

MODULE 7: STUDY NOTES

Types of Conditions

Condition 1:

FSP must advise Registrar of any changes, within fifteen days.

Changes required for Condition 1 of a licence

Any change in:

<ul style="list-style-type: none">Name of business	<ul style="list-style-type: none">Shareholders
<ul style="list-style-type: none">Trading name or division	<ul style="list-style-type: none">Directors
<ul style="list-style-type: none">Type of business	<ul style="list-style-type: none">Members
<ul style="list-style-type: none">Business contact details	<ul style="list-style-type: none">Compliance Officers
<ul style="list-style-type: none">Contact person	<ul style="list-style-type: none">Auditor
<ul style="list-style-type: none">Financial year end	<ul style="list-style-type: none">Representatives
<ul style="list-style-type: none">Bank details	<ul style="list-style-type: none">Foreign clearing firm
<ul style="list-style-type: none">Contact person dealing with payment of fees, penalties and levies	<ul style="list-style-type: none">Nominee company or independent custodian

Condition 2:

Key Individual details and changes in personal circumstances must be reported via the profile change system.

Condition 3:

A newly authorised FSP must submit the Representative register within fifteen days of authorisation and continue to do so every fifteen days during employment.

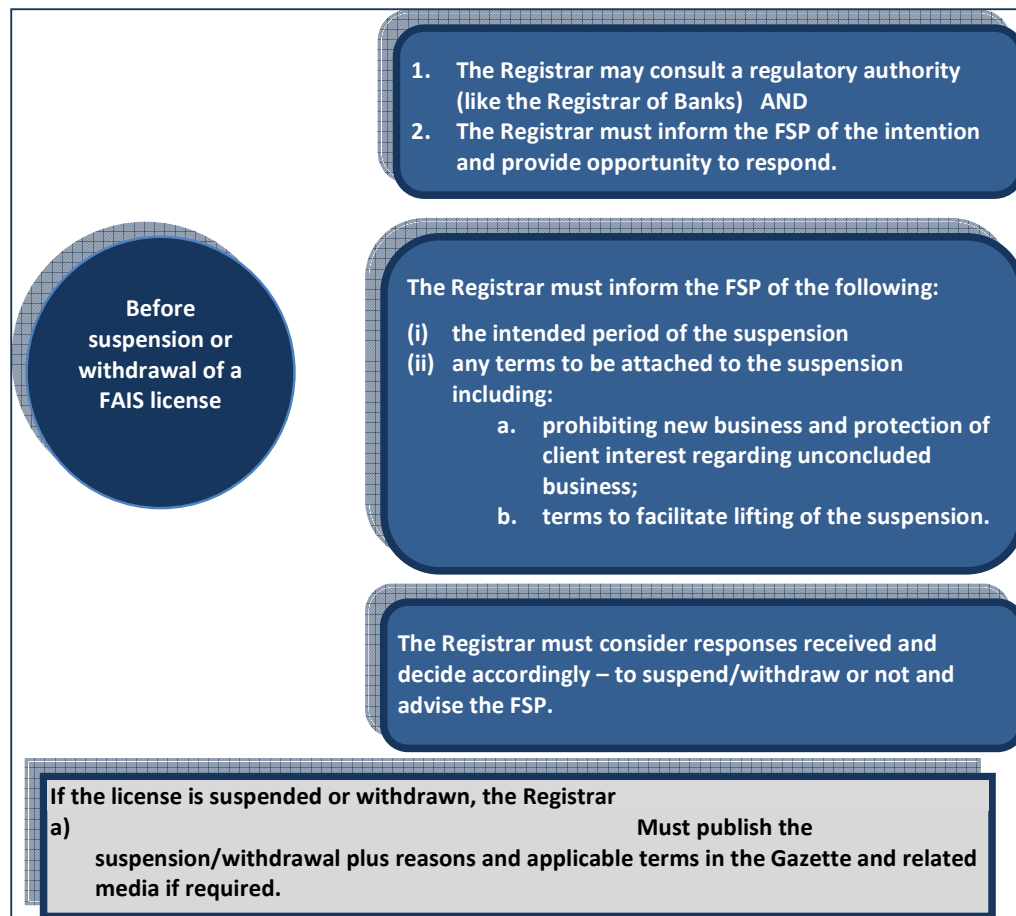
Condition 4:

Changes in name of the business.

