Legal		
Ethical		
Civil		

**Activity 4**

Explain what is meant by Directors' and Officers' Liability and Errors and Omissions.

(4)

**Activity 5**

In the following table, identify three potential liabilities from the FAIS or FICA legislation, which could arise in a financial services organisation, and indicate whether each is related to Directors' and Officers', or Errors and Omissions. (9)

Potential Liability	Legislation	Directors' and Officers'?	Errors and Omissions?
1.			
2.			
3.			

**Section 2: 19 marks****Activity 6**

List 7 characteristics of good corporate governance.

(7)

**Activity 7****FAIS GENERAL CODE OF CONDUCT**

Your task is to read through the extracts from the FAIS General Code of Conduct (below) and with a highlighter or coloured pen (not red), (or use bold or colour if you are online), identify 10 key points that relate to the issues of non-compliance that could result in a fine or penalty and / or criminal prosecution.

(10)

**PART I: INTRODUCTORY PROVISIONS**

Definitions, construction and application

1. (1) In this Code “the Act” means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), a word or expression to which a meaning has been assigned in the Act shall have that meaning, and, unless the context indicates otherwise—
 

“*advertisement*”, in relation to a provider, means any written, printed, electronic or oral communication (including a communication by means of a public radio service), which is directed to the general public, or any section thereof, or to any client on request, by any such person, which is intended merely to call attention to the marketing or promotion of financial services offered by such

person, and which does not purport to provide detailed information regarding any such financial services; and “advertising” or “advertises” has a corresponding meaning;

*“Direct marketing”*, means the rendering of financial services by way of telephone, internet, media insert, direct mail, or electronic mail, excluding any such means which are advertisements not containing transaction requirements.

*“Direct marketer”* means a provider who, in the normal course of business, provides all or the predominant part of the financial services concerned in the form of direct marketing.

*“provider”* means an authorised financial services provider, and includes a representative;

*“transaction requirement”* means any application, proposal, order, instruction or other contractual information required to be completed for, or submitted to, a product supplier by or on behalf of a client relating to the purchase of or investment in any financial product, including any amendment thereof or variation thereto;

*“writing”* includes communication by telefax or any appropriate electronic medium that is accurately and readily reducible to written or printed form; and “written” has a corresponding meaning.

## GENERAL PROVISIONS

### General duty of provider

2. A provider must at all times render financial services honestly, fairly, with due skill, care and diligence, and in the interests of clients and the integrity of the financial services industry.

### Specific duties of provider

3. (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

- (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 may be kept in an appropriate electronic or recorded format, which are accessible and readily reducible to written or printed form.

### **INFORMATION ON PRODUCT SUPPLIERS**

5. (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.

### **INFORMATION ON PROVIDERS**

6. 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.

#### **PART IV: CONTACTING OF CLIENT**

6. A provider must–

(a) in making contact arrangements, and in all communications and dealings with a client, act honourably, professionally and with due regard to the convenience of the client; and

(b) at the commencement of any contact, visit or call initiated by the provider, explain the purpose thereof and at the earliest opportunity, provide the information referred to in section 5.

#### **INFORMATION ABOUT FINANCIAL SERVICE**

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-

- (1) 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;
  - (2) separate disclosure of any charges and fees to be levied against the product, including the amount and frequency thereof and, where the specific structure of the product entails other underlying financial products, in such a manner as to enable the client to determine the net investment amount ultimately invested for the benefit of the client; and
  - (3) 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;
- (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; and
  - (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

### Activity 8

Explain the link between civil and criminal liability in terms of non-compliance or non-activity with business law. (2)

### Section 3: 25 marks

#### Activity 9

1. Complete the table below showing the possible consequences of 5 cases of ethical, civil and legal non-compliance and non-activity: (You will be required to access the FAIS or FICA legislation to establish the penalties for specific provisions)

(20)

Risk (1 mark each)	Example (1 mark each)	Possible consequences (2 marks each)
1.		

