

MODULE 10: STUDY NOTES

Record keeping obligations in terms of Section 18 the FAIS Act

- The FSP must ensure that records are kept for a minimum of five years:
- FSPs must ensure that internal control structures and procedures are in place, which include disaster recovery and back up procedures on electronic data.
- Focuses on maintaining full and proper accounting records on a continuous basis, brought up to date monthly, as well as the preparation and submission of full annual financial statements.
- An audit must be carried out by an external auditor, approved by the FSB registrar.

1.	Records of known premature cancellations of transactions or financial products by clients of the FSP.
	<ul style="list-style-type: none">• The Key Individual must ensure that there are processes in place to record premature cancellations of policies and transactions.
2.	Records of complaints received and information on whether the complaints have been resolved.
	<ul style="list-style-type: none">• Complaints must be recorded in accordance with the requirements of the General Code.
3.	Records of ongoing compliance with the requirements of Section 8 of the FAIS Act
	<ul style="list-style-type: none">• Key Individuals must ensure continued fitness and propriety and changes in the information of Key Individuals, Representatives, directors, members, trustees or partners of the FSP, as the case may be.
4.	Records of instances of non-compliance with the Act as well as reasons for non-compliance.
	<ul style="list-style-type: none">• Compliance officers have a duty to report any non-compliance with the FAIS Act as well as irregularities they may have encountered.
5.	Records of ongoing compliance by Representatives as required by Section 13(1) and (2) of the Act.
	<ul style="list-style-type: none">• 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 Representative accordingly.• There must be adequate processes and systems in place to ensure continued fitness and propriety of Key Individuals and Representatives.

Record keeping obligations in terms of the General Code:

1.	The FSP must have adequate systems and procedures in place to record verbal and written communications relating to the provision of financial services to clients. The records must be kept in accordance with the requirements of Section 18.
	Telephonic conversations regarding the provision of financial services must be recorded and the records kept for five years, subject to point 8 below.
2.	The FSP must be able to retrieve the records and other material documentation relating to clients or financial services.
	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 periods.

3. The records and documentation must be **kept safe** from destruction.

This requirement is also part of the Risk Management systems and procedures which must be 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.

4. The records must be kept for **five years after the termination** of the product (to the knowledge of the FSP) or for the same period after a financial service was provided.

There must be adequate systems and procedures in place to enable FSPs to keep the records for five years after a product was terminated (e.g. policy lapsed) or a product was terminated, but only if the FSP was aware of the termination.

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.

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.

6. It is permissible to keep records in an **appropriate electronic or recorded format**, as long as it is **accessible** and can **easily be converted** to a written or printable format.

There must be provision in the systems and procedures for a 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.

7. The FSP must ensure that there are **records of the advice** given to clients.

Records of advice are an integral part of the obligations which Representatives have when giving advice to clients. The detailed requirements are discussed in Module 7.

Telephonic records

8. If a 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 days** of request.

Regulations with regards to confidentiality of client information

A FSP may not disclose any confidential client information acquired or obtained from a client UNLESS:

- The client consented in writing beforehand; or
- Disclosure of the information is required in public interest; or
- Disclosure is required in terms of any law.

It is the Compliance Officer's duty to monitor and report on whether or not the correct procedures are in place to ensure the security of confidential information.