Condition 5:

FSP have internal processes and controls in place to ensure that a financial product qualifies and is lawfully issued by relevant product supplier.

Process of Suspension, Withdrawal and Reinstatement of authorisation



- A licence may be suspended or withdrawn if the licensee:
 - No longer meets requirements of Section 8 of the Act.
 - Did not disclose all information on applying for a licence.
 - Submitted false or misleading information.
 - Failed to comply with any provisions of the FAIS Act.
 - Owes levies or penalties to FSB.
- The Registrar must inform the licensee of the grounds and the period and allow the licensee opportunity to respond.
 - May publish the suspension or withdrawal in the Gazette or other public media.
- The Registrar must consider a response from the licensee and may decide to:
 - Lift provisional suspension
 - Make it final

If the licence is suspended or withdrawn, the licensee is:

- Not authorised to act as a FSP.
- Debarred for a period specified by the Registrar, from applying for a new licence.

Before suspension, the Registrar may consult any regulatory authority.

Display of licences

- The FSP must display certified copies of the licence in a prominent manner.
- All business documentation, advertisements and other promotional material must make reference to the licence.
- The licence must at all times be available to any person.

Undesirable business practices

Section 34 of the FAIS Act empowers the FAIS Registrar, after consultation with the FAIS Advisory Committee, to declare a particular business practice "undesirable" for all or a category of authorised financial services providers, or any such provider.

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

The business practice must have, or is likely to have, a direct or indirect effect resulting in:

- harming the relations between FSPs or any FSP or category of FSPs, and clients or the general public;
- unreasonable prejudice to clients
- deceiving any client;
- unfairly affecting any client
- and if allowed to continue, the practice will defeat one or more objects of the FAIS Act.

Once the Registrar has applied these principles and the practice is undesirable, the following must happen:

- The Registrar must **publish an intention** to make the declaration in the Gazette, **provide reasons** and invite **written representations** to the Registrar.
- The declaration then gets **published** and the FSP 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).
- If the FSP carries on with the business practice after the date of publication, the Registrar may direct the FSP to to **rectify or reinstate** to the satisfaction of the Registrar **any loss or damage**, which was caused by or arose out of the carrying on of the business practice concerned.
- The FSP must rectify or reinstate within **sixty days** after the direction was issued.

If the FSP does not adhere to the Registrar's directive:

- Fine of up to **R 1 000 000** and/or
- Imprisonment of up to **10 years**

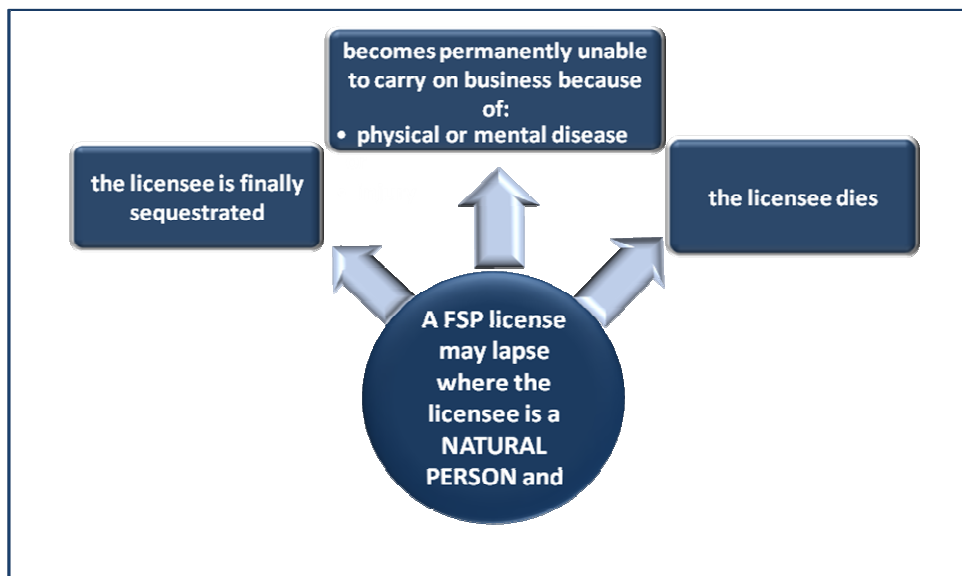
(Section 36 of the FAIS Act)

- Representatives must ensure that they do not do business with business practices, which have been declared undesirable.