2.		
3.		
4.		
5.		

**Activity 10**

Name 5 examples of non-penalty costs that may impact on your business/company because of non-compliance. (5)

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**Section 4: 18 marks****Activity 11**

Which documents used by your company show evidence of:

Ethical compliance (2)

Civil compliance (2)

Legal compliance (2)

**Activity 12****(9)**

Access your organisation's compliance report on site or manually, and answer the following questions:

(If you cannot access your company's report, you can use any example).

12.1 Does the report state the period under compliance? What is the period? How often must the organisation's compliance report be sent to the FSB? (2)

12.2 Does the report indicate the type of monitoring which was undertaken? Name one type of monitoring. (2)



12.3 What recommendation for non-compliance does the report give to the management of your company? Give 5 examples of possible recommendations. (5)



### Activity 13

Give three examples of circumstances where a claim may be repudiated because of non-compliance? (3)





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**SOUTH AFRICAN QUALIFICATIONS AUTHORITY  
REGISTERED UNIT STANDARD:**

Demonstrate knowledge and understanding of issues of compliance or non-activity that could result in civil or criminal liability in terms of business law

<b>SAQA US ID</b>	<b>UNIT STANDARD TITLE</b>			
<b>120127</b>	Demonstrate knowledge and understanding of issues of compliance or non-activity that could result in civil or criminal liability in terms of business law			
<b>ORIGINATOR</b>		<b>ORIGINATING PROVIDER</b>		
SGB Insurance and Investment				
<b>QUALITY ASSURING BODY</b>				
-				
<b>FIELD</b>			<b>SUBFIELD</b>	
Field 03 - Business, Commerce and Management Studies			Finance, Economics and Accounting	
<b>ABET BAND</b>	<b>UNIT STANDARD TYPE</b>	<b>OLD NQF LEVEL</b>	<b>NEW NQF LEVEL</b>	<b>CREDITS</b>
Undefined	Regular	Level 4	NQF Level 04	2
<b>REGISTRATION STATUS</b>		<b>REGISTRATION START DATE</b>	<b>REGISTRATION END DATE</b>	<b>SAQA DECISION NUMBER</b>
Reregistered		2009-01-27	2012-01-27	SAQA 0160/05
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2013-01-27		2016-01-27		

In all of the tables in this document, both the old and the new NQF Levels are shown. In the text (purpose statements, qualification rules, etc), any reference to NQF Levels are to the old levels unless specifically stated otherwise.

This unit standard replaces:

US ID	Unit Standard Title	Old NQF Level	New NQF Level	Credits	Replacement Status
14979	<b>Describe issues of compliance or non-activity that could result in civil or criminal liability in terms of business law</b>	Level 4	NQF Level 04	2	Complete

### **PURPOSE OF THE UNIT STANDARD**

This Unit Standard is intended for learners who manage risk in insurance and other organisations. Liability for the purpose of this Unit Standard refers to the liability attached to an entity and does not mean insurance cover. It will be useful for risk management generalists, loss adjusters and learners in short term insurance.

The qualifying learner is capable of:

- Explaining how liabilities could arise within an organisation.
- Explaining how liabilities are linked to corporate governance.
- Describing the risks associated with non-compliance or non-activity.
- Investigating evidence of compliance or non-compliance in an organisation.

### **LEARNING ASSUMED TO BE IN PLACE AND RECOGNITION OF PRIOR LEARNING**

It is assumed that learners are competent in Communication and Mathematical Literacy at Level 3.

### **UNIT STANDARD RANGE**

The typical scope of this Unit Standard is:

- Legal liability includes national, provincial, regional and metropolitan legislation.
- Civil liability includes contract, verbal and written agreements and negligence.
- Legislation includes, but is not limited to, Financial Advisors and Intermediary Services Act, Occupation Health and Safety Act, Short Term Act, Long-Term Act, Financial Intelligence Centre Act, Pension Funds Act, Electronic Communications Act, Access to information Act, Labour Relations Act, Skills Development Act and the Company's Act.
- Activities refer to conscious acts or errors.
- Non- activity refers to omissions.

