

MODULE 2: STUDY NOTES

Key Individuals

- **DEFINITION:** an individual, one person who takes full responsibility for the management and the supervision of the company in relation to FAIS regulations.
- Key Individuals are APPOINTED by a FSP, but they are APPROVED by the FAIS Registrar.

Key points about Representatives

- **DEFINITION:** A Representative gives advice or provides an intermediary service to the clients of the FSP.
- A Representative must confirm to clients (and certified by the FSP) that he or she 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/she can only operate as a Representative again if the procedures for reappointment of debarred Representatives has been followed.
- A Representative must be fit and proper as required by the FAIS Act.
- A Representative appointed in the period 30 September 2004 to 31 December 2009 May work under supervision while obtaining the required experience requirements, subject to certain conditions.
- Representatives appointed after 1 January 2010 have to work under supervision while getting the required qualifications or completing the Regulatory Examinations.
- A Representative must comply with the FAIS Act and other relevant laws, which apply to the conduct of business.
- If a Representative is also the Key Individual, it follows that the Representative will also have those responsibilities in addition to the Representative responsibilities.

FSP Register

- Also known as the “Representative Register”.
- FSP must have a register of all Representatives and Key Individuals employed /mandated by the FSP.
- Updated every fifteen days.
 - Record any changes in the fit and proper circumstances of either a Representative / a Key Individual.
- If a Key Individual or Representatives is no longer employed by an FSP, then the individual must be removed from the list.
- When the individual is debarred then this must also be shown on the Representative Register.

REMEMBER: The FSP appoints representatives and therefore must ensure that the Representatives are fit and proper and that they comply with registration.

Fit and proper requirements for Representatives

- Honesty and Integrity
- Competence

Honesty and Integrity

A person may not be appointed as a Representative if

- **The person was found guilty in any criminal proceedings or liable in any civil proceedings of acting fraudulently, dishonestly, unprofessionally, dishonorably or in breach of a fiduciary duty within 5 years before application, approval, appointment.**
- **The person was found guilty by any statutory professional body or voluntary professional body of dishonesty, negligence, incompetence, mismanagement serious enough to impugn the honesty and integrity of the Representative, within 5 years before appointment.**

- **The person was denied membership of any statutory professional body or voluntary professional body because of an act of dishonesty, negligence, incompetence or mismanagement, within 5 years before application, approval, appointment.**
- **The person was found guilty by a regulatory or supervisory body of an act of dishonesty, negligence, incompetence or mismanagement serious enough to impugn the honesty and integrity of the Representative, within 5 years before appointment.**

- **The FSP had its authorisation to carry on business / any license withdrawn or suspended by any regulatory or supervisory body because of an act of dishonesty, negligence, incompetence or mismanagement of the Representative, within 5 years before application, approval, appointment.**
- **The person was disqualified or prohibited by a court from taking part in the management of any company or other statutorily created, recognised or regulated body, current or not, within 5 years before application, approval, appointment.**

Competency

- Experience –general and specific
- Relevant qualifications
- Applicable Regulatory Examinations
- Continuous Professional Development (CPD)

GENERAL EXPERIENCE requirements, which apply to ALL Representatives in ALL the categories

- The Representative must, on the date of appointment (by the FSP) meet the minimum experience required in the different subcategories.
- It must be practical experience gained in the rendering of financial services in the different categories and the subcategories concerned provided that:
 - the experience involved the active and ongoing gaining of knowledge, skills and expertise required in terms of the Act.
 - the experience was obtained through active involvement in providing financial services and could have been gained whilst working under supervision for the minimum experience period.
 - the experience could have been gained within or outside the borders of South Africa.

- the experience 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.
- the experience could have been gained simultaneously in multiple subcategories, provided that proof of such experience can be submitted.