1. Contravention of or failure to comply with the following Sections in the Act:	
<ul style="list-style-type: none"> • Failure to get a license to operate as a FSP - s7(1); 	<ul style="list-style-type: none"> • Conducting financial services related business with a person who is licensed for such services and the conditions and restrictions allow the specific services or the person is a Representative as described in the Act – s7(3);
<ul style="list-style-type: none"> • Failure to display a FAIS license, or to refer to the license in business documentation, advertisements and other promotional material or failure to have the license available when proof is requested or when required to enter into a business relationship with the licensee – s8(8); 	<ul style="list-style-type: none"> • Failure to ensure that directors, trustees or partners (excluding Key Individuals) meet the fit and proper honesty and integrity requirements or failure to notify the Registrar or give the Registrar the required information within 15 days of changes in respect of these persons – s8(10)(a);
<ul style="list-style-type: none"> • Failure to ensure that a Representative acts on behalf of an authorised FSP or an exempted FSP and failure to ensure that a Representative provides adequate information to proof his/her agreement/ mandate with a FSP or failure to ensure that a debarred Representative's reappointment meets the requirements of the Act – s13(1); 	<ul style="list-style-type: none"> • Failure to ensure that the FSP's Representatives and Key Individuals of Representatives are fit and proper or failure to comply with the requirements for reappointment after debarment as well as failure to ensure that Representatives comply with applicable codes and laws on conduct of business - s13(2);
<ul style="list-style-type: none"> • Failure to debar a Representative as described in Section 14(1); 	<ul style="list-style-type: none"> • Failure to submit compliance reports to the Registrar – s17(4);
<ul style="list-style-type: none"> • Failure to maintain and keep records as required in Section 18; 	<ul style="list-style-type: none"> • Failure to have the financial statements audited & reported within 4 months as required in Section 19(2) • Failure by an external auditor to report any irregularity / suspected irregularity in the conducts of the affairs of the FSP as required in Section 19(4)
<ul style="list-style-type: none"> • Carrying on with business as a FSP after the Registrar declared the business an undesirable practice – s34(4); 	<ul style="list-style-type: none"> • Failure to rectify the effects of an undesirable practice within 60 days of being ordered to do so by the Registrar – s34 (6).
2. Deliberately making a misleading, false or deceptive statement, or conceals any material fact with regard to anything relating to the Act.	
3. Giving an appointed auditor or compliance officer information which is false, misleading or conceals any material fact in the execution of duties imposed by this Act.	
4. Pretending to be an appointed or mandated Representative of a licensed FSP when providing financial services to clients.	

Lapsing of a FSPs licence

The three ways in which the license could lapse.



How does voluntary sequestration, winding-up or closure of a business affect its licensing status?

The Registrar has the "final say" with regard to the legal force and effect of a voluntary sequestrations, winding-up or closure of a business.

Section 38 of the FAIS Act states that:

- No application for voluntary surrender of an estate brought before a court in terms of Section 3 of the Insolvency Act.
- No special resolution relating to the winding-up, as provided for in Section 349 of the Companies Act, and registered in terms of that Act.
- No written resolution relating to the winding-up, as provided for in Section 67 of the Close Corporations Act, and registered in terms of that Section.
- No voluntary closure of business.

By any authorised FSP, or Representative of such provider, and no special resolution in terms of the constitution of such a provider or Representative, which is not a company, to close its business, have legal force:

- UNLESS a copy or notice of the intended process has been lodged with the Registrar.
- UNLESS the Registrar has declared to the FSP or Representative by notice that the Registrar is satisfied with the arrangements that have been made to meet all liabilities with regard to transactions entered into with clients prior to sequestration, winding-up or closure, as the case may be.
- The Registrar may declare that the application, resolution or closure is contrary to the FAIS Act and that it has no legal effect.