“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”

Section 1
First Level Regulatory Examinations

FSPs (sole proprietors) and Key Individuals in Categories I, II, IIA, III & IV
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# Tasks

The material provided in this guide is based on the following tasks, as published in Board Notice 105 of 2008, Government Gazette 31514, dated 15 October 2008 as amended by Board Notice 60 of 2010.

1. Describe the role of the key individual in terms of the FAIS Act.
2. Describe the role of the representative in terms of the FAIS Act.
3. Manage and oversee the appointment of representatives.
4. Manage the rendering of services under supervision.
5. Manage and oversee the ongoing development/employment of representatives.
6. Debar representatives that have been found to act fraudulently, or committed any other act that gives rise to debarment.
7. Awareness of the regulatory environment in which the FSP functions.
8. Awareness of the specific obligations in terms of the relevant Code of Conduct and other subordinate legislation.
9. Oversee and manage the compliance functions as required by the FAIS Act.
10. Maintain the licence of the FSP including the management of the licensing conditions.
11. Take the necessary action if the FSP voluntarily lapses its licence.
12. Verify that the proper record-keeping activities are carried out.
13. Manage and oversee/participate in the setting up and/or managing of the infrastructure of the FSP.
14. Manage and oversee the requirements that auditors/accounting officers must adhere to.
15. Manage and oversee the FSPs adherence to the requirements of FICA and other relevant anti-money laundering legislation, as it applies to the FSP.
16. Manage any processes required in the event of an investigation by the Ombud for Financial Services Providers (FAIS Ombud).

Please note that any reference to:
- masculine gender implies also the feminine.
- singular indicates also the plural, and vice-versa.
### Glossary of Terms

<table>
<thead>
<tr>
<th>Administrative Code</th>
<th>Board Notice 79 of 2003 on Codes of Conduct for Administrative and Discretionary FSPs (as amended).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative FSP</td>
<td>This means an FSP, other than a discretionary FSP – (a) that renders intermediary services in respect of financial products referred to in paragraphs (a), (b), (c) (excluding any short-term insurance contract or policy referred to therein), (d) and (e), read with paragraphs (h), (i) and (j) of the definition of “financial product” in Section 1(1) of the Act, on the instructions of a client or another FSP and through the method of bulking; and (b) acting for that purpose specifically in accordance with the provisions of the Administrative Code, read with the Act, the General Code (where applicable), and any other applicable law.</td>
</tr>
<tr>
<td>Assistance policy</td>
<td>This means a life policy in respect of which the aggregate of: (a) the value of the money benefits, other than the annuity; and (b) an amount of the premium in return for which an annuity is provided, does not exceed R30 000 prescribed by the Minister and it includes a reinsurance policy in respect of such policy.</td>
</tr>
<tr>
<td>Auditor</td>
<td>This means an auditor registered in terms of the Auditing Profession Act, 2005 (Act 26 of 2005).</td>
</tr>
<tr>
<td>Direct marketer</td>
<td>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.</td>
</tr>
<tr>
<td>Discretionary Code</td>
<td>Board Notice 79 of 2003 on Codes of Conduct for Administrative and Discretionary FSPs (as amended).</td>
</tr>
<tr>
<td>Discretionary FSP</td>
<td>This means an FSP - (a) that renders intermediary services of a discretionary nature as regards the choice of a particular financial product referred to in the definition of “administrative FSP” in this subsection, but without implementing any bulking; and (b) acting for that purpose specifically in accordance with the provisions of the Discretionary Code, read</td>
</tr>
</tbody>
</table>
with the Act, the General Code (where applicable) and any other applicable law.

<table>
<thead>
<tr>
<th>The FAIS Act</th>
<th>Financial Advisory and Intermediary Services Act, No. 37 of 2002</th>
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</table>
| Financial Institution | • any pension fund organisation registered in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956), or any person referred to in section 13B of that Act administering the investments of such a pension fund or the disposition of benefits provided for in the rules of such a pension fund;  
  • any friendly society registered in terms of the Friendly Societies Act, 1956 (Act No. 25 of 1956), or any person in charge of the management of the affairs of such a society;  
  • a collective investment scheme as defined in section 1 of the Collective Investment Schemes Control Act, 2002, a manager, trustee, custodian or nominee company registered or approved in terms of that Act, and an authorised agent of such a manager;  
  • any ‘long-term insurer’ as defined in Section 1(1) of the Long-term Insurance Act,1998 (Act No. 52 of 1998), and any ‘short-term insurer’ as defined in Section 1(1) of the Short-term Insurance Act 1998 (Act No. 53 of 1998);  
  • any ‘independent intermediary’ or representative as defined in Section 1(1) of the Short-term Insurance Act, 1998 or in regulation 3.1 of the Regulations under the Long-term Insurance Act, 1998;  
  • any ‘Lloyd’s underwriter’ as defined in Section 1(1) of the Short-term Insurance Act, 1998, and referred to in Section 56 of that Act;  
  • any person rendering or who is to render services contemplated in section 23A(1) of the Insurance Act, 1943;  
  • any authorised financial services provider’ or ‘representative’ as defined in section 1(1) of the Financial Advisory and Intermediary Services Act, 2001; |
- a bank as defined in section 1(1) of the Banks Act, 1990 (Act No. 94 of 1990), a mutual bank as defined in Section 1(1) of the Mutual Banks Act, 1993 (Act No. 124 of 1993), or a co-operative bank as defined in Section 1(1) of the Co-operative Banks Act, 2007 (Act No. 40 of 2007), which deals with trust property as a regular feature of its business; or
- any other person who or which deals with trust property as a regular feature of his, her or its business, but who is not registered, licensed, recognised, approved or otherwise authorised to deal so in terms of any Act, other than the Companies Act, 1973 (Act No. 61 of 1973), the Close Corporations Act, 1984 (Act No. 69 of 1984), and the Trust Property Control Act, 1988 (Act No. 57 of 1988);

<table>
<thead>
<tr>
<th>Forex Code</th>
<th>Code of Conduct for Authorised Financial Services Providers and Representatives, involved in Forex Investment business.</th>
</tr>
</thead>
<tbody>
<tr>
<td>FSB</td>
<td>Financial Services Board</td>
</tr>
<tr>
<td>FSP</td>
<td>Financial services provider</td>
</tr>
<tr>
<td>General Code</td>
<td>General Code of Conduct for Authorised Financial Services Providers and Representatives, (as amended).</td>
</tr>
<tr>
<td>Services under supervision</td>
<td>Financial services rendered by a representative who does not meet the prescribed experience, qualification and/or regulatory examination requirements and which services are rendered under the guidance, instruction and supervision of a supervisor in terms of the provisions of an exemption by the Registrar under section 44 of the FAIS Act.</td>
</tr>
</tbody>
</table>
An introduction to the FAIS Act

This topic covers the following criteria:

**KNOWLEDGE CRITERIA:**

- Describe the FAIS Act and requirements thereof. (Part of Task 7)
- Explain the different financial products with examples of products in each category. (Part of Task 10)
- Codes of Conduct (Part of Task 8)
- Explain the different financial products with examples of products in each category. (Part of Task 10)
INTRODUCTION

The FAIS Act introduced market conduct legislation in South Africa.

It regulates the financial services market and became effective in 2002 with the main objective to protect consumers in relation to financial services with regard to the regulated products.

This topic provides an overview of the FAIS Act as well as the requirements and some key principles that will assist your understanding of the rest of the material.

1.1 THE PURPOSE OF THE FAIS ACT

1.1.1 Overview of the FAIS Act

The FAIS Act regulates the business of all financial service providers and intermediaries who give advice or provide intermediary services to clients.

The Act aims to professionalise the financial services industry and to provide adequate consumer protection.

The FAIS Act follows a functional approach and not an institutional approach. This means that the Act regulates certain functions across institutions (insurance companies, brokerages and banks). An institutional approach focuses on specific institutions, like the Banks Act for example, which regulates banks only. Therefore, the ‘function’ of providing financial services, across the various institutions, is governed by the FAIS Act.

Other examples of legislation that are applied across the whole financial services industry are: The Financial Intelligence Centre Act, 38 of 2001, The Financial Intelligence Centre Amendment Act, 11 of 2008 and The Companies Act, 71 of 2008.

The FAIS Act refers to the Financial Advisory & Intermediary Services Act, no. 37 of 2002. The commencement date of the FAIS Act is 15 November 2002, except for the following sections:

- Sections 20 to 31 became operational on 8 March 2003¹.

¹ Proclamation 21 of 2003
• Section 13(1) became operational on 30 September 20042.
• Section 7 became effective on 30 September 20043.

1.1.2 The role-players in the FAIS Act

The FAIS Act has a number of role-players.

• **The Financial Services Board (FSB)** is an independent institution established by law to oversee the South African non-banking financial services industry in the public interest.

• **Financial Services Providers (FSPs)** are the financial institutions, insurance companies or other entities that need to be authorised or licensed by the FSB to provide financial services covered by the FAIS Act.

• **Key individuals** are employed by the FSPs and are responsible for the management and oversight of the FAIS-related business.

• **Representatives** are employed or mandated by FSPs to provide financial services to clients.

• **Compliance officers** are employed by or contracted by FSPs to assist in ensuring that the FSP complies with all the requirements of the Act.

• **The Ombud for Financial Services Providers (FAIS Ombud)** resolves disputes between consumers (clients) and financial service providers and their representatives with regard to financial services.

1.2 The role-players’ duties/power in the FAIS Act

| Table 1.1 |
|-------------------|-------------------------------------------------------------------------------------------------|
| **The FAIS Registrar is responsible for administration and enforcement of the Act, and the Registrar has defined functions, powers and obligations.** |
| **The FAIS Registrar authorises and issues licences to FSPs.** The form and manner of applications are stipulated in the Act as well as other authorisation requirements such as the fit and proper requirements. |
| **The FAIS Registrar approves key individuals and compliance officers.** The subordinate legislation describes the fit and proper requirements. |
| **The FAIS Registrar may publish Codes of Conduct.** The Codes describe the requirements when FSPs and representatives render financial services to clients. |

---

2 Proclamation 35 of 2004
3 GN 270/2004
The duties of FSPs are described in the Act and subordinate legislation. There are specific provisions for compliance officers and compliance arrangements, requirements for record maintenance, disclosure, and auditing.

The FAIS Registrar has power to enforce the Act and to impose penalties. The Act includes provisions relating to undesirable practices, offences and penalties, voluntary sequestration, winding-up and closure.

Any decision taken by the Registrar under any enabling provision in the Act is valid only if it is in written format. All applications made to the Registrar must therefore also be made in writing and be accompanied by the fees payable and the 0 required by the Registrar.

The Act describes the role and power of the Ombud for Financial Services Providers (FAIS Ombud).

1.3 PRODUCT CATEGORIES IN THE FAIS ACT

1.3.1 The product categories in the FAIS Act

Each authorised FSP is licensed to provide financial services in relation to certain FAIS products. These products are defined and grouped in product categories.

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 subcategories.

The category descriptions 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.

The classification of the categories and subcategories are important for the following reasons:

- **FSP licences are issued** for specific product categories
- **Key individuals and representatives are approved** and appointed to be operative within certain product categories and subcategories
- **Compliance officers are approved** for certain product categories and subcategories; and
- the **fit and proper requirements relate to product categories** and subcategories.

1.3.2 Examples of product sub-categories in the FAIS Act

Let’s look at some examples of product categories and subcategories:

<table>
<thead>
<tr>
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</tr>
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<td><strong>CATEGORIES I: SUBCATEGORIES</strong></td>
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<td>1.1 Long-term Insurance Subcategory A</td>
</tr>
<tr>
<td>1.2 Short-term Insurance Personal Lines</td>
</tr>
<tr>
<td>1.3 Long-term Insurance Subcategory B1</td>
</tr>
<tr>
<td>1.4 Long-term Insurance Category C</td>
</tr>
<tr>
<td>1.5 Retail Pension Benefits</td>
</tr>
<tr>
<td>1.6 Short-term Insurance Commercial Lines</td>
</tr>
<tr>
<td>1.7 Pension Fund Benefits</td>
</tr>
<tr>
<td>1.8 Securities and Instruments: Shares</td>
</tr>
<tr>
<td>1.9 Securities and Instruments: Money Market Instruments</td>
</tr>
<tr>
<td>1.10 Securities and Instruments: Debentures and Securitised Debt</td>
</tr>
<tr>
<td>1.11 Securities and Instruments: Warrants, Certificates and other Instruments acknowledging Debt</td>
</tr>
<tr>
<td>1.12 Securities and Instruments: Bonds</td>
</tr>
<tr>
<td>1.13 Securities and Instruments: Derivative Instruments excluding Warrants</td>
</tr>
<tr>
<td>1.14 Participatory Interests in one or more Collective Investment Schemes</td>
</tr>
<tr>
<td>1.15 Forex Investment Business</td>
</tr>
<tr>
<td>1.16 Health Service Benefits</td>
</tr>
<tr>
<td>1.17 Long-term Deposits</td>
</tr>
<tr>
<td>1.18 Short-term Deposits</td>
</tr>
<tr>
<td>1.19 Friendly Society Benefits</td>
</tr>
<tr>
<td>1.20 Long-term Insurance Subcategory B2</td>
</tr>
</tbody>
</table>
Please note that the Category I table was changed to 20 subcategories in Board Notice 135 of 2012.

**Table 1.2**

<table>
<thead>
<tr>
<th>Subcategory</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CATEGORY II: SUBCATEGORIES</strong></td>
</tr>
<tr>
<td>2.1 Long-term Insurance Subcategory B1</td>
</tr>
<tr>
<td>2.2 Long-term Insurance Category C</td>
</tr>
<tr>
<td>2.3 Retail Pension Benefits</td>
</tr>
<tr>
<td>2.4 Pension Fund Benefits</td>
</tr>
<tr>
<td>2.5 Securities and instruments: Shares</td>
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<td>2.6 Securities and Instruments: Money Market Instruments</td>
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<td>2.12 Forex Investment Business</td>
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<tr>
<td>2.13 Long-term Deposits</td>
</tr>
<tr>
<td>2.14 Short-term Deposits</td>
</tr>
<tr>
<td>2.15 Hedge Funds</td>
</tr>
<tr>
<td>2.16 Long-term Insurance Subcategory B2</td>
</tr>
</tbody>
</table>

Please note that the Category II and IIA table was amended in Board Notice 135 of 2012 to include 16 sub-categories.

**1.4 CODES OF CONDUCT**

As mentioned above, the FAIS Registrar may publish Codes of Conduct. The purpose of the Codes is to provide more detailed provisions regarding the rendering of financial services. These Codes are part of the subordinate legislation and are binding on all FSPs, key individuals and representatives.

**Section 16 of the FAIS Act** requires that the Codes must contain (at least) provisions relating to the following:

- Making adequate disclosures
- Adequate record-keeping
• Avoidance of fraudulent and misleading advertising, canvassing and marketing
• Proper safe-keeping, 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
• The control or prohibition of incentives given or accepted by a provider
• Any other matter which is necessary or expedient to be regulated in such code for the better achievement of the objects of the Act

The following Codes have been published so far:

• General Code of Conduct for Authorised Financial Services Providers and Representatives, (as amended)
• Specific Code of Conduct for Authorised Financial Services Providers and Representatives conducting Short-term Deposit Business
• Code of Conduct for Authorised Financial Services Providers and Representatives, involved in Forex Investment Business
• Codes of Conduct for Administrative and Discretionary FSPs (as amended).

As and when required, the Codes are amended through the publication of Board Notices in Government Gazettes.

1.5 TYPES OF FINANCIAL SERVICES AND PRODUCTS

1.5.1 Types of financial services

To provide a financial service means to:

• give advice; or
• provide an intermediary service; or
• give advice and provide an intermediary service.

We refer to financial service throughout the material and it is important that you understand that it may consist of both or either of the above elements. Sometimes a representative or FSP may only be authorised to give advice in respect of certain product categories, or to provide an intermediary service (without advice).
### 1.5.2 Advice

The FAIS Act defines ‘advice’ as follows:

**Definition of advice:**

“‘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;”

---

**Subsection 3(a) says the following:**

**Exclusions from "advice"**

"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;"
The elements of ‘advice’ include the following:

- Make a recommendation
- Provide guidance
- Provide a proposal

Of a financial nature

To a client or a group of clients

Regarding the purchasing of a financial product

Regarding investment in a financial product

On the conclusion of any other transaction to cede or pledge or to get benefits or rights in respect of a financial product.

On the variation of any term or condition of financial products:
  - on replacement; or
  - on termination of buying the products; or
  - on termination of investing in the products.

It does not matter if the advice was given during or incidental to financial planning with the client OR if it results in buying, investing, transacting, variation, replacement or termination.

Figure 1.1
The following is not included in the definition of ‘advice’:

**ADVICE IS NOT**

- About procedures to do a financial transaction
- About describing a financial product
- By answering routine admin queries
- By displaying or distributing promotional material
- By giving objective information about a financial product

**Advice is not factual advice/information**

- An analysis or report on a financial product without an express or implied recommendation, guidance or proposal that a transaction in respect of the product meets the client’s needs, investment objectives or financial situation

- Advice by a board member of any pension fund organisation or friendly society, to their members on benefits to be enjoyed by the members
- Advice by the board of trustees of a medical scheme to members of the medical scheme on healthcare benefits

**Figure 1.2**
1.5.3 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:

**Definition of 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;"

**Subsection 3(b) says the following:**

**Exclusions from intermediary service**
"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;

(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."
The elements of ‘intermediary service’ include the following:

**INTERMEDIARY SERVICE IS**

Any act, except giving advice, by a person

For or on behalf of a client or a product supplier

Resulting in

or

**With a view to**

The client entering into or offering to enter into a transaction in respect of a financial product with a product supplier.

Do the following in respect of a financial product purchased by a client from a product supplier or in which a client has invested:

- Buying, selling or dealing in (discretionary or not);
- Managing;
- Administering;
- Keeping in safe custody;
- Maintaining; or
- Servicing.

OR

With a view to

- Collecting or accounting for premiums;
- Or other money which a client has to pay to a product supplier in respect of a financial product.

OR

With a view to

- Receiving;
- Submitting; or
- Processing the claims of a client against a product supplier.

**Figure 1.3**
1.5.4 Types of financial products

Financial products are grouped in the various product categories and sub-categories.