### **Specific Outcomes and Assessment Criteria:**

**SPECIFIC OUTCOME 1**

Explain how liabilities could arise within an organisation.

**ASSESSMENT CRITERIA****ASSESSMENT CRITERION 1**

Five principle Acts that impact on a specific organisation are identified and the intention of each Act is summarised in a table.

**ASSESSMENT CRITERION 2**

The concept of directors' and officers liability is explained with three examples.

**ASSESSMENT CRITERION 3**

Potential liabilities in respect of different activity and non-activity compliance issues are identified and an indication is given of whether each is related to civil and/or criminal liability.

**SPECIFIC OUTCOME 2**

Explain how liabilities are linked to corporate governance.

**ASSESSMENT CRITERIA****ASSESSMENT CRITERION 1**

The basic principles of good corporate governance are explained with reference to legal, ethical and civil compliance.

**ASSESSMENT CRITERION 2**

Areas of liability that arise out of legal compliance are identified and an indication is given of the consequences of non-compliance or non-activity.

**ASSESSMENT CRITERION 3**

Areas of liability that arise out ethical compliance are identified and an indication is given of the consequences of non-compliance or non-activity.

**ASSESSMENT CRITERION 4**

The link between civil and criminal liability is explained in terms of non-compliance or non-activity with business law.

**SPECIFIC OUTCOME 3**

Describe the risks associated with non-compliance or non-activity.

**ASSESSMENT CRITERIA**

**ASSESSMENT CRITERION 1**

Risks associated with ethical non-compliance are explained with examples.

**ASSESSMENT CRITERION 2**

Risks associated with legal non-compliance are explained with examples.

**ASSESSMENT CRITERION 3**

Possible consequences for ethical and legal non-compliance and non-activity are compared for a specific organisation.

**ASSESSMENT CRITERION 4**

The ethical and legal risks in a specific organisation are quantified in terms of the potential consequences.

**SPECIFIC OUTCOME 4**

Investigate evidence of compliance or non-compliance in an organisation.

**ASSESSMENT CRITERIA****ASSESSMENT CRITERION 1**

Evidence of compliance or non-compliance is identified in the documents of a specific organisation.

**ASSESSMENT CRITERION 2**

Compliance to an organisation's systems is checked on site and any deficiencies are indicated in a report.

**UNIT STANDARD ACCREDITATION AND MODERATION OPTIONS**

- Anyone assessing a candidate against this Unit Standard must be registered as an assessor with the relevant ETQA or ETQA where a Memorandum of Understanding (MOU) exists with the relevant ETQA.
- Any institution offering learning that will enable achievement of this Unit Standard must be accredited as a provider through the relevant ETQA or ETQA where a Memorandum of Understanding (MOU) exists with the relevant ETQA.
- Moderation of assessment will be overseen by the relevant ETQA according to the moderation guidelines and the agreed ETQA procedures.

**UNIT STANDARD ESSENTIAL EMBEDDED KNOWLEDGE**

N/A

**UNIT STANDARD DEVELOPMENTAL OUTCOME**

N/A

**UNIT STANDARD LINKAGES**

N/A

**Critical Cross-field Outcomes (CCFO):****UNIT STANDARD CCFO IDENTIFYING**

Learners are capable of identifying and solving problems in which responses show that responsible decisions using critical thinking have been made in checking systems for compliance.

**UNIT STANDARD CCFO COLLECTING**

Learners are capable of collecting, organising and critically evaluating information in investigating evidence of non-compliance.

**UNIT STANDARD CCFO COMMUNICATING**

Learners are able communicate clearly in reporting deficiencies.

**UNIT STANDARD CCFO DEMONSTRATING**

Learners are able to see the world as a set of related systems in understanding the links between risks and compliance and between civil and criminal liability.

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