SPECIFIC EXPERIENCE REQUIREMENTS for Representatives for each category

Experience Requirements for **category I Representatives** are as follows:

All the general experience requirements must be met in relation to category I and the subcategories concerned, and in addition:

- If the licence changes to include other financial services or other subcategories, the experience requirements of the other subcategories must be met provided that:
 - if the change includes additional financial service the Representative must obtain 50% of the experience requirements applicable to the additional financial services, and
 - if the change relates to an additional subcategory the Representative must obtain 100% of the experience requirements applicable to the additional subcategory

Experience Requirements for category II Representatives

All the general experience requirements must be met in respect of category II and the subcategories concerned, and in addition:

- The experience could have been gained in a team environment where the person participated in the process of making investment decisions whilst working under supervision, and
- If the licence changes to include the financial services in other subcategories, the experience requirements of the other subcategories must be met.

Experience Requirements for category IIA Representatives

All the general experience requirements must be met in respect of category IIA, and in addition:

- The Representative must have three years practical experience in the rendering of financial services in category IIA.

Experience Requirements for category III Representatives

All the general experience requirements must be met in respect of category III, and 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 Representatives

All the general experience requirements must be met in respect of category IV.

- 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”.

Qualification requirements for Representatives

- Gauged against qualifications list.
- Representatives who were appointed between 2004 and 2009 are subject to the transitional arrangements – these arrangements determine the type of qualification requirements, as well as the arrangements regarding the requirements for experience, regulating exams and the CPD.
- From 2009- first attain qualification and comply with fit and proper requirements.

Competence requirements

- Complete the relevant first and second level Regulatory Examinations within prescribed dates

Continuous Professional Development

The aim of CPD is to ensure that the relevant role players in FAIS are enabled to:

- Develop and maintain professional competence in order to provide financial services of a high quality in the public interest that will support the professionalism of the financial services industry.
- Understand that the primary responsibility of competence vests in the individual, and that they have an obligation to develop and maintain their professional competence.
- Render financial services with due care, competence and diligence with an ongoing duty to maintain knowledge and skill at a level required to ensure that the client receives competent, professional service based on up-to-date developments in legislation and financial services industry.

Acceptable CPD must be verifiable and recognised by the FAIS Registrar.

Let's summarise

Experience

- Needs to relate to the products in the subcategories for which the Representative is appointed.
- Amount of required experience depends on the product subcategory for, which the Representative is appointed.
- Experience may be gained whilst working under supervision.

Qualifications

- A completed qualification is required from the list of recognised qualifications appropriate to Representatives.
- Qualifications, which are applicable to specific product subcategories may also be obtained.
- The qualification can be obtained whilst working under supervision.

Regulatory Examination

- Must be completed successfully within two years from date of first appointment.
- The RE2 for each of the product subcategories that the Representative is responsible for.
- The RE2 must be successfully completed within six years from date of first appointment.
- The RE2 may be completed whilst working under supervision.

Fit and Proper requirements:

1. Honesty and Integrity

2. Competence:

- Experience
- Qualifications
- Regulatory Examinations
- CPD

The purpose of the register

- To provide a record of all the Representatives of an FSP.
- To enable the Registrar to maintain a central register with all the information gathered from the FSP register.
- To calculate the levies payable by the FSP in respect of each Representative and Key Individual.

The register must be sent to the Registrar every fifteen days either in hard copy format or electronically.

Information included in register

1. FSP reference number	13. Physical address 3
2. Natural person ID no or passport no or registration no	14. Physical address postal code
3. ID type	15. Date of appointment
4. Type (natural or juristic person)	16. Key individual of rep
5. Title	17. ID number of rep
6. Initials	18. Category/Sub-category/A/B; A=Advice B=Intermediary service
7. First name of natural person	19. Accreditation no
8. Surname of natural person or company name of juristic person	20. Qualifications

9. Date of birth	21. Debarred
10. Country of registration if juristic person or passport no	22. Date debarred
11. Physical address 1	23. Reason for debarment
12. Physical address 2	24. Process flag (Add/Update/Delete)
25. Regulatory examinations	