Below examples of financial products:

<table>
<thead>
<tr>
<th>Financial product</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Securities and instruments, including:</td>
<td>Shares in a company such as Absa Bank.</td>
</tr>
<tr>
<td>(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);</td>
<td></td>
</tr>
<tr>
<td>(ii) debentures and securitised debt;</td>
<td>An example of a debenture is an unsecured bond.</td>
</tr>
<tr>
<td>(iii) any money-market instrument.</td>
<td>Money market instruments are short-term financial instruments such as bankers’ acceptances, certificates of deposit.</td>
</tr>
<tr>
<td>(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);</td>
<td></td>
</tr>
<tr>
<td>(v) any “securities” as defined in Section 1 of the Financial Markets Act, 2012.</td>
<td>Securities include shares, stocks and depository receipts in public companies.</td>
</tr>
<tr>
<td>b) A participatory interest in one or more collective investment schemes</td>
<td>Money market funds managed by a fund manager</td>
</tr>
<tr>
<td>c) A long-term or a short-term insurance contract or policy, referred to in the Long-term Insurance Act, and the Short-term Insurance Act, respectively</td>
<td>Credit life insurance as an example of Long-term Insurance Category B</td>
</tr>
<tr>
<td>d) A benefit provided by:</td>
<td>Benefits include payout of money accumulated in a pension fund, for the</td>
</tr>
<tr>
<td>(i) a pension fund organisation as defined in Section 1(1) of the</td>
<td></td>
</tr>
</tbody>
</table>

---

4 Act No. 52 of 1998
5 Act No. 53 of 1998
<table>
<thead>
<tr>
<th>Financial product</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pension Funds Act, 1956 (Act No. 24 of 1956), to the members of the organisation by virtue of membership; or a friendly society referred to in the Friendly Societies Act⁶, to the members of the society by virtue of membership</td>
<td>benefit of the members.</td>
</tr>
<tr>
<td>(ii)</td>
<td></td>
</tr>
<tr>
<td>e) A foreign currency denominated investment instrument, including a foreign currency deposit</td>
<td></td>
</tr>
<tr>
<td>f) A deposit as defined in Section 1(1) of the Banks Act⁷</td>
<td>Savings and 32-day notice deposit accounts</td>
</tr>
<tr>
<td>g) A health service benefit provided by a medical scheme as defined in Section 1(1) of the Medical Schemes Act⁸</td>
<td>Health benefits that are available in terms of a medical scheme</td>
</tr>
<tr>
<td>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</td>
<td></td>
</tr>
<tr>
<td>i) Any combined product containing one or more of the financial products referred to in paragraphs (a) to (h), inclusive</td>
<td></td>
</tr>
<tr>
<td>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.</td>
<td></td>
</tr>
</tbody>
</table>

Summary

Topic 1 introduced you to the main purpose and ambit of the FAIS Act, which sets out to regulate financial services in South Africa.

We also discussed the product categories and subcategories.

The categorisation of products is important because it is used for the following:

- FSP licences are issued for specific product categories.

⁶ Act No. 25 of 1956
⁷ Act No. 94 of 1990
⁸ Act No. 131 of 1998
• Key individuals and representatives are approved and appointed to operate within certain product categories and subcategories.
• Compliance officers are approved for certain product categories and subcategories.
• The fit and proper requirements relate to product categories and subcategories.

The FAIS Act makes provision for Codes of Conduct. The Codes give us the detailed provisions that prescribe what and how to do things.

We also unpacked the concept of ‘financial service’ in this topic. Two elements make up ‘financial service’:

• Advice
• Intermediary services; or
• A combination of both

Only those financial products that are listed in the FAIS Act are subject to the Act.

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. The FAIS Act regulates the business of all financial services providers and intermediaries who:
   a) give advice or provide intermediary services to clients.
   b) give advice and grant credit.
   c) are registered as credit providers.
   d) only give advice to clients.

2. FSPs may:
   a) only be registered for one licence.
   b) have various licences but for the same product categories.
   c) only apply for one licence.
   d) have various licences in respect of different product categories.
3. The classification of the categories and subcategories are important for the following reasons:
   a) FSP licences are issued for specific product categories.
   b) Compliance officers are approved for certain product categories and subcategories.
   c) a) and b)
   d) a)

4. Section 16 of the FAIS Act requires that the Codes must have (at least) provisions relating to:
   a) adequate record-keeping.
   b) the power of the Registrar.
   c) the control or prohibition of incentives given or accepted by a provider.
   d) a) and c)

5. To provide a financial service means to:
   a) only give advice.
   b) only provide an intermediary service.
   c) give advice and/or provide an intermediary service.
   d) adhere to the General Code.

6. "Advice" as defined by the FAIS Act includes:
   a) giving factual information about products.
   b) making a recommendation on a financial product.
   c) providing guidance of a financial nature to a client.
   d) b) and c)

7. Advice excludes the following:
   a) Procedures to do a financial transaction
   b) Describing a financial product
   c) Factual information about products
   d) All of the above

8. To provide an intermediary service means to:
   a) do something for a client, which may result in him buying an insurance policy.
   b) do something with a view to collecting premiums from a client.
   c) give advice.
   d) a) and b)
   e) b) and c)
9. Financial products are grouped in the various product categories and sub-categories. The following are examples of financial products in the FAIS Act:
   a) Credit life insurance
   b) Money market funds managed by a fund manager
   c) Shares in a company such as Old Mutual
   d) Savings and 32-day notice deposit accounts
   e) All of the above

10. The following are examples of subcategories in Category I:
    a) Long-term Insurance Category B1
    b) Participatory interests in one or more collective investment schemes
    c) Securities and instruments: Shares
    d) Short-term deposits
    e) All of the above
The role of the key individual in terms of the FAIS Act

This topic covers the following criteria:

**KNOWLEDGE CRITERIA:**

- Describe the roles and responsibilities of key individuals as defined in the FAIS Act. (Task 1)
- Explain the requirements for licensing by the FSB for the role of the key individual. (Task 1)
- Describe what the key individual’s management responsibility entails regarding the regulated functions of the FSP. (Task 1)
- Describe what the honesty and integrity requirements are for a key individual. (Task 1)
- Explain what the implications are for the key individual if a key individual’s personal situation changes and he/she is no longer fit and proper. (This refers to the honesty and integrity requirement.) (Task 1)
- Explain the competence/qualification requirements that a key individual needs to meet. (Task 1)
- Explain the experience requirements that the key individual must meet. (Task 1)
- Explain what management responsibilities should be carried out by a key individual. (Task 1)
- Explain when an individual can commence acting as a key individual. (Task 1)

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

- Perform the necessary management and oversight functions regarding their functioning within the FSP.
- Check whether a potential/current key individual meets the requirements regarding honesty and integrity.
- Take the appropriate action where a potential/current key individual does not meet the requirements regarding honesty and integrity.
- Check, where applicable, whether a potential/current key individual meets the competence/qualification requirements.
- Check, where applicable, whether a potential key individual meets the experience requirements.
- Oversee the implementation of processes and controls to ensure the sufficient management and oversight of the financial services rendered.
INTRODUCTION

This topic introduces the role of the key individual. Key individuals are appointed by the FSP but APPROVED by the FSB. The management and oversight responsibilities of key individuals stretch over the whole (FAIS-related) business of the FSP. In this topic we unpack the fit and proper requirements applicable to key individuals.

2.1 THE ROLES AND RESPONSIBILITIES OF KEY INDIVIDUALS AS DEFINED IN THE FAIS ACT

2.1.1 Definition of a key individual

The FAIS Act defines a key individual as follows:

Definition of key individual:

"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."

A key individual must therefore:

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

Where a single key individual does not meet all the requirements, an FSP may have more than one key individual and among them they will meet the requirements. The activities of the FSP refer to the rendering of an intermediary service and/or advice relating to the financial products the FSP is licensed for (category and subcategories).
2.1.2 The role of a key individual

We also see that it is possible that an FSP can have one natural person in the business (sole proprietor) and that person can be the key individual as well. In other words, the sole proprietor and the key individual is the same person.

The Act refers to the FSP in this instance as "the applicant". Insurance companies will normally have designated key individuals and representatives. Key individuals may also act as representatives, in which case they have to meet the requirements for both roles respectively.

Section 17(3) of the Act states that an FSP must establish and maintain procedures to be followed by the FSP and its representatives in complying with the Act. The KI is usually tasked, on behalf of the FSP, with ensuring that such procedures (for example, procedures in respect of the provision of advice, or retaining records of advice) are implemented and maintained.

Figure 2.1

Let's look at some examples that explain the various “hats” that key individuals can wear.
Example 1:

CBA Financial Services is a sole proprietor with Sarah as the owner. CBA, as a juristic body, is authorised by the FSB as an FSP. Sarah operates on her own and she is, therefore, the key individual as well.

Sarah provides her clients with financial services; therefore, she acts as a representative as well.

As the key individual for CBA Financial Services, Sarah must oversee and manage all the activities of CBA for which a key individual is responsible in terms of the FAIS Act.

Example 2:

InsCo is an insurance company with 200 employees and authorised to sell Category I products. It is very likely that InsCo will have at least two (2) key individuals to manage and oversee the activities and functions of the FSP.

2.1.3 Management responsibilities

The key individual has the responsibility of management and oversight of the FSP that performs the activities relating to the rendering of financial services, which includes the provision of advice and intermediary services in respect of such a licence. The key individual must have the required experience in management before the Registrar will approve the appointment.

The experience must include practical experience in the management or oversight of the services similar to or corresponding to the financial services rendered by the FSP.

The key individual is responsible, among other things, for the representatives, as well as the overall business management of the FSP.

In the topics to follow we discuss all the responsibilities that key individuals have in terms of the FAIS Act.
2.2 APPROVAL OF KEY INDIVIDUALS

2.2.1 Requirements for approval

The FSP applies to the Registrar for approval of a key individual. The onus is on the applicant (when it is a partnership, a trust or a corporate or unincorporated body) to 'satisfy' the Registrar that a key individual meets the fit and proper requirements in respect of honesty and integrity, as well as competence and operational abilities. (We discuss these requirements in the next section.)

If the applicant's qualification is not on the recognised qualification list, and the applicant thinks the qualification is indeed relevant and applicable to the role, application for recognition (to the Registrar in the prescribed manner) of the qualification must be made prior to submitting the application form.

Let’s look at the administrative requirements for the approval of key individuals.

Table 2.1

<table>
<thead>
<tr>
<th>Submitting documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Key individuals and sole proprietors (FSP which is a natural person) must complete a specific application form (Form FSP4). The following is a summary of what is required in completing the application form.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Role</th>
<th>A description of what best describes the applicant’s (FSPs) role in the organisation is required.</th>
</tr>
</thead>
</table>
| Fit and proper requirements | • Questions relating to honesty and integrity must be completed (refer the discussion on honesty and integrity above).  
• Details about qualifications must be completed and certified copies of qualifications must be attached. |
<table>
<thead>
<tr>
<th>Submitting documents</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Employment history</strong></td>
</tr>
<tr>
<td>• A detailed CV must be attached, indicating the experience that the applicant has gained within the last five (5) years. Full details of the person’s responsibilities must be provided to illustrate that the person’s experience is relevant to the category of financial services and subcategory of financial products being offered/rendered.</td>
</tr>
<tr>
<td>• Reference letters from previous employers must be submitted.</td>
</tr>
<tr>
<td>• Details of experience for the categories of financial services and the sub-categories of financial products in respect of which the sole proprietor will be rendering financial services and the key individual will be managing or overseeing, must be provided. Reference letters from previous employers regarding responsibilities of the applicant in the various categories must be submitted.</td>
</tr>
<tr>
<td><strong>Operational ability</strong></td>
</tr>
<tr>
<td>• The key individual and sole proprietor must have the operational ability to fulfil the responsibilities imposed on the licensee and its key individuals by the Act.</td>
</tr>
<tr>
<td><strong>General</strong></td>
</tr>
<tr>
<td>• If the applicant is both key individual and a representative, a separate form (FSP 5) must be completed.</td>
</tr>
<tr>
<td>• The applicant needs to sign an indemnity, authorising the FSB to verify all information.</td>
</tr>
</tbody>
</table>

The Registrar may require an applicant to furnish additional information as he deems necessary. He may also take into consideration any other information regarding the proposed key individual, from any other source, provided that the key individual is granted an opportunity to respond to the information.

Once the Registrar is satisfied that the applicant meets all the requirements for the key individual role in the FSP, the Registrar will grant or refuse the application.

The Registrar may impose restrictions or additional conditions on the FSP licence, which may include specific conditions regarding the key individual. Such conditions may include that, where after the date of granting a licence, the key individual is replaced by a new key individual, or a new key individual...
is appointed, or any change occurs in the personal circumstances of a key individual which causes the person to fall short of the fit and proper requirements, such person may not take part in the conduct, management or oversight of the FSP's business unless he has been approved by the Registrar as compliant with the fit and proper requirements for key individuals in the manner described above.

2.3 FIT AND PROPER REQUIREMENTS FOR KEY INDIVIDUALS

2.3.1 Overview of the fit and proper requirements for key individuals

The FAIS Act is clear on the various requirements and criteria a person must meet in order to be approved as a key individual. Apart from the definition in the Act, which we looked at above, we find most of the requirements in the subordinate legislation (Board Notices).

Remember, the FSP, being the employer, will identify/appoint the people it wants to act as key individuals, and the FSB, being the regulator, will approve the appointment of key individuals for each FSP.

What are the fit and proper requirements to be a key individual?

The fit and proper requirements for all key individuals include the following:

<table>
<thead>
<tr>
<th>FIT AND PROPER REQUIREMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Honesty and integrity</td>
</tr>
<tr>
<td>Competence</td>
</tr>
<tr>
<td>Operational ability</td>
</tr>
</tbody>
</table>

We discuss the requirements relating to honesty and integrity and competence in the sections to follow. (Refer to BN 106 for further detail in respect of these requirements.)

Part of a key individual's fit and proper requirements is the operational ability to fulfil its functions in terms of the FAIS Act, including the oversight of the financial services (regarding the giving of advice and rendering of intermediary services) provided by the representatives of the FSP.
FSPs must also meet operational ability requirements in order to be authorised as such. These will be discussed throughout the topics to follow. In addition, FSPs (including sole proprietors) must also meet the financial soundness requirement. This requirement does not apply to key individuals.

Below are the fit and proper requirements applicable to the different role-players:

<table>
<thead>
<tr>
<th>Fit &amp; Proper Requirement</th>
<th>FSPs</th>
<th>FSPs (Sole Proprietors)</th>
<th>Key Individuals</th>
<th>Representatives</th>
<th>Compliance Officers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Honesty &amp; Integrity</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>(directors/members/etc.)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Competence: Experience</td>
<td>N</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Requirements</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Competence: Qualifications</td>
<td>N</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Competence: Regulatory</td>
<td>N</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Examinations (RE Exams)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Competence: Continuous</td>
<td>N</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Professional Development</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(CPD)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operational Ability</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>N</td>
<td>Y</td>
</tr>
<tr>
<td>Financial Soundness</td>
<td>Y</td>
<td>Y</td>
<td>N</td>
<td>N</td>
<td>Y</td>
</tr>
</tbody>
</table>

The following summary of the applicable fit and proper requirements gives us an overview of the more detailed discussions that follow.
Table 2.3

<table>
<thead>
<tr>
<th>Key individuals must:</th>
<th>An FSP who is a sole proprietor must:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• meet the requirement in respect of honesty and integrity;</td>
<td>• meet the requirement in respect of honesty and integrity;</td>
</tr>
<tr>
<td>• have the minimum experience requirements;</td>
<td>• have the minimum experience requirements;</td>
</tr>
<tr>
<td>• have the required qualifications; and</td>
<td>• have the required qualifications; and</td>
</tr>
<tr>
<td>• have completed the relevant first level regulatory examination before the Registrar will APPROVE the appointment.</td>
<td>• have completed the relevant regulatory examinations for the categories and subcategories before a LICENCE will be granted.</td>
</tr>
<tr>
<td>• have completed the relevant second level regulatory examinations for the categories and subcategories, if these are required by the FSP.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>At least one (1) or more of the approved key individuals must:</th>
<th>In a juristic representative (where a juristic person, such as another company renders financial service to an FSP), at least one (1) of the key individuals (overseeing and managing) must have the same experience, qualifications and regulatory examination requirements as would apply to the key individual of the FSP of the juristic representative.</th>
</tr>
</thead>
<tbody>
<tr>
<td>• have the same experience and qualifications; and</td>
<td></td>
</tr>
<tr>
<td>• have completed the same regulatory examinations as would apply to a sole proprietor FSP (above), which must relate to the same categories/subcategories that the FSP is licensed for.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Application for authorisation</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>An application for authorisation must be submitted to the Registrar in the form and manner determined by the Registrar by notice on the official website, 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 -</td>
<td></td>
</tr>
<tr>
<td>(a) personal character qualities of honesty and integrity;</td>
<td></td>
</tr>
<tr>
<td>(b) competence;</td>
<td></td>
</tr>
<tr>
<td>(bA) operational ability; and</td>
<td></td>
</tr>
<tr>
<td>(c) financial soundness</td>
<td></td>
</tr>
</tbody>
</table>

---

9 Section 3(4) of BN 106
10 Section 3(2) of BN 106
11 Section 3(3) of BN 106
12 Section 3(5) of BN 106
13 Section 3(6) of BN 106
If the applicant is a partnership, trust or corporate or unincorporated body, the requirements of honesty and integrity, and competence 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 relevant category, in respect of

(a) personal character qualities of honesty and integrity;
(b) competence; and
(c) operational ability.

All key individuals must also meet the Continuous Professional Development requirements once all the experience, qualifications and regulatory examination requirements are met.\textsuperscript{14}

\subsection*{2.3.2 Honesty and integrity requirements for key individuals}

The key individual is managing or overseeing a large portion of the business of the FSP and these personal attributes are crucial in ensuring that the objectives of the FAIS Act are met and that the FSP renders a professional financial service to its clients.

One way to determine whether a person is honest and has integrity is to provide certain criteria which the key individual must meet. In addition, the FAIS Registrar may refer to any information it has or anything that is brought to the attention of the Registrar in relation to the fitness and propriety of a key individual.\textsuperscript{15}

The honesty and integrity requirement is ongoing. Section 2(4) of BN 106 requires that honesty and integrity be declared in the application for approval of a key individual.

Key individuals are required to disclose all information and facts available and applicable to them when applying for approval by the Registrar.

The following block summarises factors that may exclude a person from approval as a key individual.

\textsuperscript{14} Section 3(2)(d) of BN 106
\textsuperscript{15} Section 2(2) of BN 106
• The person was found guilty in any criminal proceedings or liable in any civil proceedings of acting fraudulently, dishonestly, unprofessionally, dishonourably or in breach of a fiduciary duty within five (5) years before application, approval, and appointment.

• The person was found guilty by any statutory professional body or voluntary professional body of dishonesty, negligence, incompetence, mismanagement serious enough to call into question the honesty and integrity of the FSP, key individual, within five (5) years before application, approval, 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 five (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 call into question the honesty and integrity of the FSP, KI, within five (5) years before application, approval or appointment.

• The FSP had its authorisation to carry on business/any licence withdrawn or suspended by any regulatory or supervisory body because of an act of dishonesty, negligence, incompetence or mismanagement, within five (5) years before application, approval or 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, irrespective of whether this has been lifted or not.

2.3.3 Changes in the personal circumstances of key individuals

Section 13(2)(a) of the Act requires that the FSP must be AT ALL TIMES satisfied that the key individual meets the requirements of honesty and integrity and the FSP must ensure that the key individual/s responsible for its business remain/s qualified in terms of these personal attributes, to fulfil the function of key individual.

To achieve this, the key individual must declare to the FSP if there is any change in his/her personal situation that affects his/her honesty and integrity, particularly in view of the criteria which may be used to determine "exclusions", which we discussed above.
If there is a change in the circumstances of the key individual that affects her honesty and integrity adversely, the FSP is responsible to advise the regulator and also tell the regulator what action the FSP has taken, including debarment (which we discuss later) of the key individual.

This notification is also referred to as a profile change, which we discuss later.

Section 8(4)(b) of the FAIS Act states that:

- if there is any change in the personal circumstances of a key individual which affects the fit and proper requirements and renders or may render such person to be no longer a fit and proper person,
- no such person may be permitted to take part in the conduct or 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 by the Registrar by notice on the official website.

In addition, Section 2(b)(ii) of Board Notice 122 of 2003, states that the FSP is responsible for providing the Regulator with full disclosure on steps that the key individual and the FSP intend to take in order to comply fully with the requirements of honesty, integrity and competence in due course.16

2.3.4 Competency and continuous professional development requirements for key individuals

The competency requirements for a key individual include the following: 17

- Minimum experience requirements
- Relevant qualification requirements
- Completion of relevant regulatory examinations
- In addition, ongoing compliance with continuous professional development (CPD) is required.

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16 Section 2(b)(iii) of Board Notice 122 of 2003 read together with Section 8(1)(i) and (ii) of the Act.
17 Section 3(2) of BN 106
2.3.5  Experience requirements for key individuals

The key individual's experience is one of the crucial elements which determines whether he will be approved by the Registrar or not.

When discussing the experience requirements for key individuals, one has to distinguish between general management experience and experience required in a specific product category.

General management and oversight experience

Key individuals of a Category 1 FSP must, on 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. Such experience:

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

For key individuals of Category II and IIA FSPs, the requirement is similar, except that the key individual must have actually provided the financial services in relation to the subcategories on date of approval. A key individual of a Category III FSP must have three years’ practical experience gained in the rendering of financial services in that category, in addition to meeting the requirement for one year management/oversight experience. A key individual of a Category IV FSB must 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.

Management and oversight experience must already exist when the key individual applies for approval; it can never be obtained under supervision while the key individual is fulfilling the duties of a key individual in terms of the Act. 18

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18 Generally in Section 4 of BN 106 – all FSP categories
Experience required for product categories

BN 106 (part 3(5)) requires that an FSP must at all times ensure that at least one or more of the key individuals approved by the Registrar meet the same experience, qualifications and regulatory examination requirements as would apply to an FSP who is a sole proprietor in relation to any one of the categories or sub-categories that the provider is authorised for.

This means that key individuals may also require experience in specific product categories in addition to the general management experience required.

The other instance where a key individual would need to meet the experience requirements of a particular product category is of course where the key individual is also a representative of the FSP.

The specific experience requirements in respect of each category are published in the subordinate legislation and show in a table format, where applicable, the number of months/years required for each subcategory.

Note:
Categories IIA and III do not have tables because of the nature of the business/financial service provided.

Let's look at the table applicable to Category I. (Published in Board Notice 106/2008, amended by BN 151/2008 and substituted by BN 60/2010):
<table>
<thead>
<tr>
<th>Column One Subcategory</th>
<th>Column Two Advice: Minimum experience</th>
<th>Column Three Services: Minimum experience</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1 Long-term Insurance Subcategory A</td>
<td>6 months</td>
<td>2 months</td>
</tr>
<tr>
<td>1.2 Short-term Insurance Personal Lines</td>
<td>1 year</td>
<td>6 months</td>
</tr>
<tr>
<td>1.3 Long-term Insurance Subcategory B1</td>
<td>1 year</td>
<td>6 months</td>
</tr>
<tr>
<td>1.4 Long-term Insurance Subcategory C</td>
<td>1 year</td>
<td>6 months</td>
</tr>
<tr>
<td>1.5 Retail Pension Benefits</td>
<td>1 year</td>
<td>6 months</td>
</tr>
<tr>
<td>1.6 Short-term Insurance Commercial Lines</td>
<td>1 year</td>
<td>6 months</td>
</tr>
<tr>
<td>1.7 Pension Fund Benefits</td>
<td>1 year</td>
<td>6 months</td>
</tr>
<tr>
<td>1.8 Securities and instruments: Shares</td>
<td>2 years</td>
<td>1 year</td>
</tr>
<tr>
<td>1.9 Securities and Instruments: Money Market Instruments</td>
<td>2 years</td>
<td>1 year</td>
</tr>
<tr>
<td>1.10 Securities and Instruments: Debentures and Securitised Debt</td>
<td>2 years</td>
<td>1 year</td>
</tr>
<tr>
<td>1.11 Securities and Instruments: Warrants, Certificates and other Instruments acknowledging Debt</td>
<td>2 years</td>
<td>1 year</td>
</tr>
<tr>
<td>1.12 Securities and Instruments: Bonds</td>
<td>2 years</td>
<td>1 year</td>
</tr>
<tr>
<td>1.13 Securities and Instruments: Derivative Instruments excluding Warrants</td>
<td>2 years</td>
<td>1 year</td>
</tr>
<tr>
<td>1.14 Participatory Interests in one or more Collective Investment Schemes</td>
<td>1 year</td>
<td>1 year</td>
</tr>
<tr>
<td>1.15 Forex Investment Business</td>
<td>2 years</td>
<td>1 year</td>
</tr>
<tr>
<td>1.16 Health Service Benefits</td>
<td>2 years</td>
<td>2 years</td>
</tr>
<tr>
<td>1.17 Long-term Deposits</td>
<td>6 months</td>
<td>3 months</td>
</tr>
<tr>
<td>1.18 Short-term Deposits</td>
<td>6 months</td>
<td>3 months</td>
</tr>
<tr>
<td>1.19 Friendly Society Benefits</td>
<td>6 months</td>
<td>2 months</td>
</tr>
<tr>
<td>1.20 Long-term Insurance Subcategory B2</td>
<td>1 year</td>
<td>2 months</td>
</tr>
</tbody>
</table>
Let's look at the table applicable to Category II.

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

<table>
<thead>
<tr>
<th>Column One: Subcategory</th>
<th>Column Two: Minimum experience</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1 Long-term Insurance</td>
<td></td>
</tr>
<tr>
<td>2.1.1 Subcategory B1</td>
<td>2 years</td>
</tr>
<tr>
<td>2.1.2 Subcategory B2</td>
<td>2 years</td>
</tr>
<tr>
<td>2.2 Long-term Insurance Subcategory C</td>
<td>2 years</td>
</tr>
<tr>
<td>2.3 Retail Pension Benefits</td>
<td>2 years</td>
</tr>
<tr>
<td>2.4 Pension Fund Benefits</td>
<td>2 years</td>
</tr>
<tr>
<td>2.5 Securities and Instruments: Shares</td>
<td>3 years</td>
</tr>
<tr>
<td>2.6 Securities and Instruments: Money Market Instruments</td>
<td>3 years</td>
</tr>
<tr>
<td>2.7 Securities and Instruments: Debentures and Securitised Debt</td>
<td>3 years</td>
</tr>
<tr>
<td>2.8 Securities and Instruments: Warrants, Certificates and other Instruments acknowledging Debt</td>
<td>3 years</td>
</tr>
<tr>
<td>2.9 Securities and Instruments: Bonds</td>
<td>3 years</td>
</tr>
<tr>
<td>2.10 Securities and Instruments: Derivative Instruments excluding Warrants</td>
<td>3 years</td>
</tr>
<tr>
<td>2.11 Participatory Interests in one or more Collective Investment Schemes</td>
<td>2 years</td>
</tr>
<tr>
<td>2.12 Forex Investment Business</td>
<td>3 years</td>
</tr>
<tr>
<td>2.13 Long-term Deposits</td>
<td>1 year</td>
</tr>
<tr>
<td>2.14 Short-term Deposits</td>
<td>1 year</td>
</tr>
<tr>
<td>2.15 Hedge Funds</td>
<td>3 years</td>
</tr>
<tr>
<td>2.16 Long-term Insurance Subcategory B2</td>
<td>2 years</td>
</tr>
</tbody>
</table>

Remember, key individuals may gain ‘product’ experience (if they need it) under supervision, but they are not allowed to gain management experience under supervision; they need to have this experience on date of approval by the Registrar.

As the key individual may be required to have experience relating to a specific product category for which the FSP is authorised (either because he is authorised as a representative, or alternatively because the FSP needs to ensure at all times that at least one key individual meets the same experience
requirements as a sole proprietor), we need to look at the experience requirements set for sole proprietor FSPs:

**Experience requirements for a Category I**

The FSP (who is a sole proprietor) must meet the minimum experience applicable to the subcategories as described in Table A. It must be practical experience gained in the rendering of financial services in respect of Category I 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 and could have been gained while rendering financial services under supervision.
- the experience could have been gained simultaneously in multiple subcategories, provided that proof of such experience can be submitted.
- 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 (advice and intermediary service), the FSP (key individual) 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 subcategory, the FSP (key individual) must obtain 100% of the experience requirements applicable to the additional subcategory (as indicated in the applicable table).

**Experience requirements for a Category II**

The FSP (who is a sole proprietor) must meet the minimum experience applicable to the subcategories as described in Table B. It must be practical experience gained in the rendering of financial services in respect of Category II 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;

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19 PART IV (1)(a) of BN 106
20 Section 4(2)(a) of BN 106
the experience was obtained through active involvement in providing financial services and could have been gained while working under supervision;

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

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

The FSP (who is a sole proprietor) must have three (3) years’ experience which must be practical experience gained in the rendering of financial services in respect of Category IIA, provided that the experience:

- involved the active and ongoing gaining of knowledge, skills and expertise required in terms of the Act; and
- was obtained through active involvement in providing financial services and could have been gained while working under supervision.

Experience requirements for a Category III

A representative of a Category III FSP must have three (3) years’ practical experience gained in the rendering of financial services as referred to in the definition of ‘Administrative FSP’.

The key individual of the Category III FSP must also 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 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; and

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21 Section 4(3)(a) of BN 106
could have been gained simultaneously in multiple subcategories, even while working under supervision, provided that proof of such experience can be submitted.

**Experience requirements for Category IV**

An FSP who is a sole proprietor must have one year’s experience gained in the rendering of financial services as referred to in the definition of “administration of assistance policies”, 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;
- could have been gained simultaneously in multiple subcategories, even while working under supervision, provided that proof of such experience can be submitted;
- could have been gained within or outside the Republic of South Africa;
- could have been gained during intermittent periods, not more than five years prior to the application.

A representative of a Category IV FSP must have the same relevant practical experience as mentioned for FSPs in Category I, 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.

The key individual of the Category IV FSP must also 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 the experience:

- could have been gained within or outside the Republic of South Africa;
- could have been gained during intermittent periods, not more than five years prior to the application;
- may have been gained in the management and/or oversight of services similar to or corresponding to the financial services rendered by the provider.

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22 Section 4(5) of BN 106
2.3.6 Qualifications requirements for key individuals

Remember, one of the competency requirements for fitness and propriety beyond 2010, is that **the key individual must have an appropriate qualification**. The FAIS Registrar publishes a list of ‘**recognised qualifications**’ for each category and subcategory.

When a key individual is responsible for more than one category or subcategory, **he needs to have a qualification that meets the most onerous requirements**. There is no need to have a qualification for each category or subcategory.

2.3.7 Qualifying criteria

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

The qualifying criteria serve **two purposes. They are used to:**

1. **evaluate** the **content of the qualifications**.
2. **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 (skills) in order to complete a specific task successfully (such as giving advice and/or rendering intermediary services or performing the functions of a key individual).

**Table 2.4 Example of qualifying criteria for a key individual**

<table>
<thead>
<tr>
<th>TASK</th>
<th>KNOWLEDGE</th>
<th>SKILLS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Describe the role of the key individual in terms of the FAIS Act.</td>
<td>Describe what the key individual’s management responsibility entails regarding the regulated functions of the FSP.</td>
<td>Perform the necessary management and oversight functions regarding their functioning within the FSP.</td>
</tr>
<tr>
<td></td>
<td>Describe what the honesty and integrity requirements are for a key individual.</td>
<td>Check whether a potential/current key individual meets the requirements regarding honesty and integrity.</td>
</tr>
</tbody>
</table>

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

To differentiate between these qualifications, the regulator introduced a ‘rating’ system.

- If a qualification, in terms of content, meets the qualifying criteria only partially, it is recognised as a Generic (G) qualification.
- If a qualification, in terms of content, matches the qualifying criteria 80%, it is recognised as a Specific (S) qualification.
- If a qualification, in terms of content, matches the qualifying criteria 100%, it is recognised as a Specific (SP) qualification.

The main reason for the differentiation and classification of qualifications is to indicate if a person has to complete a second level regulatory examination, in addition to the qualification.

<table>
<thead>
<tr>
<th>IF YOU …</th>
<th>THEN …</th>
</tr>
</thead>
<tbody>
<tr>
<td>have a generic qualification (G)</td>
<td>you have to complete a product-specific regulatory examination.</td>
</tr>
<tr>
<td>were appointed prior to 31 December 2009 and have obtained a specific qualification (S)</td>
<td>you will be exempted from the product-specific regulatory examination.</td>
</tr>
<tr>
<td>were appointed from 1 January 2010 and have obtained a specific qualification (SP)</td>
<td>you will be exempted from the product-specific regulatory examination.</td>
</tr>
</tbody>
</table>

The Registrar publishes an updated qualifications list, as subordinate legislation, at least quarterly.

It is important that key individuals consult the list, not only to establish their own qualification requirements, but also to match and map the qualification requirements of the representatives for which they are responsible.

Remember, if a particular qualification is not on the list, an application can be made to the FSB for recognition of the particular qualification, if the qualification is appropriate.

Let’s look at an example of a qualifications list.
In the example below we are looking at an extract from Board Notice 135 of 2012, List 1 for Category I FSPs.
| Qualification No | Qualification title                                      | Institution No | Institution                               | Qualification SP | Level | Credits | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | Ki |
|------------------|--------------------------------------------------------|----------------|-------------------------------------------|------------------|-------|---------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|    |    |
| 171              | POSTGRADUATE DIPLOMA: ACCOUNTING                       | 9              | UNIVERSITY OF CAPE TOWN                  | 5191             | 7     | 120     | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  |     |
| 174              | MANAGEMENT DEVELOPMENT PROGRAMME                       | 10             | UNIVERSITY OF STELLENBOSCH              | FS80175          | 5     | 162     | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  |     |
| 174              | MANAGEMENT DEVELOPMENT PROGRAMME                       | 11             | UNIVERSITY OF FREE STATE                 | FS80164          | 0     | 0       | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  |     |
| 174              | MANAGEMENT DEVELOPMENT PROGRAMME                       | 1              | UNISA                                    | FS80163          | 0     | 0       | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  |     |
| 175              | NATIONAL CERTIFICATE: FINANCIAL PLANNING               | 60             | INSETA                                   | 57695            | 6     | 120     | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  |     |
| 175              | NATIONAL CERTIFICATE: FINANCIAL PLANNING               | 4              | MILPARK BUSINESS SCHOOL                  | 62795            | 6     | 120     | G  | G  | G  | G  | SP | SP | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  |     |
| 177              | BACHELOR ADMINISTRATION                                | 15             | UNIVERSITY OF WESTERN CAPE              | 7353             | 6     | 360     | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  |     |
| 179              | DIPLOMA: BUSINESS MANAGEMENT                           | 52             | SGB ALL INSTITUTIONS                    | 58341            | 5     | 240     | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  | G  |     |
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 subcategories 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.

| Table 2.6 |
| A key individual must have already obtained a qualification from the list when applying to the Registrar for approval. |
| A key individual who only manages and oversees | must have obtained qualification relevant to key individuals prior to being appointed and approved as a key individual. |

23 Section 5(1)(c) of BN 106
24 Section 5(1)(c) of BN 106

2.3.9 Regulatory examinations

To meet the fit and proper requirements in terms of competence, all key individuals and representatives have to complete the regulatory examinations (from 2010 onwards), except where there is provision for exemption, which we discuss below.

The Registrar introduced the first-level regulatory examinations because there is a severe lack of understanding and application of the key principles of the FAIS Act in the financial services industry.

The focus of the first-level regulatory examinations is to test the application of factual knowledge of the representatives and key individuals with regard to the:
rendering of financial services applicable to specific categories or subcategories to clients; and
understanding and application of the relevant legal provisions pertaining to providers and clients.

There are two (2) levels of regulatory examinations:

**First level regulatory examination**

- The examination includes the regulatory framework of the FAIS Act, the subordinate legislation, the FIC Act and related content (such as KI roles and responsibilities).
- The examination is compulsory and varies across the Categories and roles.

**Second level regulatory examination**

- The second level regulatory examination ONLY APPLIES TO REPRESENTATIVES.
- The examination is product specific and will test the knowledge and skills required of a representative in relation to specific products.
- Therefore key individuals who are also representatives must comply with second level regulatory examination requirements.

If the key individual is also acting as a representative, he will have to complete the applicable second level regulatory examination(s).

**Regulatory examinations for the key individual**

As discussed above, the qualifying criteria prescribe what must be covered in each of these regulatory examinations. There are different examinations for different categories and subcategories and also for the different role-players (key individuals, representatives, compliance officers, sole proprietor FSPs).

There are also different first-level regulatory examinations for key individuals in the different categories; and the nature of the products in the subcategories differs.

- First level regulatory examinations for applicants and/or key individuals in Category I, II, IIA, III and IV
- First level regulatory examinations for applicants and/or key individuals in Category II and IIA (key individuals operating in Cat II and IIA only, will therefore do this RE)
• First level regulatory examinations for applicants and/or key individuals in Category III (key individuals operating in Cat III only, will therefore do this RE).

• Key individuals fulfilling the roles of representatives must complete the relevant (category) **key individual first-level regulatory examination, AS WELL AS the applicable second-level regulatory examination applicable to representatives** for the applicable category.

• Key individuals who apply for **approval from 2011 onwards** must have completed the first-level regulatory examinations **by the time they apply for approval**.

• Key individuals who are already approved **prior to 2010** must complete the **first-level regulatory examination by 30 June 2012**. If the key individual is employed by a Category II, IIA or III FSP, further first level examinations (RE 3 and 4) are required by **30 September 2012**.

• Key individuals who were approved **during 2010** have until **31 December 2012** to complete their first level regulatory exam and their **second level regulatory exam** (where relevant) **by a date announced by the Registrar**.

Please note that 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.

**Continuous professional development**

Continuous professional development (CPD) is part of the fit and proper requirements that are effective from 1 January 2010 onwards. However, the three-year (3-year) CPD cycle will only start on completion of the highest level (first or second) regulatory examination, but not later than on the completion of a six-year (6-year) period from date of authorisation, appointment or approval.\(^{25}\) The **aim of CPD is to ensure that the relevant role-players in FAIS**, such as key individuals, representatives and compliance officers are **enabled to do the following**:

---

\(^{25}\) Section 7(1)(c) of BN 106
• **Develop and maintain professional competence** in order to provide financial services of a high quality in the public interest that will support the professionalisation 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 the financial services industry.

(Source: **FSB Key Individual Plain Language Guide 2009**)

**Various CPD programmes and hours**

The Registrar will consider various CPD programmes and will maintain a CPD list. Institutions, employers and the like **may apply to the Registrar for recognition of their applicable programmes/activities**.

The amount of time spent by the role-players (such as key individuals, representatives and compliance officers) on updating skills and knowledge through participation in CPD programmes, reflect the CPD hours which are prescribed for each function in the subordinate legislation. These hours must be achieved during a three-year (3-year) cycle.

An FSP (who is a sole proprietor), key individual and/or a representative must meet the continuous professional development requirements, as determined in the table below (ranging between 15 and 60 notional hours of development) over a three-year cycle. The three-year cycle will start upon completion of the highest level or regulatory examination as it applies to either the FSP (who is a sole proprietor), the key individual or the representative, and will not start later than on the completion of a six-year period from date of authorisation, approval or appointment. Where the person is authorised, approved or appointed in multiple categories, the highest requirement in terms of notional hours will apply.

The key individual, as part of his management and oversight duties, will have to ensure that there are processes and systems in place to ensure that the required CPD activities are completed by the relevant parties.
### TABLE D: CONTINUOUS PROFESSIONAL DEVELOPMENT REQUIREMENTS

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>COLUMN TWO NOTIONAL HOURS: 3-YEAR CYCLE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Category 1</strong></td>
<td></td>
</tr>
<tr>
<td>1.1 Long-term Insurance Category A</td>
<td>15</td>
</tr>
<tr>
<td>1.2 Short-term Insurance Personal Lines</td>
<td>30</td>
</tr>
<tr>
<td>1.3 Long-term Insurance Category B</td>
<td>60</td>
</tr>
<tr>
<td>1.4 Long-term Insurance Category C</td>
<td>60</td>
</tr>
<tr>
<td>1.5 Retail Pension Benefits</td>
<td>60</td>
</tr>
<tr>
<td>1.6 Short-term Insurance Commercial Lines</td>
<td>45</td>
</tr>
<tr>
<td>1.7 Pension Fund Benefits</td>
<td>60</td>
</tr>
<tr>
<td>1.8 Securities and Instruments: Shares</td>
<td>60</td>
</tr>
<tr>
<td>1.9 Securities and Instruments: Money Market Instruments</td>
<td>60</td>
</tr>
<tr>
<td>1.10 Securities and Instruments: Debentures and Securitised Debt</td>
<td>60</td>
</tr>
<tr>
<td>1.11 Securities and Instruments: Warrants, Certificates, and other Instruments acknowledging Debt</td>
<td>60</td>
</tr>
<tr>
<td>1.12 Securities and Instruments: Bonds</td>
<td>60</td>
</tr>
<tr>
<td>1.13 Securities and Instruments: Derivative Instruments, excluding Warrants</td>
<td>60</td>
</tr>
<tr>
<td>1.14 Participatory Interests in one or more Collective Investment Schemes</td>
<td>60</td>
</tr>
<tr>
<td>1.15 Forex Investment Business</td>
<td>60</td>
</tr>
<tr>
<td>1.16 Health Service Benefits</td>
<td>45</td>
</tr>
<tr>
<td>1.17 Long-term Deposits</td>
<td>15</td>
</tr>
<tr>
<td>1.18 Short-term Deposits</td>
<td>15</td>
</tr>
<tr>
<td>1.19 Friendly Society Benefits</td>
<td>15</td>
</tr>
<tr>
<td><strong>Category II, IIA and III</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Category IV</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Summary**

Topic 2 dealt with the fit and proper requirements for key individuals. FSPs appoint key individuals and the FSB approves the key individual to operate for a specific FSP, in specific product categories and subcategories.

Below is a summary of the exclusions, with regard to **honesty and integrity** that will disqualify a key individual from approval by the Registrar.
A PERSON MAY NOT BE APPOINTED AS A KEY INDIVIDUAL IF:

- The person was found guilty in any criminal proceedings or liable in any civil proceedings of acting fraudulently, dishonestly, unprofessionally, dishonourably or in breach of a fiduciary duty within five (5) years before application, approval, and appointment.

- The person was found guilty by any statutory professional body or voluntary professional body of dishonesty, negligence, incompetence, mismanagement serious enough to call into question the honesty and integrity of the FSP, key individual, within five (5) years before application, approval, 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 five (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 call into question the honesty and integrity of the FSP, KI, within five (5) years before application, approval or appointment.

- The FSP had its authorisation to carry on business/any licence withdrawn or suspended by any regulatory or supervisory body because of an act of dishonesty, negligence, incompetence or mismanagement, within five (5) years before application, approval or 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, irrespective of whether this has been lifted or not.
We have summarised the competence requirements for a key individual applicable from 2010 below:

**Table 2.7**

<table>
<thead>
<tr>
<th>Experience</th>
<th>Qualification</th>
<th>Regulatory exam</th>
</tr>
</thead>
<tbody>
<tr>
<td>One year (or more depending on licence category) practical experience in the management and oversight of a business</td>
<td>A completed qualification from the list of recognised qualifications appropriate to a key individual</td>
<td>First level regulatory examination(s) for key individuals</td>
</tr>
<tr>
<td>This experience may not be gained under supervision. The individual must have gained the required experience prior to approval.</td>
<td>The qualification cannot be obtained under supervision and must have been obtained prior to approval.</td>
<td>The regulatory examination must have been successfully completed prior to approval (unless approved prior to 2010).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Second level regulatory examination(s) for each of the product subcategories that the key individual is authorised as representative</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The second level regulatory examination(s) may be completed while under supervision.</td>
</tr>
</tbody>
</table>

Product experience, if representative, or if required in order to meet requirement that the FSP must at all times ensure that at least one KI meets the same requirements as set for a sole proprietor:

- Must also have product-specific experience as it relates to the subcategories that the key individual is responsible for.
- The product-specific experience can be gained under supervision.
- The experience required depends on the product subcategory that the key individual is responsible for.
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 statements describe a key individual best?
   a) In a sole proprietorship, it is not allowed for the key individual to also act as a representative.
   b) A person must be a senior manager or director to qualify for appointment as a key individual.
   c) A key individual is a person within a company who takes full responsibility for the management and the supervision of the company in relation to the FAIS Act requirements.
   d) A key individual may be any person with some experience regarding financial services.

2. Once a key individual is approved by the FSB:
   a) it is not necessary to ensure that he continue to meet the honesty and integrity requirements at all times.
   b) it is necessary to ensure that he continue to meet the honesty and integrity requirements at all times.
   c) it means that he can automatically be a representative in all product categories.
   d) the key individual keeps the appointment for life but needs to reapply when he changes employment.

3. Part of the FAIS Act fit and proper requirements are that a key individual must meet the honesty and integrity requirements.

   InsCo is an insurance company, which needs to appoint a new key individual. Jody and Peter are potential candidates and you need to make sure that they meet the honesty and integrity requirements.

   Consider the following scenario, read each statement carefully and then choose the statement that is TRUE.
   a) Peter was found not guilty on a charge of fraud last year; everything else is fine, so he meets the honesty and integrity requirements. Peter meets the honesty and integrity requirements.
b) Jody qualified as a chartered accountant seven (7) years ago. Three (3) months ago her membership of SAICA (the professional body that all chartered accountants must belong to) was terminated because they found her guilty of fraudulent activities. Jody declared that this is not serious because she wants to make a career change and doesn’t want to practise as a CA any longer; therefore termination of her membership is not relevant to her appointment as a key individual. Jody meets the honesty and integrity requirements.

c) Jody meets the requirements because she was not found guilty in any court of any acts of fraud, dishonesty or the like within the last five (5) years, although the FSP she worked for, before applying to InsCo, had its licence withdrawn by the FSB four (4) months ago because of mismanagement. Jody meets the honesty and integrity requirements.

4. When submitting documentation with the application to be approved as a key individual by the FSB, the following is required:
   a) Reference letters from previous employers must be submitted.
   b) A detailed CV must be attached, indicating the experience the applicant has gained within the last two (2) years.
   c) A detailed CV must be attached, indicating the experience the applicant has gained within the last five (5) years.
   d) a) and b)
   e) a) and c)

5. Key individuals must meet the following fit and proper requirements:
   a) All key individuals must have the required qualifications.
   b) All key individuals must complete the relevant regulatory examinations for the categories and subcategories.
   c) All key individuals must have the minimum experience requirements.
   d) All of the above

6 The following applies to changes in the personal circumstances of key individuals:
   a) Any change in the personal circumstances of a key individual after approval by the Registrar, that affects his honesty and integrity, must be declared to the FSP and FSB.
   b) Once a key individual has been approved by the Registrar, it does not matter if his personal circumstances change and affect the honesty and integrity requirements.
c) If a key individual is found guilty of any of the prohibited actions within two (2) years after approval, it must be reported to the FSP and FSB.
d) All of the above

7. The competency requirements for key individuals include the following:
a) Ongoing compliance with Continuous Professional Development (CPD) requirements
b) Minimum experience requirements
c) Completion of relevant regulatory examinations
da) a) and b)
e) All of the above

8. With regard to management and oversight experience of key individuals:
a) it must already exist when the key individual applies for approval.
b) it can be gained while working under supervision of another key individual.
c) it must be obtained within five (5) years of approval.
d) it must be obtained within two (2) years of approval.

9. The qualifying criteria serve two (2) purposes:
a) They are used to determine the fit and proper status of key individuals.
b) They are used to evaluate the content of the qualifications against.
c) They are used to set the standards for the regulatory examinations.
d) They are used to determine the experience of key individuals.
e) a) and b)
f) b) and c)
g) d) and e)

10. Key individuals must meet the following management experience before they will be approved:
a) One (1) year of practical experience in the management and oversight of a business
b) Product-specific experience as it relates to the subcategories that the key individual is responsible for
c) Five years’ practical experience in the management and oversight of a business.
d) b) and c)
Topic

3

The role of the representative in terms of the FAIS Act

This topic covers the following criteria:

**KNOWLEDGE CRITERIA:**

<table>
<thead>
<tr>
<th>Description</th>
<th>Task</th>
</tr>
</thead>
<tbody>
<tr>
<td>Describe the roles and responsibilities of representatives as defined in the FAIS Act.</td>
<td>2</td>
</tr>
<tr>
<td>Explain the requirements for registration of representatives.</td>
<td>2</td>
</tr>
<tr>
<td>Explain the fit and proper requirements applicable to representatives.</td>
<td>2</td>
</tr>
<tr>
<td>Explain the qualification requirements for representatives.</td>
<td>2</td>
</tr>
<tr>
<td>Discuss the purpose of the representatives Register.</td>
<td>2</td>
</tr>
<tr>
<td>Explain what recruitment and appointment procedures have to be implemented when appointing representatives.</td>
<td>3</td>
</tr>
</tbody>
</table>

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

- Verify that the FSP maintains a register of representatives in accordance to the FAIS requirements.
INTRODUCTION

Topic 3 introduces you to the role of representatives and their fit and proper requirements. The FSP is responsible for the actions of representatives and as a key individual, you are responsible to oversee and manage the representatives including their fitness and propriety.

3.1 THE ROLES AND RESPONSIBILITIES OF REPRESENTATIVES AS DEFINED IN THE FAIS ACT

3.1.1 Definition of a representative

The FAIS Act defines a ‘representative’ as follows:

**Definition of representative**

"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;"

The representative **IS:**

- a person who renders a **financial service** (advice or intermediary service)
- to a **client**
- on behalf of a **provider** (licensed FSP)
- by virtue of an **employment contract** with the provider or
- by virtue of a **mandate** from the provider.
The representative is NOT:

- a person who provides clerical, technical, administrative, legal, accounting or related service IF
  - that service requires no judgment; OR
  - does not specifically influence (lead) a client towards a financial product transaction when the client merely enquires about the product or service.

From this definition it is clear that whenever a person gives advice as defined in the Act, he will fall within the definition of “representative”. Should a person, however, only render intermediary services as defined in the Act, his status as “representative” will depend on whether he uses judgement in providing clerical, administrative, legal, accounting or related services.

3.1.2 Roles and responsibilities of representatives

As discussed above, once a person makes a recommendation, proposal or gives guidance in respect of a financial product to a client, that person is a representative.

As the representative of an FSP, the representative either renders an intermediary service and/or gives advice to clients.

As such, the representative does not act for himself, 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'.
Let's look at the responsibilities of representatives:

**Table 3.1**

- A representative **gives advice and/or provides an intermediary service** to the clients of the FSP.
- A representative must **confirm to clients (and 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.
- A representative must be **fit and proper as required** by the FAIS Act. (We discuss this in more detail below.)
- Representatives **appointed after 1 January 2010** may have to work under supervision while getting the required qualifications, experience and/or completing the regulatory examinations.
- A representative must **comply with the FAIS Act and other relevant laws which apply to the conduct of business.** (The compliance with the General Code is discussed in more detail below.)

If a representative also acts as a key individual (discussed above), it follows that the representative will also have those responsibilities (KI responsibilities), in addition to the representative responsibilities.

If a representative was debarred, he can only operate as a representative again if the procedures for reappointment of debarred representatives have been followed.

### 3.2 REGISTRATION OF REPRESENTATIVES

#### 3.2.1 Appointment of representatives

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 Registrar (FSB) authorises an FSP to provide financial services and issues a licence.

Representatives are not ‘licensed’ by the FSB. If they meet all the requirements they are authorised by the FSP to render financial services on its behalf and they are then included on the representative register in a specific capacity.

Representatives are appointed by the FSP, either through contract of employment or through another mandate agreement. Section 7 of the FAIS Act stipulates that person may not act as a representative of an authorised financial service provider unless the person has been appointed as such.

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 FAIS products.

As such, the FSP must maintain a register of all the representatives and key individuals employed or mandated by the FSP. Section 13 of the FAIS Act stipulates that only lawfully appointed, and fit and proper representatives are able to render financial services on behalf of an FSP.

Part of the management and oversight duties of a key individual, within the FSP is to oversee and manage all aspects relating to representatives.

3.3 FIT AND PROPER REQUIREMENTS FOR REPRESENTATIVES

3.3.1 Overview of the fit and proper requirements for representatives

The fit and proper requirements for honesty and integrity are the same for both representatives and key individuals. The main difference between the fit and proper requirements for these two role-players comes in with the required competence and CPD.

Remember, the FSP, appoints or mandates a representative to act for and on behalf of the FSP. This also means that the FSP is responsible, in terms of the FAIS Act, to ensure that the appointed/mandated representatives meet all the FAIS Act requirements, including fit and proper.
It is important to understand what is meant by ‘date of first appointment’, as it indicates the type of qualification and experience needed in the various categories.

The date of first appointment means the date on which a person was first deployed in a FAIS role; it does not mean the date on which they started to work in the current organisation.

For example, a person may have started an insurance or banking career on 1 June 2006. The person was not appointed as a representative at that stage. On 1 September 2008, the person started in a new function, with the same organisation (or another one), as a FAIS representative. This date, 1 September 2008, is the ‘date of first appointment’ for purposes of the FAIS Act.

**What are the fit and proper requirements for representatives?**

The fit and proper requirements for all representatives include the following:

- Honesty and integrity
- Competence (including experience, qualifications, and knowledge tested through examinations determined by the Registrar)
- Continuous professional development

3.3.2 **Honesty and integrity**

The requirements in terms of honesty and integrity are the same for key individuals and representatives.

The FSP, in appointing or mandating a representative, may refer to any information it has or anything that is brought to its attention, relating to the approval of the representative.\(^{26}\)

The **FAIS Registrar has similar powers**, even though the FSB does not approve or appoint a representative, the Registrar may still use information it has, to question the approval of a representative or even to debar a representative.

As with key individuals, the **honesty and integrity requirement is ongoing** and the FSP must ensure that the representatives appointed and mandated to provide financial service remain qualified in terms of these personal attributes.

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\(^{26}\) This is implied in Section 13(2) and 8(2)(b) of the Act
To achieve this, the representative must declare to the FSP on a regular basis if there is any change in his personal situation that affects his status negatively. If the FSP becomes aware of a change in the circumstances of the representative that affects his honesty and integrity adversely, the FSP is obliged to debar the representative. This means that the FSP must prevent the representative from rendering any financial service by withdrawing any authority to act on its behalf. In addition, the FSP must remove the name of the representative from the representative register and must advise the Regulator and also inform the Regulator what action the FSP has taken.

The following table summarises factors that may exclude a person from being a representative. The factors mentioned below are merely some of the indications of the fitness and propriety of a representative and should not be regarded as a ‘closed list’.

<table>
<thead>
<tr>
<th>A person may not be appointed as a representative if:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• The person was found guilty in any criminal proceedings or liable in any civil proceedings of acting fraudulently, dishonestly, unprofessionally, dishonourably or in breach of a fiduciary duty within five (5) years before application, approval and appointment.</td>
</tr>
<tr>
<td>• The person was found guilty by any statutory professional body or voluntary professional body of dishonesty, negligence, incompetence or mismanagement serious enough to call into question the honesty and integrity of the representative, within five (5) years before appointment.</td>
</tr>
<tr>
<td>• 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 five (5) years before application, approval and appointment.</td>
</tr>
<tr>
<td>• The person was found guilty by a regulatory or supervisory body of an act of dishonesty, negligence, incompetence or mismanagement serious enough to call into question the honesty and integrity of the representative, within five (5) years before appointment.</td>
</tr>
<tr>
<td>• The FSP had its authorisation to carry on business/any licence withdrawn or suspended by any regulatory or supervisory body because of an act of dishonesty, negligence, incompetence or mismanagement of the representative, within five (5) years before application, approval and appointment.</td>
</tr>
</tbody>
</table>

27 This is implied in Section 13(2)(b) of the Act
3.3.3 Competency and continuous professional development requirements for representatives

The Act requires that representatives must have certain minimum experience, qualifications and that they should complete prescribed exams, all of these within stipulated deadline dates. To understand which competency requirements/deadline dates apply to each representative, it is necessary to correctly establish the first-ever date of appointment into a FAIS role.

The ‘date of first appointment’ into a FAIS role refers to the date when the individual was appointed, at any financial services provider in the industry, to render financial services in terms of the FAIS Act.

The competency requirements for representatives are made up of the following:

- Minimum **experience** requirements
- Relevant **qualifications** requirements
- Successful completion of relevant **regulatory examinations**

The following general competency requirements are discussed in more detail in the material to follow.
Table 3.2

GENERAL COMPETENCY REQUIREMENTS FOR REPRESENTATIVES

A representative, must at date of appointment by an FSP:

- have the minimum experience requirements;
- have all the required qualifications (unless the representative works under supervision and the minimum qualifications for supervision are met);
- must have completed all regulatory examinations.

PROVIDED THAT

The Registrar may exempt representatives from any of the above while they are working (providing financial service) under supervision.

A health service representative must be accredited as a broker or apprentice broker if services are performed under supervision in terms of the Medical Schemes Act.28

Once all the qualifications, experience and regulatory examination requirements are met, the representative must complete CPD as required.

3.3.4 Experience requirements for representatives

The experience required for a representative must be practical – ‘hands-on’ experience. This means that the representative must have provided advice/rendered intermediary services in respect of the products and services in the subcategories for which he seeks appointment.

Difference between general and specific experience

There are general experience requirements and specific experience requirements for representatives. The main differentiating factor between the general experience requirements applicable to all representatives and the specific requirements lies in the nature of the products in the different categories and the length of experience gained in the preceding five-year (5-year) period.

Representatives may obtain the experience while providing financial services under supervision and may therefore be exempted from compliance with the

28 Section 3(8) of BN 106
requirements when appointed (subject to the criteria and requirements for services under supervision).

The specific experience requirements in respect of each subcategory are published in the subordinate legislation and show the number of months/years, in a table format, required for each subcategory, where applicable. (Categories IIA and III do not have tables because of the nature of the business.)

We discussed the tables Section 2.3 tables A and B. Refer to these tables to see what the experience requirements are for representatives in each category.

Let’s look at the **GENERAL EXPERIENCE requirements that 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 (as described in the relevant table).

- **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;
  - 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 (5) 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 subcategories, provided that proof of such experience can be submitted.

Now we look at the **SPECIFIC EXPERIENCE REQUIREMENTS** for representatives for each category.

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29 Part IV of BN 106
Experience requirements for Category I representatives

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 (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 subcategory, the representative must obtain 100% of the experience requirements applicable to the additional subcategory (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 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 while 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 (3) years’ practical experience in the rendering of financial services in Category IIA.

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30 Section 4(1)(a)(iv) / (b) of BN 106  
31 Section 4(2)(a)(vi) / (b) of BN 106  
32 Section 4(2)(a)(vii) / (b) of BN 106
Experience requirements for Category III representatives

All the general experience requirements must be met in respect of Category III, and in addition:\(^{33}\)

- the representative must have three (3) 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, and in addition:\(^{34}\)

- 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”.

3.3.5 Qualification requirements for representatives

Representatives, like key individuals, must also meet qualification criteria in order to be fit and proper and must, therefore, have appropriate qualifications.

We discussed the concepts of "qualifying criteria" and the "types of qualifications" in Topic 2 when we looked at the qualification criteria for key individuals.

The same principles apply to representatives. We repeat some of it here for your convenience.

The FAIS Registrar publishes a list of ‘recognised qualifications’ for each category and subcategory. When a representative is responsible for more than one category or subcategory he needs to have a qualification that meets the most onerous requirements. There is no need to have a qualification for each category or subcategory.

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\(^{33}\) Section 4(4)(a)/(b) of BN 106
\(^{34}\) Section 4(5)(a) / (b) of BN 106
Qualifying criteria

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.

The qualifying criteria serve two purposes. It is used to:

1. evaluate the content of the qualifications.
2. 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 (such as giving advice and/or rendering intermediary services) successfully.

Example of qualifying criteria for a representative

Table 3.3

<table>
<thead>
<tr>
<th>TASK</th>
<th>KNOWLEDGE</th>
<th>SKILLS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apply knowledge of financial products.</td>
<td>Provide an overview of the different types of financial services and financial products an FSP can deal with.</td>
<td>Explain the relationship between different industry players.</td>
</tr>
</tbody>
</table>

Types of qualifications

As with key individuals, one of the competency requirements for fitness and propriety beyond 2010 is that the representative must have an appropriate qualification.

The FAIS Registrar publishes a list of ‘recognised qualifications’ for each category and subcategory.

It is not possible for all qualifications to meet all the qualification criteria, and you 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 if 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 3.4

<table>
<thead>
<tr>
<th>IF YOU...</th>
<th>THEN YOU</th>
</tr>
</thead>
<tbody>
<tr>
<td>have a qualification and the <strong>content meets the qualifying criteria only partially</strong>, it is recognised as a Generic (G) qualification.</td>
<td>have to <strong>complete a product-specific regulatory examination</strong>.</td>
</tr>
<tr>
<td>have a qualification and the <strong>content meets the qualifying criteria 80%</strong>, it is recognised as a Specific (S) qualification. This recognition only applies to representatives/sole proprietors authorised prior to 2010 and will be replaced by SP from 2010 onwards.</td>
<td>will be <strong>exempted from the product-specific regulatory examination</strong>, provided you were first authorised prior to 2010.</td>
</tr>
<tr>
<td>have a qualification and the <strong>content meets the qualifying criteria 100%</strong>, it is recognised as a Specific (SP) qualification. The recognition applies to pre and post 2010.</td>
<td>will be <strong>exempted from the product-specific regulatory examination</strong>.</td>
</tr>
</tbody>
</table>

**Generic qualifications must meet the criteria below:**

**Part III (6) of Board Notice 105 of 2008 says:**

(i) The qualification must be approved by the Registrar as a generic qualification for meeting the entry level qualification requirement in respect of Category I/II/IIA and/or III.

(ii) The generic qualification must be completed in full.

(iii) The individual must have successfully completed a minimum of three different subjects or modules that appear in the appropriate subject list.\(^{35}\) Provided that at Certificate and Diploma level, the qualification must contain at least three of these subjects with at least one of the subjects in the field of commerce, and where a certificate or diploma has major subjects, at least one must be a major subject (final year level) and;

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\(^{35}\) The list of appropriate subjects is published in Part IV of Board Notice 105 of 2008.
(iv) At degree level, at least one of the subjects must be in the field of commerce and of the three subjects, at least one must be a major subject (final year level).

**Qualifications list**

The Registrar will publish an updated qualifications list, as subordinate legislation, at least four (4) times a year. If a particular qualification is not on the list, application can be made to the FSB (download the form from the FSB website) for recognition.

Refer to Topic 2 for examples of a qualification list.

**Appointment dates**

There are different qualification requirements for different appointment dates. Representatives appointed between 2004 and 2009 are subject to the transitional arrangements published in the subordinate legislation. These rules determine the type of qualification that is required as well as arrangements regarding the requirements in terms of experience, regulatory examinations and CPD.

Representatives appointed from 2010 onwards must get a full qualification from the qualification list and comply with the other fit and proper requirements relating to competence.

**3.3.6 Regulatory examinations for representatives**

The principles applicable to the regulatory examinations for key individuals were discussed in Topic 2. The same basic principles as to the need and reasons apply to representatives, but the application of the examinations differ.

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

Only when a qualification meets all the qualifying criteria will a person be exempted from the applicable second level (product-related) regulatory examination, as discussed above.
Regulatory examinations for representatives

All representatives will be required to complete the first level regulatory examination applicable to representatives.

- All representatives performing financial services in relation to Category I, II, IIA, III and/or IV are required to complete the first level regulatory examination based on the qualifying criteria.
- Representatives appointed to provide financial services in Categories II, IIA, III and subcategories of Categories I and IV must also complete the applicable second-level regulatory examinations except if the Registrar provided an exemption for the applicable second-level regulatory examinations in a specific subcategory.
- 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 subcategory. The regulatory examination must then be completed in terms of the requirements which apply to services under supervision, as discussed in Topic 4.
- The Registrar appointed examination bodies that are responsible for compiling the examination questions and for administering the examinations. In some instances the second level regulatory examinations may be offered in conjunction with the first level regulatory examinations.
- Representatives who were first appointed into a FAIS role between 30 September 2004 and 31 December 2009 must complete the first level regulatory examination by 31 December 2011 (except for product subcategories Long-term Insurance Category A and Friendly Society Benefits, which have different completion dates and requirements; refer to Board Notice 106 of 2008 for further detail in this regard) and all required second level regulatory examinations by a date determined by the Registrar.

3.3.7 Continuous professional development for representatives

Representatives will also have to complete CPD programmes. Refer to the discussions in Topic 2 above, which apply to representatives as well.

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:

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

The amount of time spent by the role-players (such as key individuals, representatives and Compliance Officers) on updating skills and knowledge through participation in CPD programmes, reflects the CPD notional hours which are prescribed for each function in the subordinate legislation. CPD will require that between 15 to 60 notional hours be achieved during a three-year cycle.

CPD notional hours must be completed every three years. The three-year cycle will start on successful completion of the highest level regulatory examination. However, CPD cannot start later than six years from date of first-ever appointment into a FAIS role or date of approval as a KI.

3.4 REPRESENTATIVE REGISTER

3.4.1 Overview of the register of representatives

The FAIS Act\textsuperscript{36} requires that every FSP must have and maintain a register with information about the appointed representatives and where the representatives have key individuals, the information of those key individuals must also appear on the register. (Juristic representatives will have key individuals).

The purpose of the 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 subcategories the representative is appointed for or key individual is approved for.

\textsuperscript{36} Section 13 of the FAIS Act 37 of 2002
• 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.

3.4.2 Information required for the register of representatives

The register requires the following information:

Table 3.5

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

3.4.3 Updating the register of representatives

The FSP must ensure that the register is constantly updated, adding and removing representatives and key individuals. The register must be sent (uploaded) to the Registrar within 15 days of changes either in hard copy format or electronically.

The key individual is responsible, as part of the management and oversight functions, to ensure that the representative register is updated and sent to the Registrar as required.
Changes in the circumstances of representatives or key individuals must be recorded in the register.

**Changes may include:**

<table>
<thead>
<tr>
<th>Change of name</th>
<th>Qualifications</th>
</tr>
</thead>
<tbody>
<tr>
<td>Change of address</td>
<td>Change in categories or subcategories where financial service is provided</td>
</tr>
<tr>
<td>Services under supervision</td>
<td>Debarment</td>
</tr>
<tr>
<td>Regulatory examinations</td>
<td>Resignation</td>
</tr>
<tr>
<td></td>
<td>Dismissal</td>
</tr>
</tbody>
</table>

Key individuals must ensure that there are adequate procedures in place to record the information as well as to identify changes in the information and record same.

### 3.5 RECRUITMENT AND APPOINTMENT OF REPRESENTATIVES

#### 3.5.1 Recruitment and appointment procedures for representatives

As a key individual, you will play an integral role in ensuring that the FSP recruits and appoints representatives who meet the fit and proper requirements.

When an FSP wants to appoint a representative, the necessary checks must be done and documentation obtained to ensure that the prospective representative meets all the requirements.

Part of the management and oversight functions of a key individual is to ensure that there are adequate processes in place to achieve this. In bigger FSPs there may be a Human Resource Division which takes care of recruitment and employment, and in smaller FSPs, the key individual may have to fulfil the functions himself. Once a representative is appointed in a specific category, the representative register must be updated accordingly.

The following processes and procedures may be considered to ensure that adequate recruitment and appointment procedures are in place (to verify fit and proper requirements) when appointing representatives:
Table 3.7

<table>
<thead>
<tr>
<th>Fit and proper requirement</th>
<th>PROCESS</th>
</tr>
</thead>
</table>
| Honesty and integrity      | • Check data bureaux.  
                              • Check details of applicant against available data supplied by regulatory and professional bodies (such as FSB debarred list).  
                              • Check validity of membership of professional bodies or other institutions.  
                              • Check the FSB website to see if the representative has been debarred.  
                              • Check any other source which may be used by the FSP (such as criminal checks). |
| Experience                  | • Obtain and verify details of previous experience. |
| Qualifications              | • Obtain and verify details of appropriate qualifications submitted by applicant. |
| Regulatory examinations     | • Check completion of REs as submitted by applicant. |
| CPD                         | • Obtain and verify details of completed CPD. |

Summary

Topic 3 introduced you to the fit and proper requirements for representatives. There are similarities between the requirements for key individuals and representatives.

One of the critical elements to remember as a key individual is that your duties include ensuring that the representatives under your management meet the fit and proper requirements.
Let's look at a summary of the instances where honesty and integrity may be questioned:

- **The person was found guilty in any criminal proceedings or liable in any civil proceedings of acting fraudulently, dishonestly, unprofessionally, dishonourably or in breach of a fiduciary duty within five (5) years before application, approval and appointment.**

- **The person was found guilty** by any statutory professional body or voluntary professional body of dishonesty, negligence, incompetence or mismanagement serious enough to call into question the honesty and integrity of the representative, within five (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 five (5) years before application, approval and appointment.

- **The person was found guilty** by a regulatory or supervisory body of an act of dishonesty, negligence, incompetence or mismanagement serious enough to call into question the honesty and integrity of the representative, within five (5) years before appointment.

- **The FSP had its authorisation to carry on business/any licence withdrawn or suspended by any regulatory or supervisory body because of an act of dishonesty, negligence, incompetence or mismanagement of the representative, within five (5) years before application, approval and 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, irrespective of whether such disqualification has since been lifted or not.
Let’s look at a summary of the competence requirements for representatives:

Table 3.8

<table>
<thead>
<tr>
<th>Experience</th>
<th>Qualification</th>
<th>Regulatory exam</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Experience relates to the products in the subcategories for which the representative is appointed.</td>
<td>• A completed qualification 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 while working under supervision.</td>
<td>• First level regulatory examination for representatives. The first level regulatory examination must be completed successfully within two (2) years from date of first appointment. Second level regulatory examinations for each of the product subcategories that the representative is responsible for. The second level regulatory examinations must be successfully completed within six (6) years from the date of first appointment (by 30 June after the expiry of 72 months from the date of appointment). The first and second level regulatory examinations may be completed while working under supervision.</td>
</tr>
<tr>
<td>• The amount of required experience (years) depends on the product subcategory for which the representative is appointed.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• The experience may be gained while working under supervision.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Representatives render a financial service that consists of either advice or intermediary service, or a combination of both.

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). Only a lawfully appointed fit and proper representative are able to render financial services.

The representative register must be updated when representatives’ names are removed and the Registrar must be informed about these changes within 15 days.

When appointing representatives, care must be taken to ensure that they meet and maintain all the fit and proper 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. In terms of the definition of a representative, which of the following fall within the definition?
   a) A person who renders a financial service to a client on behalf of an FSP
   b) A person who provides a clerical, technical, administrative, legal, accounting or related service with no judgement
   c) A person who provides a clerical, technical, administrative, legal, accounting or related service WHICH IS just factual information about products
   d) A person who renders a financial service to a client on behalf of an FSP but with no contractual or mandate agreements in place with the FSP

2. Once a person exercises judgement, and provides a recommendation, opinion or guidance in respect of a financial service to a client, that person is:
   a) a key individual.
   b) a representative.
   c) a compliance officer.
   d) All of the above
3. Read the statements carefully and choose the CORRECT statement.
   a) Representatives are appointed by the FSP, either through employment or through a mandate-type agreement and act on behalf of the FSP.
   b) Representatives carry the responsibility for their actions, not FSPs.
   c) The representative register needs to be updated twice a year and when a representative joins or leaves the FSPs employment.
   d) All of the above

4. The following applies to the regulatory examinations for representatives:
   a) The first level regulatory examination is not compulsory for representatives.
   b) Representatives must first obtain the required qualifications before completing the first level regulatory examination.
   c) The second level regulatory examination applies to key individuals only.
   d) The first level regulatory examination is compulsory for representatives.

5. Which of the following applies to the representative register?
   a) Profile changes must be done and the updated register must be sent to the FSB within 15 days of any change.
   b) The representative register contains personal information of representatives as well as their status with regard to meeting the fit and proper requirements.
   c) The representative register only applies to newly-appointed representatives.
   d) only a) and b)

6. A representative, must at date of appointment by an FSP, have:
   a) the minimum experience requirements, unless the representative works under supervision.
   b) the required entry level qualification.
   c) completed all regulatory examinations, unless working under supervision.
   d) All of the above
7. The main differentiating factor between the general experience requirements applicable to all representatives and the specific experience requirements, lies in the:
   a) nature of the products in the different categories.
   b) length of experience gained in the preceding five-year (5-year) period.
   c) length of service of the representative.
   d) only a) and b)

8. The general experience requirements which apply to all representatives in all the product categories:
   a) must be experience gained in unbroken periods, not more than ten (10) years prior to the application.
   b) may be experience gained within or outside the borders of South Africa.
   c) may not be experience gained simultaneously in multiple subcategories.
   d) All the above

9. The qualifying criteria serve two purposes. They are used to:
   a) see if people meet the honesty and integrity requirements.
   b) set the standards for the regulatory examinations.
   c) evaluate the content of the qualifications.
   d) only b) and c)

10. Changes on the representative register may include:
    a) change of address.
    b) services under supervision.
    c) Qualifications.
    d) All the above
Topic

4

Services under supervision

This topic covers the following criteria:

<table>
<thead>
<tr>
<th>KNOWLEDGE CRITERIA:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Explain when representatives can act under supervision. (Task 4)</td>
</tr>
<tr>
<td>Describe the supervision requirements that must be in place when representatives act under supervision. (Task 4)</td>
</tr>
<tr>
<td>Explain the disclosure requirements that representatives are responsible for. (Task 4)</td>
</tr>
</tbody>
</table>

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

- Confirm that there are enough role-players (key individuals/ representatives) that meet the criteria and can act as supervisors.
- Ensure that the supervisors understand their roles and have the capacity to carry this out.
- Verify that there are levels of supervision in place to oversee the representatives.
- Perform the necessary management and oversight functions regarding the representative that are overseen by you.
INTRODUCTION

In Topic 4 you will learn when and under what conditions representatives may perform services under supervision.

The 2010 fit and proper requirements make provision for people who are not quite as competent as they should be on appointment (as far as the required qualifications are concerned), to continue with their activities whilst getting the required experience or qualifications. These services will then be rendered under supervision.

4.1 WHEN CAN REPRESENTATIVES ACT UNDER SUPERVISION?

4.1.1 When can representatives act under supervision?

It is not always possible to appoint representatives who meet the experience and qualification requirements at date of appointment. Therefore, the FAIS Regulator provided an exemption (published in Board Notice 104 of 2008) from the requirement in Section 13 (2) of the Act, which requires representatives to meet all the fit and proper requirements when rendering financial services.

In terms of the exemption, 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 exemption allows representatives to gain experience, get qualifications and complete the regulatory examinations whilst working under supervision in Categories I, II, IIA, III and IV.

The exemption is subject to certain conditions, which are discussed later in this topic.

Representatives can only be offered the opportunity to work under supervision if the authorised FSP can satisfy the Registrar that it has the required operational ability to facilitate services under supervision.  

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37 Published in Board Notice 104 of 2008
38 Section 4(1)(a) of BN 104
The table below depicts the level of supervision that is required in respect of representatives of Categories I and IV:\(^\text{39}\):

<table>
<thead>
<tr>
<th>Column One: Subcategory</th>
<th>Column Two: Direct supervision</th>
<th>Column Three: Ongoing level of supervision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 1.1 Subcategory A</td>
<td>Long-term Insurance</td>
<td>The first 2 months of the period under supervision</td>
</tr>
<tr>
<td>1.2</td>
<td>Short-term Insurance Personal Lines</td>
<td></td>
</tr>
<tr>
<td>1.3</td>
<td>Long-term Insurance Subcategory B1</td>
<td></td>
</tr>
<tr>
<td>1.4</td>
<td>Long-term Insurance Subcategory C</td>
<td></td>
</tr>
<tr>
<td>1.5</td>
<td>Retail Pension Benefits</td>
<td></td>
</tr>
<tr>
<td>1.6</td>
<td>Short-term Insurance Commercial Lines</td>
<td></td>
</tr>
<tr>
<td>1.7</td>
<td>Pension Fund Benefits (excluding Retail Pension Benefits)</td>
<td>The first 4 months of the period under supervision</td>
</tr>
<tr>
<td>1.8</td>
<td>Securities and Instruments: Shares</td>
<td></td>
</tr>
<tr>
<td>1.9</td>
<td>Securities and Instruments: Money Market Instruments</td>
<td></td>
</tr>
<tr>
<td>1.10</td>
<td>Securities and Instruments: Debentures and Securitised Debt</td>
<td></td>
</tr>
<tr>
<td>1.11</td>
<td>Securities and Instruments: Warrants, Certificates and other Instruments acknowledging Debt</td>
<td></td>
</tr>
<tr>
<td>1.12</td>
<td>Securities and Instruments: Bonds</td>
<td></td>
</tr>
<tr>
<td>1.13</td>
<td>Securities and Instruments: Derivative Instruments</td>
<td></td>
</tr>
<tr>
<td>1.14</td>
<td>Participatory Interests in one or more Collective Investment Schemes</td>
<td></td>
</tr>
</tbody>
</table>

\(^{39}\) Board Notice 60 of 2010.
TABLE A
CATEGORIES 1 and IV: LEVEL OF SUPERVISION REQUIRED

<table>
<thead>
<tr>
<th>Column One: Subcategory</th>
<th>Column Two: Direct supervision</th>
<th>Column Three: Ongoing level of supervision</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.15 Forex Investment Business</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.16 Health Service Benefits</td>
<td>The first 2 months of the period under supervision</td>
<td>After 2 months for the rest of the period under supervision</td>
</tr>
<tr>
<td>1.17 Long-term Deposits</td>
<td>The first 6 weeks of the period under supervision</td>
<td>After 6 weeks for the rest of the period under supervision</td>
</tr>
<tr>
<td>1.18 Short-term Deposits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.19 Friendly Society Benefits</td>
<td>The first 2 weeks of the period under supervision</td>
<td>After 2 weeks for the rest of the period under supervision</td>
</tr>
<tr>
<td>1.20 Long-term Insurance Subcategory B2</td>
<td>The first 2 months of the period under supervision</td>
<td>After 2 months for the rest of the period under supervision</td>
</tr>
<tr>
<td>Category IV Assistance Business FSP</td>
<td>The first 6 weeks of the period under supervision</td>
<td>After 6 weeks for the rest of the period under supervision</td>
</tr>
</tbody>
</table>

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

**Exemption from competence requirements for Category I and IV representatives**

**To qualify for the exemption:**

- representatives working in these categories must have the following **entry level qualifications** when appointed by the FSP:
representatives working in Subcategories 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.\textsuperscript{41}

- The representative must complete an ‘appropriate’ full qualification within the prescribed date.

The key individual is responsible for the management and oversight of the representatives who are rendering financial services under the FSP licence for which the key individual is appointed. As such, services under supervision must also be managed by the key individual, who needs to ensure that suitable supervisors are appointed.

Supervisees are expected to obtain experience across the subcategories in respect of which they are appointed as a representative, but should this prove to be problematic during the minimum period under supervision due to business reasons, the FSP (through its key individual) should make arrangements to either place the supervisee in a position where he can gain experience in the specific subcategory, or extend the period under supervision to ensure that the supervisee receives sufficient exposure. The maximum period under supervision may however not exceed six (6) years.

The FSP must indicate on the representative register whether the representative is acting under supervision or not. The register has to distinguish between representatives who are acting under supervision and those who meet all the requirements and are not acting under supervision.

The following parties may act as supervisors:

- An authorised FSP being a natural person; or
- A representative of the provider who meets, to the satisfaction of the provider, the relevant requirements of the exemption; or
- A key individual of the FSP who meets to the satisfaction of the provider, the relevant requirements of the exemption.

\textsuperscript{40} Section 3(b)(i) of BN 104
\textsuperscript{41} Ibid
A supervisor must have completed and meet the relevant requirements regarding experience and qualification and at least the first level regulatory examination before he is allowed to act as a supervisor for a specific category.

Exemption from competence requirements for Category II, IIA and III representatives to qualify for the exemption

Representatives working in these categories must have a degree or similar professional qualification that meets the qualification requirements (discussed in Topic 3) when appointed by the FSP:

Board Notice 104 provides the following important definitions:

**Direct supervision** means the supervision of the financial services rendered by a representative under the guidance, instructions and supervision of a supervisor, and which occurs on a regular (ranging between daily and weekly) basis.

**Ongoing level** of supervision means the way in which supervision is exercised after the initial period of services under direct supervision has been completed, but the supervisee still requires supervision, and such supervision occurs on at least a bi-weekly to monthly basis.

**Investment team meetings** means morning meetings and/or similarly structured meetings that refer to the practice of discretionary financial service providers where the investment team discusses and decides on the investment policy, strategy or the implementation of a specific investment decision.

### 4.2 Supervision Requirements

<table>
<thead>
<tr>
<th>Responsibilities, duties and requirements</th>
<th>Key Individual/FSP</th>
<th>Supervisor</th>
<th>Supervisee (representative)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Satisfy the Registrar that the business has the operational ability to provide services under supervision.</td>
<td>Sign-off on advice given to clients.</td>
<td>Adhere to the requirements of the supervision agreement.</td>
<td></td>
</tr>
<tr>
<td>Satisfy the Registrar that there is a competent person to act as supervisor.</td>
<td>Pre-transaction sign-off by a supervisor where intermediary services are rendered.</td>
<td>Provide the supervisor upon request, where applicable, with any records and or documents regarding the advice given and/or intermediary services rendered.</td>
<td></td>
</tr>
<tr>
<td>Identify the representatives who act under supervision and differentiate between representatives who meet all the requirements and those who are working under</td>
<td>Attend meetings with supervisee and clients where the purpose of the meeting is the rendering of financial services.</td>
<td>Disclose to clients that he is acting under</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Do appropriate post-transaction sampling.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

© Inseta RE Section 1 Key Individuals 14b
<table>
<thead>
<tr>
<th>Key individual/FSP</th>
<th>Supervisor</th>
<th>Supervisee (representative)</th>
</tr>
</thead>
<tbody>
<tr>
<td>supervision in the representative register.</td>
<td>Make follow-up calls to clients after the rendering of financial services by the supervisee to confirm certain aspects of the interaction with the client.</td>
<td>supervision.</td>
</tr>
<tr>
<td>• Place supervisees in correct categories for services under supervision.</td>
<td>• Ensure that the supervisee has a good understanding of and exposure to the categories and/or subcategories in which he is providing financial service.</td>
<td>• Complete the required qualifications within the prescribed time limits.</td>
</tr>
<tr>
<td>• Ensure that the supervisee has a good understanding of and exposure to the categories and/or subcategories in which he is providing financial service.</td>
<td>• Observe selected meetings between the supervisee and customers (frequency may differ).</td>
<td>• Undertake the relevant product training.</td>
</tr>
<tr>
<td>• Observe selected meetings between the supervisee and customers (frequency may differ).</td>
<td>• Assess the advice given by the supervisee for appropriateness in terms of the requirements of the General Code.</td>
<td>• Request guidance from the supervisor if in doubt.</td>
</tr>
<tr>
<td>• Assess the advice given by the supervisee for appropriateness in terms of the requirements of the General Code.</td>
<td>• Ensure that the supervisee has a good understanding of and exposure to the categories and/or subcategories in which he is providing financial service.</td>
<td>• The supervision period must be linked to the category or subcategory the representative is appointed for.</td>
</tr>
<tr>
<td>• 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 interest of the client.</td>
<td>• Observe selected meetings between the supervisee and customers (frequency may differ).</td>
<td>• Maximum period any representative can act under supervision in any category or subcategory is six (6) years from date of appointment.</td>
</tr>
<tr>
<td>• Have documented evidence, together with the supervisee, of the method and frequency of the supervision for the period of services under supervision.</td>
<td>• Assess the advice given by the supervisee for appropriateness in terms of the requirements of the General Code.</td>
<td>• Representatives working in multiple categories or subcategories can get experience in all the categories at the same time. They remain under supervision until they meet requirements for the most onerous category.</td>
</tr>
<tr>
<td>• 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.</td>
<td>• 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 interest of the client.</td>
<td>• Must complete RE1 (for the applicable category or subcategory) within two (2) years of appointment as representative.</td>
</tr>
<tr>
<td></td>
<td>• Have documented evidence, together with the supervisee, of the method and frequency of the supervision for the period of services under supervision.</td>
<td>• Must complete RE 2 and the relevant qualification (for the applicable category or subcategory within six (6) years from the date of appointment (by 30 June after the expiry of 72 months) from the date of appointment).</td>
</tr>
</tbody>
</table>

The financial services provider (through its key individual) must ensure that the normal working relationship between the supervisee and 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.

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

The supervisor must also ensure the following: (remember key individuals are responsible for managing and overseeing, to ensure that supervisors comply with the requirements)

- In Category II and IIA, when a supervisor signs-off on transactions regarding intermediary services, the supervisor 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 duration of the period under supervision.

For Category II & IIA FSPs, the following will also be recognised for supervision purposes:

- Minutes of the ‘investment team’ meetings will be accepted as sign-off.
- Sign-off regarding intermediary services will require that the supervisor checks that the Representative carries out instructions accurately and in line with the relevant mandate and/or consensus decisions.
Types of supervision activities

Supervision may include one or more of the following activities:

- Sign-off by a supervisor on the advice given to client
- Pre-transaction sign-off by a supervisor where intermediary services are rendered
- Attending meetings with supervisees and clients, where the purpose of the meeting is the rendering of financial services
- Appropriate post-transaction sampling
- Follow-up calls to clients after the rendering of financial services by the supervisee to confirm certain aspects of the interaction with the client
- Any other activity that enables the supervisor to scrutinise the activities of the supervisee in respect of rendering financial services.

4.3 EXPLAIN THE DISCLOSURE REQUIREMENTS THAT REPRESENTATIVES ARE RESPONSIBLE FOR

Representatives must disclose the following:

- All the required information which is discussed in Topic 8 relating to products, providers and commission
- The signed ‘authority’ from the FSP for whom the representative is acting, indicating the fit and proper status of the representative in relation to the financial service being rendered
- The fact that the representative is acting under supervision, if applicable
- Any changes to the personal situation of the representative with regard to the honesty and integrity requirements

Summary

Services under supervision are an important addition to the FAIS fit and proper requirements because they allow representatives who are not competent (as far as the required qualifications are concerned) to gain their competence levels while working.
There are a number of conditions attached to the rendering of services under supervision:

1. The FSP must **satisfy the Registrar that it has the required operational ability to facilitate services under supervision.**
2. Representatives may work under supervision in Categories I, II, IIA, III and IV.
3. There are different ‘entry level’ requirements for each of these categories.
4. Representatives must get their qualifications within the prescribed time.
5. Representatives have certain duties while working under supervision. Refer to the summary of the various duties and responsibilities explained previously.
6. Supervisors have certain duties while overseeing representatives. Refer to the summary of the various duties and responsibilities explained previously.

---

**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. In terms of the exemption granted for services under supervision, representatives will not have to comply with the:
   a) honesty and integrity requirements while working under supervision in certain categories.
   b) experience, qualifications and regulatory examinations.
   c) experience, qualifications and regulatory examinations while working under supervision in certain categories.
   d) All of the above.
   e)  
2. Representatives can only work under supervision if the licensed FSP can:
   a) satisfy the Registrar that it has the required financial reserves to facilitate services under supervision.
   b) satisfy the Registrar that it has the required operational ability to facilitate services under supervision.
c) afford to appoint at least five (5) supervisors.
d) All of the above

3. The duties of a supervisor include the following:
a) Sign-off on advice given to clients
b) Do appropriate post-transaction sampling
c) Observe selected meetings between the supervisee and customers
d) All of the above

4. The duties of a supervisee include the following:
a) Disclose to clients that he is acting under supervision.
b) Do appropriate post-transaction sampling.
c) 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 interest of the client.
d) All of the above

5. Supervisors in Categories II, IIA and III must do the following:
a) Review and approve discretionary financial services provided by representatives (Categories II and IIA), in writing before a transaction is concluded or executed.
b) Conduct sample checks on a daily basis to ensure that the supervisee did not deviate from the relevant mandate and/or investment team meetings.
c) Conduct sample checks on a weekly basis to ensure that the supervisee did not deviate from the relevant mandate and/or investment team meetings.
d) Only a) and c).
Implications of Sections 8 and 13 of the FAIS Act

This topic covers the following criteria:

<table>
<thead>
<tr>
<th>KNOWLEDGE CRITERIA:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Describe the implications of Section 8 and Section 13 of the Act, and what this means in terms of training and development of representatives. (Task 5)</td>
</tr>
<tr>
<td>Describe the implications if a representative does not meet all the requirements in terms of fit and proper by the relevant date. (Task 5)</td>
</tr>
</tbody>
</table>

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

- Verify that the processes are documented to ensure that records are kept of training programmers attended, including continued educational training for your key individuals and representatives.
- Implement and maintain a documented process to ensure that all representatives are trained, competent and will provide financial services on behalf of the FSP efficiently, honestly and fairly.
- Check that there are training processes in place to provide representatives with information and skills regarding:
  - Processes
  - Systems
  - Products
  - Services
  - Compliance requirements
  - Regulatory requirements when rendering financial services.
- Check that the necessary HR processes are developed/amended to enable the FSP to check at regular intervals, whether a representative is making the required progress regarding reaching all the Fit and Proper requirements as it applies to his/her appointment conditions.
INTRODUCTION

Before a juristic entity can provide financial services, it has to be authorised as an FSP. No person may 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.

Section 8 of the FAIS Act prescribes what has to be done in order to compile and submit an application, as well as the steps to be taken when an application is considered. By going through this part of the topic, you will get an understanding of the processes involved.

Section 13 of the FAIS Act looks at the duties of the FSP in relation to its representatives. You will gain an understanding of some of the responsibilities of FSPs, which include the maintenance of the representative register.

5.1 INTRODUCTION TO SECTIONS 8 AND 13

5.1.1 Section 8 of the FAIS Act

Section 8 of the FAIS Act stipulates the requirements relating to an application to become an FSP. It prescribes the process and procedures as well as the steps to take if an application is turned down by the Registrar. The process is discussed in more detail in Section 5.2.

Section 8A makes it clear that an authorised financial services provider, key individual, representative of the provider and key individual of the representative must continue to comply with the fit and proper requirements.

5.1.2 Section 13 of the FAIS Act

Section 13 of the FAIS Act stipulates the requirements for representatives to act for and on behalf of FSPs. It also prescribes the format and input required in respect of the representative register.

This will be discussed in more detail in Section 5.3.
The application process

**Figure 5.1**

The respective steps in the process are discussed on the next page.
Table 5.1 Understanding the process step by step

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Submit application</td>
<td>The applicant lodges an application with the Registrar to become an authorised financial services provider. The relevant forms must be completed and submitted. The required supporting documents must be submitted.</td>
</tr>
<tr>
<td>2 Registrar considers application</td>
<td>The Registrar will consider the application and may require additional information. The Registrar may consider additional information regarding the applicant or proposed key individual of the applicant obtained from external sources, including the Ombud or any other regulatory or supervisory authority, provided the applicant was given opportunity to comment on the information.</td>
</tr>
<tr>
<td>3 Registrar grants application</td>
<td>Once the Registrar has all the required information, a decision is made to either grant the application or refuse it. The Registrar must grant the license if the Registrar is satisfied that the applicant and its key individual(s) comply with the requirements of the Act, and if the Registrar approve the key individuals.</td>
</tr>
</tbody>
</table>
| 3A Registrar imposes conditions on licence | The Registrar may impose conditions and/or restrictions on the FSP licence with regard to:  
- all facts and information available to the Registrar pertaining to the applicant and any key individual of the applicant.  
- the category of financial services which the applicant could appropriately render or wishes to render.  
- the category of financial services providers in which the applicant will be classified for the purposes of the FAIS Act.  
- the category or subcategory of financial products in respect of which the applicant could appropriately render or wishes to render financial services.  
If after date of granting the licence:  
- a key individual is replaced by a new key individual or a new key individual is appointed or takes up office  
- there is a change in the personal circumstances of a key individual which affects his fitness and propriety negatively he is prohibited from managing and overseeing the licensee's business in relation to the rendering of financial services, unless the Registrar has approved an application by the key individual and published it by notice on the official web site. |
### Display Licence

An FSP must display certified copies of the licence in a prominent and durable manner in every business premises and must ensure that all business documentation, advertisements and other promotional material refers to the licence and that the licence is at all times immediately or within a reasonable time available to any person who has a legal right to request it or who wants to enter into a business relationship with the FSP.

Section 8(9) now also contains prohibitions to prohibit persons from making use of their licenses where they no longer have such authorisations or from publishing documentation that is misleading or contrary to the public interest of contains an incorrect statement of fact.

<table>
<thead>
<tr>
<th>3B</th>
<th>Registrar Considers Application</th>
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<tbody>
<tr>
<td></td>
<td>The Registrar may withdraw a licence on application by licensee or own initiative. The Registrar may also withdraw or amend conditions and the licensee may respond. The Registrar may, pursuant to an evaluation of a new key individual, impose new conditions (with reasons), after giving the licensee time to respond. Amended licences must be issued in accordance with the actions of the Registrar.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4</th>
<th>Registrar Issues Licence</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If the Registrar approves the application, a licence is issued to the applicant. Certain requirements apply to persons who are accredited under the Medical Schemes Act. These are described in Section 8(7) – it means that they must apply for a FAIS licence as well and the same fit and proper requirements apply. If the FAIS licence is refused, suspended or withdrawn, the accreditation in terms of the Medical Schemes Act will be deemed to have lapsed, suspended or been withdrawn and if the accreditation in terms of the Medical Schemes Act is withdrawn, the FAIS licence will be considered suspended or withdrawn.</td>
</tr>
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<tr>
<th>5</th>
<th>Registrar Refuses Application</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>In the event that the application is refused, the Registrar must advise the applicant and provide reasons for the refusal.</td>
</tr>
</tbody>
</table>

Once issued with a licence, the FSP must at all times be satisfied that every director, member, trustee or partner of the FSP, who is not a key individual in

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42 Medical Schemes Act, 1998 (Act No. 131 of 1998)
43 Section 8(7)(d)(iv) of the Act
the provider's business, complies with the requirements in respect of personal character qualities of honesty and integrity. Where a new director, member, trustee or partner is appointed, the FSP must within 15 days of the appointment inform the Registrar of the appointment and furnish the Registrar with such information on the matter as the Registrar may reasonably require. If the Registrar is satisfied that a director, member, trustee or partner does not comply, the Registrar may suspend or withdraw the licence of the FSP.

5.3 SECTION 13

As mentioned above, Section 13 imposes certain duties and responsibilities on FSPs (and by implication on key individuals).

**Table 5.2 Summary of responsibilities**

<table>
<thead>
<tr>
<th>What must be done?</th>
<th>Who must do it and how?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nobody may provide financial services to clients for or on behalf of unauthorised FSPs who are not exempted from the FAIS Act.</td>
<td>The key individual must ensure that there are processes in place to verify that the other FSP is authorised/licensed in terms of FAIS.</td>
</tr>
</tbody>
</table>
| Nobody may act as a representative for an FSP unless the person can prior to rendering a financial service, confirm to clients (certified by the FSP) that:  
  - he has an employment or mandate agreement with the FSP, to represent the FSP; and  
  - the FSP accepts responsibility for the activities of the representative performed in terms of the agreement. | The key individual must ensure that the representatives are supplied with the necessary documentation to confirm the required information to clients.  
Where representatives provide financial services on mandates from the FSP, the required written mandate must be available to representatives to provide to clients. |
<p>| Nobody may act as a representative for an FSP unless the person meets the fit and proper requirements. | The key individual must ensure that the representatives under his or her management meet the fit and proper requirements. |
| If a representative was debarred, he can only operate as a representative again if the procedures for reappointment of rehabilitated | The key individual must ensure that the necessary checks are done on representatives before appointment, to ensure that they are not debarred. |</p>
<table>
<thead>
<tr>
<th>What must be done?</th>
<th>Who must do it and how?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>debarred representatives</strong> have been followed.</td>
<td>When the FSP wants to reappoint any person who had been debarred, the key individual must ensure that the correct procedure is in place to ensure that the re-appointment request is assessed in terms of the criteria as stipulated in Section 2 of BN 82 of 2003.</td>
</tr>
</tbody>
</table>

The FSP must at all times:
- ensure that representatives and key individuals of representatives **are competent and fit and proper to provide financial services**;
- take **reasonable steps to ensure that representatives comply** with applicable Codes of Conduct and with other applicable laws on conduct of business.

The **key individual must ensure that there are adequate processes and systems in place** to:
- verify fitness and propriety of representatives and key individuals at appointment and throughout employment;
- identify the requirements for each representative and key individual to become fit and proper;
- provide training to enable representatives and key individuals to comply with the FAIS Act and other applicable legislation in the rendering of financial services;
- record the qualifications, experience, completion of regulatory examinations and CPD for each representative and key individual;
- ensure that representatives and key individuals have adequate product and process training;
- ensure that services under supervision are managed in accordance with the requirements;
- ensure that representatives and key individuals understand and comply with the FSPs codes of ethics or related codes as well as the relevant Codes of Conduct, as
<table>
<thead>
<tr>
<th>What must be done?</th>
<th>Who must do it and how?</th>
</tr>
</thead>
<tbody>
<tr>
<td>required in FAIS subordinate legislation.</td>
<td></td>
</tr>
</tbody>
</table>

The FSP 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.

The register must:

- provide a record of all the representatives of an FSP (and where applicable, key individuals of the representatives) which shows personal information and capacity of the representative (employee/mandatory);
- reflect compliance with fit and proper requirements; and
- show the applicable categories and subcategories the representative is appointed for or key individual is approved for.

The Registrar may require information from FSPs to enable the Registrar to maintain and continuously update a central register of all representatives and key individuals.

The key individual must ensure that processes are in place to ensure that the register is constantly updated, adding and removing representatives and key individuals.

- The register must be sent (uploaded) to the Registrar within 15 days of amendments either in hard copy format or electronically.
- Changes in the circumstances of representatives or key individuals must be recorded in the register.
- Key individuals must ensure that there are adequate procedures in place to record the information as well as to identify changes in the information and record same.

(See Topic 3 for examples of what should be included in the register.)
5.4 THE IMPLICATIONS IF A REPRESENTATIVE DOES NOT MEET THE FIT AND PROPER REQUIREMENTS BY THE REQUIRED DATE

The fit and proper requirements applicable to representatives are as follows:

- Honesty and integrity
- Competency:
  - Experience
  - Qualifications
  - Regulatory examinations; and
  - CPD.

There are defined timelines for successful completion of the experience, qualifications, regulatory examinations and CPD requirements. The CPD requirements will only become effective at a later stage.

The timelines are as follows:\(^{44}\)

<table>
<thead>
<tr>
<th>Table 5.3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Date of first appointment: 2004 to 2007</strong></td>
</tr>
<tr>
<td>For FSPs (sole proprietors), key individuals and representatives who were approved or appointed in terms of the FAIS Act between 2004 (when the Act went into effect) and 31 December 2007, the requirements are that they must have met the relevant qualification requirements (either a full qualification or an appropriate skills programme) by 31 December 2009. These requirements can be found in Part 10 of the Determination of Fit and Proper Requirements for Financial Services Providers.</td>
</tr>
</tbody>
</table>

| **Date of first appointment: 2008 to 2009** |
| The competence requirements for representatives, who were appointed for the first time in respect of a specific product category in 2008 or 2009, are also provided for in Part 10 of the Determination of Fit and Proper Requirements for Financial Services Providers. Representatives with a date of first appointment from 1/1/2008 to 31/12/2009, have a choice of either completing an appropriate skills programme by 31/12/2011 or a full qualification as published by the Registrar, by 31/12/2013. |

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\(^{44}\) FAIS Circular 01/2010
Failure by a representative to meet the competency requirements by the relevant date means that the FSP is required to take appropriate action, as explained in this circular.

The FSB issued a Circular in March 2010 that deals specifically with the issues around not meeting the fit and proper requirements and required action by the FSP. The Circular reads as follows:45

"Implications if a representative does not meet the qualification requirements"

Failure by the representative to meet the necessary qualification requirements means that the representative is no longer fit and proper in terms of Section 8(1) of the FAIS Act.

Therefore, in terms of Section 14 of the FAIS Act, 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) is removed from the register referred to in Section 13(3) of the Act.

This also applies to any representative who has contravened or failed to comply with any provision of this Act in a material manner. This means that any such representative is prohibited by the 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). 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.

Debarment in terms of the Act means that the provider stops the representative concerned from rendering further financial services and removes his or her name from the register mentioned above.

Implementation of the debarment provisions in terms of Section 14 is obligatory whenever the representative no longer complies with the requirements referred to in Section 13(2)(a) of the Act.

Section 3 of the FAIS Act states that, subject to the provisions of this Act, any notice given, approval or exemption granted, determination made, requirement or condition determined or imposed, or any other decision taken by the

Registrar under an enabling provision of this Act, is valid only if it is reduced to a durable written or printed form or, where communicated electronically, has been correctly transmitted in a legible form.

**Appropriate action by the FSP**

The Registrar of Financial Services Providers has deemed it proper that if the representative does not meet the required qualifications or appropriate skills programme as specified in Table E, Part 10 of the Determination of Fit and Proper Requirements for Financial Services Providers, the FSPs may do as follows:

- Debar the representative and request the Registrar to list the latter on the list of debarred persons
- Request a profile change to remove the product/s for which the representative is not qualified for
- Remove the said representative from the register of the particular FSP and subsequently request the Registrar to remove that representative from the central register.

In terms of **Condition 1 of the licensing conditions imposed on FSPs**, an FSP is **required to inform the Registrar within 15 days of any change to its licensing conditions**. This means that the FSP is required to inform the Registrar of the failure to meet the qualification requirements by an FSP (sole proprietor) or key individual within 15 days after the due date for meeting the relevant qualification requirements.

It is critical that the **FSP ensures that representatives are enabled and supported** to achieve the (outstanding) requirements by the relevant dates.

It is therefore imperative that there are adequate processes in place to monitor and manage the representatives' progress and achievement of the fit and proper requirements.

Checks should be done at regular intervals and the key individual must ensure that there are systems to record progress and achievement of the requirements.

It should be a condition of the employment contracts of representatives that they are compelled to achieve all the fit and proper requirements in a manner and timeframe determined by the FSP and agreed to by the representatives.
Section 8 of the FAIS Act details the steps required for registration as an FSP. These steps include the following:

- Submission of application plus supporting documents
- Consideration of the application by the Registrar. He may consider additional information obtained from external sources, provided the applicant was given opportunity to comment on the information.
- Registrar approves or declines the application.
- If approved, conditions will be imposed on the FSP.
- If declined, the Registrar must give reasons for the refusal.
- Licences may be suspended or withdrawn at a later stage. If the FSP is also accredited under the Medical Schemes Act, its accreditation will be treated in accordance with the FAIS licensing.

Section 13 provides an overview of the duties of FSPs. These include the following:

- Ensure that representatives are mandated to act on behalf of the FSP.
- Ensure that only fit and proper representatives offer financial services
- Ensure that the correct procedures are followed in respect of debarment and reinstatement of representatives.
- Maintain the representative register.
- Take appropriate action if representatives do not meet the fit and proper 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. When the FAIS Registrar considers the application for an FSP licence, he may:
   a) refer to the documentation submitted by the applicant only.
   b) consider additional information obtained from external sources without giving the applicant an opportunity to comment on the information.
c) consider additional information obtained from external sources provided the applicant was given opportunity to comment on the information.

d) Only a) and c)

2. The Registrar may impose conditions and/or restrictions on the FSP licence having regard to:
   a) all facts and information available to the Registrar pertaining to the applicant and any key individual of the applicant.
   b) the category of financial services which the applicant could appropriately render or wishes to render.
   c) the category or subcategory of financial products in respect of which the applicant could appropriately render or wishes to render financial services.
   d) All the above

3. The Registrar may:
   a) withdraw a licence on application by the licensee or on own initiative.
   b) not withdraw or amend conditions.
   c) pursuant to an evaluation of a new key individual, impose new conditions.
   d) Only a) and c)

4. In order to meet the requirements for displaying a licence, the FSP must:
   a) display copies of the licence in a prominent and durable manner.
   b) display copies of the licence in every head office only.
   c) ensure that all business documentation, advertisements and other promotional material refers to the licence.
   d) ensure that all business documentation, advertisements and other promotional material reflect the FSP licence number.

5. Section 13 imposes certain duties and responsibilities on FSPs:
   a) If a representative was debarred, he can never operate as a representative again.
   b) FSPs must take reasonable steps to ensure that representatives comply with applicable Codes of Conduct and with other applicable laws on conduct of business.
c) Nobody may provide financial services to clients for or on behalf of unauthorised FSPs who are not exempted from the FAIS Act.

d) Only b) and c).

6. The representative register must provide a record of all the representatives:
   a) of an FSP (and where applicable, key individuals of the representatives).
   b) of an FSP, but without personal information.
   c) provide a record of all the representatives and compliance officers of an FSP.

7. If a representative is no longer fit and proper:
   a) he must be placed under supervision and left on the register.
   b) he must be left on the register but with a note that he is not fit and proper.
   c) he must be removed from the representative register.
   d) All the above.
Debarment of representatives

This topic covers the following criteria:

**KNOWLEDGE CRITERIA:**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>Discuss the purpose of debarment. (Task 6)</td>
</tr>
<tr>
<td></td>
<td>Describe when the debarment of a representative should take place (reasons). (Task 6)</td>
</tr>
<tr>
<td></td>
<td>Discuss how the debarment of a representative should take place. (Task 6)</td>
</tr>
<tr>
<td></td>
<td>Explain the actions a representative may take that would give rise to debarment procedures. (Task 6)</td>
</tr>
<tr>
<td></td>
<td>Describe the ramifications for an FSP if it debars a representative unfairly. (Task 6)</td>
</tr>
<tr>
<td></td>
<td>Explain the processes that should be followed before a representative is debarred. (Task 6)</td>
</tr>
<tr>
<td></td>
<td>Explain the process and timeframe to notify the Registrar that a representative has been debarred. (Task 6)</td>
</tr>
</tbody>
</table>

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

- Check that the employment/mandatory agreement with representatives includes the reasons for possible debarment.
- Confirm that all role players in the FSP are informed about:
  - The reasons why debarment would be considered,
  - The process that would be followed in such instances,
  - Any recourse a representative may have.
- Verify that the FSP’s HR and disciplinary code has been amended to provide for debarment procedures.
- Verify that there are internal processes and procedures that are followed when a representative is debarred.
- Verify that there are internal processes and procedures that are followed to inform the Registrar when a representative is debarred.
- Check the compliance officer performs monitoring procedures on all cases where representatives are debarred.
INTRODUCTION

Topic 6 gives you an overview of the relevant aspects of debarment. This includes the purpose, reasons, and steps for debarment.

As a key individual you have certain responsibilities regarding debarment. This topic also looks at the record-keeping requirements with regard to the activities of representatives and key individuals, which also fall under the management of key individuals.

6.1 DEBARMENT OF REPRESENTATIVES

6.1.1 The purpose of debarment

The purpose of debarment is to prevent a representative in certain circumstances from rendering financial services to clients, by removing him from the representative register. (The representative register was discussed in Topic 3.) Debarment has certain ramifications, such as the fact that a person who is debarred may not render financial services in the industry. On the other hand, removing a person from the representative register because he left the employment of a specific FSP is not debarment.

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
- 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
• take steps to notify all affected clients and ensure that uncompleted business of the representative is properly concluded.

6.1.2 Reasons for debarment and debarment procedure

Representatives must be debarred when they:

• do not meet the FAIS fit and proper requirements, as discussed in Topic 5; or
• have contravened the Act in a material manner.

The FSP may use information regarding the conduct of a representative received from the Ombud for Financial Service Providers (FAIS Ombud), the Registrar and any other source.

In certain instances it will be necessary to follow internal disciplinary procedures, for instance where lack of honesty and integrity of the representative is cause for debarment. In such instances, the key individual must ensure that the correct procedures are followed in terms of labour law requirements before debarment is affected.

It is also important to ensure that the relevant role-players in the business are informed about:

• the reasons why debarment would be considered;
• the process that would be followed in such instances; and
• any recourse a representative may have.

It is the responsibility of the key individual to ensure that there are adequate systems and procedures in place to identify grounds for debarment, follow internal disciplinary procedures if required, and to effect debarment in respect of the representative register.

It may be a condition of service that representatives and key individuals of representatives will be debarred in certain circumstances and representatives should be made aware of the conditions.

Once a representative and the key individual of the representative have been removed from the register, the Registrar must be advised in writing of the removal, within 15 days.
The debarred representatives are then listed on a central register that is maintained by the Registrar. The Registrar may publish the debarment and the reason therefor on the official web site or by means of any other appropriate public media.

**Ramifications for the FSP if debarment is unfair**

It follows that representatives *should not be debarred unfairly* as they will have full legal recourse to the FSP (the key individual will be held responsible as s/he is responsible for management and oversight of the business of the FSP which renders financial service).

**Summary of the key individual's responsibilities with regard to debarment**

- Refer to debarment as a consequence of non-compliance in contracts of employment and mandatory agreements.
- Ensure that the FSP Disciplinary Code includes debarment-related offences and failure to comply with material requirements of the FAIS Act and reasons.
- Ensure internal processes and procedures exist and are followed when representatives are debarred.
- Ensure that all role-players get adequate and relevant information on debarment of representatives.
- Ensure that the representative register is amended as soon as the decision is taken to debar.
- Ensure that the FAIS Registrar is notified of the debarment in the prescribed reporting format (notification of debarment/ representative register).
- Ensure that the necessary action is taken to assess the situation of the debarred representative’s clients and take immediate action to preserve clients' interests.
- Check that the compliance officer performs monitoring procedures in respect of the cases where representatives have been debarred.

### 6.1.3 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 (including a representative) from providing financial services for a specific period of time if:
that person does not meet the fit and proper requirement of honesty and integrity; or
that person contravened or did not comply with any provision of the Act.

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.46

The Registrar may publish the debarment and the reason therefor or the lifting thereof, on the official web site or by means of any other appropriate public media.

Before the Registrar can debar a person, the following must happen:

- The Registrar must inform the person of the grounds for the intention of debarment and must give the person a reasonable opportunity to respond.
- The Registrar must also inform the person of any terms or conditions it wants to attach to the debarment. This may include terms such as a prohibition on the Representative to conclude any new business from the date that the debarment becomes effective. Where the representative has unconcluded business (in the pipeline), the Registrar may take whatever measures it deems appropriate in order to protect the interests of clients as well as the FSP for which the Representative operates. The Registrar may also stipulate terms under which it will lift the debarment.

The debarment process followed within the Registrar’s office can be summarised as follows:

- An acknowledgement of receipt of a case is sent within 14 days of receipt to the compliance officer or to the person that reported the matter. This will include a case number as well as contact details of the person dealing with the case.
- The information is analysed and further information may be required.
- A notice of intention to debar is issued to the person in question. This notice will state the grounds for the intended debarment, the reasons therefore, the intended period of debarment as well as the terms

46 Section 14A (3)
attached to the debarment, including prohibition from furnishing any advice or rendering intermediary services to clients.

- The person to be debarred is issued with the notice in order to afford him a reasonable opportunity (14 days) to respond thereto.
- A notice of intention to debar is dispatched by registered post to the address furnished by the FSP, or by fax or electronically.
- Upon receipt of a response, the Registrar considers such response and takes a final decision.
- Where no response is received, the Registrar will only make a decision if satisfied that proof of delivery of service exists. If the letter is returned, the person’s name will be flagged on the FSB’s system.
- The Registrar will then issue a notice of debarment, which will be sent by registered post or by fax or by email.
- The notice will state the grounds for the debarment, the reasons therefore, the period of debarment as well as the terms attached to the debarment, including prohibition from furnishing any advice or rendering intermediary services to clients.
- The person is allowed to appeal the decision.
- The debarred person’s name is placed on the central register of debarred persons and flagged on the FSB’s web site for public viewing.
- The period of debarment is dependent on the severity of the transgression and is usually between two and five years.
- If the debarred person is linked to any other FSP, the Registrar will notify such FSP.

6.1.4 Reinstatement after debarment

A representative can be reinstated depending on the reasons for debarment.47 Debarred representatives may reapply after 12 months if the debarment was not related to the competency requirements. It follows that where the representative was debarred for not meeting any of the competency requirements, such representative may reapply within 12 months should the said competency requirement/s be met sooner.

When reapplying, the applicant will have to comply with the following:

- All unconcluded business of the person as a former representative should 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 should have been properly concluded; or

47 BN 82 of 2003
• All 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, must have been properly and lawfully resolved or concluded, as the case may be, and the applicant must have 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 as contemplated in Section 8(1)(a) and (b), read with Section 13(2), of the Act are complied with.

6.2 KEEPING RECORD OF THE ACTIVITIES OF REPRESENTATIVES AND KEY INDIVIDUALS

Adequate record-keeping to keep track of the activities of representatives and key individuals in respect of meeting the fit and proper requirements must be in place.

There are internal operational and training requirements which representatives and, in fact, everybody who has a role to play in a FAIS function need to meet and be aware of.

Remember, the key individual must ensure that the FSP has the operational capability to function, as part of the management and oversight function of the key individual.

There should be documented processes in place to record:

• the training attended by representatives and key individuals – including training relating to FICA requirements.
• the CPD hours and related activities.
• compliance by representatives and key individuals with the applicable fit and proper requirements, such as qualifications, completion of regulatory examinations, etc.
• the categories and products for which representatives and key individuals are authorised to provide intermediary service or advice.
• all the information relating to services under supervision, such as the details of supervisors and supervisees as well as the duration of the supervision.
• initial and ongoing checks on the fitness and propriety of representatives and key individuals, such as honesty and integrity.
Summary

- Debarment is a drastic action by an FSP and should be done with the necessary caution.
- FSPs may use information gathered from their own records, as well as information obtained from third parties, to debar representatives or key individuals.
- Key individuals must ensure that conditions of employment and similar agreements contain the fact that employees may be debarred for non-compliance with the FAIS fit and proper requirements.
- In order to ensure that all the applicable staff meet the fit and proper requirements, FSPs must keep adequate records of training and related activities. This includes records of initial and ongoing checks on the fitness and propriety of representatives and key individuals, such as honesty and integrity.

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 means to remove:
   a) a representative, under certain circumstances, from rendering financial services to clients.
   b) an FSP, under certain circumstances, from rendering financial services to clients.
   c) a compliance officer, under certain circumstances, from providing compliance service to clients.
   d) All the above

2. When debarring a person, the FSP must:
   a) ensure that unconcluded business of the representative is properly concluded.
   b) take immediate steps to ensure that the debarment does not prejudice the interests of the clients of the representative.
   c) Get the permission from the FAIS Registrar in writing.
   d) a) and b)
3. May an FSP use information obtained from external sources to debar a person?
   a) Yes
   b) No
   c) Sometimes
   d) Only if the debarred person agreed

4. May the FAIS Registrar debar a person?
   a) No
   b) Sometimes
   c) Yes
   d) Only if the debarred person agreed

5. There should be documented processes in place to record:
   a) the CPD hours and related activities of representatives.
   b) compliance by representatives and key individuals with the applicable fit and proper requirements.
   c) the categories and products which representatives and key individuals are authorised to provide intermediary services for.
   d) All of the above
Topic 7

The regulatory environment in which the FSP functions

This topic covers the following criteria:

**KNOWLEDGE CRITERIA:**

| Explain in general which department and/or contact person(s) at the Regulator's office should be contacted with regard to the maintenance of an FSP licence. (Task 7) |
| Explain what format of communication with the Regulator is required. (Task 7) |
| Explain what gives rise to a profile change and when should it be submitted. (Part of Task 13) |
| Explain the reporting obligations imposed by the Act (Part of Task 12) |
| Explain what processes are required to remain updated with regard to other legislation, amendments, updates and requirements published that will affect the FSP. (Task 7) |
| Describe the implication for an FSP if the Registrar publishes a notice regarding an "undesirable business practice". (Task 7) |
| Explain what is meant by "undesirable practices". (Task 7) |
| Explain the reparation measures available to the Registrar if an FSP continues with undesirable business practices. (Task 7) |

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

- Interact with the regulator when and where required.
- Check that there are processes in place to check whether the Registrar has published notices regarding "undesirable business practices".
- Verify that there are processes in place to ensure that the business is informed about "undesirable business practices" and that they cease any such actions.
INTRODUCTION

During the course of the lifespan of an FSP licence, there will be communication with various divisions of the FAIS Regulator. This topic gives you an understanding of the various FAIS departments and their responsibilities.

It also explains the impact and effect of an "undesirable business practice". You need to understand your responsibilities as a key individual with regard to these requirements.

7.1 COMMUNICATION WITH THE FAIS REGULATOR

The FAIS Division of the FSB consists of the following departments:

**Registration Department:** Responsible for new licence applications, profile changes (change to any of the application detail that must be submitted in terms of licensing conditions of FSPs), updating the central representative register, approval of mandates and application forms for discretionary FSPs and Administrative FSPs, lapsing of licences, any queries relating to the status of an FSPs licence and liaison with the FSB’s Finance Department relating to collection of levies.

**Supervision Department:** Responsible for the implementation of a risk-based approach to supervision of financial service providers, the analysis of financial statements and compliance reports, conducting onsite visits to FSPs and compliance officers and liaison with industry relating to changes in subordinate legislation.

**Compliance Department:** Responsible for dealing with complaints against FSPs that cannot be referred to the FAIS Ombud, investigations into the affairs of FSPs and regulatory action (suspension and withdrawal of licences) and updating debarments on the central representative register as well as reinstatement of representatives on the central register.

**Enforcement Department:** Responsible for the interaction between the FAIS Division and the FSB Enforcement Committee. This interaction includes the preparation of matters that the Registrar of Financial Services Providers deems necessary to refer for possible administrative sanction.
In support of the function of ‘enforcement’, the Registrar has the authority to conduct on-site visits to verify the state of compliance.

7.1.2 Profile changes

You know by now that whenever there are changes in the information relating to the FSP, submitted during the application, the FAIS Department must be notified within 15 days of such changes.

Key individuals must ensure that there are adequate processes in place to manage completion and submission of the relevant forms. Each profile change requires a fee to be paid to the FSB.

Table 7.1 Summary of profile change forms:

<table>
<thead>
<tr>
<th>Form number</th>
<th>Description of form</th>
</tr>
</thead>
<tbody>
<tr>
<td>FSP 1</td>
<td>Business Information of Financial Services Provider</td>
</tr>
<tr>
<td>FSP 2</td>
<td>Licence categories</td>
</tr>
<tr>
<td>FSP 3</td>
<td>Directors, officers and applicable shareholders</td>
</tr>
<tr>
<td>FSP 4</td>
<td>Key individuals</td>
</tr>
<tr>
<td>FSP 5</td>
<td>Representatives</td>
</tr>
<tr>
<td>FSP 6</td>
<td>Compliance officer of FSP</td>
</tr>
<tr>
<td>FSP 7</td>
<td>Operational ability</td>
</tr>
<tr>
<td>FSP 8</td>
<td>Financial soundness</td>
</tr>
<tr>
<td>FSP 9</td>
<td>External auditor</td>
</tr>
<tr>
<td>FSP 10A</td>
<td>Shareholders, directors or trustees of the nominee company or independent custodian</td>
</tr>
<tr>
<td>FSP 13</td>
<td>Application for the approval of a compliance practice and/or officer (separate form)</td>
</tr>
<tr>
<td>FSP 14A</td>
<td>Attachments, list of all completed forms and declarations</td>
</tr>
<tr>
<td>FSP 14B</td>
<td>Calculation of application fee if applying directly to the FSB</td>
</tr>
</tbody>
</table>

7.2 AWARENESS OF THE REGULATORY UNIVERSE

In the discussion of the purpose and ambit of the FAIS Act in Topic 1, it was indicated that the FAIS Act is functional and exists together with other legislation in relation to its purpose.

Financial services are impacted by many laws relating to financial products, security-related legislation, insurance-specific legislation as well as consumer
protection legislation, to name a few. Business needs to constantly align its practices and compliance with applicable legislation.

The key individual must ensure that there are procedures and systems in place to identify and flag changes in legislation.

An example of such a process is subscription to a service provider that specialises in updating business with changes, alerts and updates. Industry associations offer valuable platforms for sharing and gaining information and knowledge. It is also important to take note of any changes and information emanating from the FSB and other regulators.

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

**Reporting obligations**

From the above discussion a number of reporting obligations can be identified, such as profile changes and debarment. There are also other reports that are discussed later, including the compliance report and financial statements. The key individual must ensure that there are adequate processes across the business to ensure that the information needed in these reports can be captured and submitted to the FAIS departments and the Registrar.

**7.3 UNDESIRABLE BUSINESS PRACTICES**

**7.3.1 What is an undesirable business practice?**

In terms of Section 34 of the FAIS Act, the Registrar may declare a business practice ‘undesirable’. This may be done for a specific FSP or a category of FSPs.
Before declaring a business practice as undesirable, the Registrar must first consider the following:

| 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 OR unreasonable prejudice to clients OR deceiving any client OR unfairly affecting any client AND if allowed to continue, the practice will defeat one or more objects of the FAIS Act. |

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. Such representations must reach the Registrar within 21 days after date of publication of the intention.
2. The Registrar considers the representations and decides to declare the business practice as ‘undesirable’ or not.
3. The declaration must be published and the FSP or representatives concerned may not continue 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).  
4. If the 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 loss or damage which was caused by or arose out of the carrying on of the business practice concerned.
5. The FSP who must rectify or reinstate must do so within 60 days after the direction was issued.
6. If the FSP does not adhere to the Registrar's directive, a fine not more than R1 000 000 or imprisonment of not more than ten (10) years, or both, may be imposed in terms of Section 36 of the FAIS Act.

The key individual must ensure that the relevant areas and departments of the business are aware of a declared undesirable business practice.

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48 Sections 34(3)&(4) of the Act
49 Section 34(5) of the Act
50 Section 34(6) of the Act
Communication with the FAIS Registrar includes the following:

- Interaction with the **Registration Department**, which is responsible for new licence, profile changes, the representative register, lapsing of licences, queries on licences and collection of levies
- Interaction with the **Supervision Department**, which is responsible for risk management of FSPs, investigations, analysis of compliance reports and financial statements, on-site visits and liaison with the industry on changes in subordinate legislation
- Interaction with the **Complaints Department** responsible for complaints, investigations, regulatory action, updating debarments and reinstatement of debarred representatives
- Interaction with the **Enforcement Department** responsible for the interaction between the FAIS Division and the FSB Enforcement Committee. This interaction includes the preparation of matters that the Registrar of FSPs deems necessary to refer for possible administrative sanction.
- It is imperative that the business and key individuals are up to date with the regulatory universe in which they operate.
- Key individuals must ensure that the relevant people in the business are up to date with changes and developments in the financial services environment.
- The Registrar may declare a business as undesirable. This has severe consequences for the business.
- The Registrar will publish an intention to declare first. The FSP may then respond.
- Thereafter the Registrar may publish the declaration and the FSP must stop with the business on or after the date of publication.
- Failure to stop, rectify or reinstate may result in a fine of R1 million and/or imprisonment for ten years.
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. The FAIS Supervision Department is responsible for:
   a) application forms.
   b) compliance reports.
   c) submissions on changes in legislation.
   d) complaints handling.
   e) b) and c)

2. The FAIS Registration Department is responsible for:
   a) compliance reports.
   b) Debarments.
   c) upload of the representative register.
   d) application forms.
   e) c) and d)

3. When deciding whether a business practice is an undesirable business practice, the Registrar must consider whether the business practice must have, or is likely to have, a direct or indirect effect resulting in:
   a) harming the relations between FSPs.
   b) unreasonable prejudice to clients.
   c) deceiving any client.
   d) All the above.

4. When the Registrar informs the FSP to rectify or reinstate loss or damage, the FSP must do it:
   a) within 60 days after the direction was issued.
   b) within 90 days after the direction was issued.
   c) within 60 days after the business was closed.
   d) immediately.
5. If the FSP does not adhere to the Registrar's directive regarding an undesirable business practice, a fine of not more than:
   a) R10 000 000 or imprisonment of not more than ten (10) years, or both may be imposed.
   b) R1 000 000 or imprisonment of not more than ten (10) years, in the alternative, may be imposed.
   c) R1 000 000 or imprisonment of not more than ten (10) years, or both may be imposed.
   d) None of the above
This topic covers the following criteria:

**KNOWLEDGE CRITERIA:**

<table>
<thead>
<tr>
<th>Description</th>
<th>Task</th>
</tr>
</thead>
<tbody>
<tr>
<td>Explain the obligations and requirements when client funds or premiums are received.</td>
<td>8</td>
</tr>
<tr>
<td>Explain the importance of disclosures.</td>
<td>8</td>
</tr>
<tr>
<td>Discuss the impact and requirements regarding the disclosure rules on the FSP.</td>
<td></td>
</tr>
<tr>
<td>Discuss the effect of disclosure requirements on commission with reference to line of business and specific product/policy.</td>
<td>8</td>
</tr>
<tr>
<td>Describe the disclosure requirements regarding the FSP, product suppliers, product suppliers acting as FSPs and financial services.</td>
<td>8</td>
</tr>
<tr>
<td>Discuss how to ensure transparency and manage conflict of interests.</td>
<td>8</td>
</tr>
<tr>
<td>Describe the concept of ethical conduct in the financial services environment.</td>
<td>8</td>
</tr>
<tr>
<td>Explain the steps that must be taken by an FSP/representatives when providing advice.</td>
<td>8</td>
</tr>
</tbody>
</table>
| Explain the provisions of the General Code relating to: (Task 8)  
  • complaints  
  • risk management  
  • insurance  
  • advertising and termination. CH 7 S9                                                                                                                                                   |      |
| Explain the importance of contingency planning/processes for the FSP. (Part of Task 13)                                                                                                                                 |      |
| Explain all processes and procedures required when handling complaints. (Part of Task 13)                                                                                                                                 |      |
| Explain the requirements regarding advertising and direct marketing in terms of the Act. (Part of Task 13)                                                                                                     |      |

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

- Confirm that there is a separate bank account with a registered bank into which client monies are deposited.
- Apply the requirements of the General Code of Conduct.
- Apply disclosure requirements in terms of financial products.
INTRODUCTION

The FAIS General code prescribes how and what FSPs and other role-players must do in order to comply with the FAIS Act. Topic 8 introduces you to some of these requirements. You will learn how the FSP must account for money and funds received from clients and how to ensure adequate disclosure to clients. The topic also looks at ethical conduct on the financial services industry and equips you to ensure that the required steps are taken when giving advice to clients.

We also discuss transparency, conflict of interest, risk management, contingency planning, insurance and advertising requirements. As a key individual you must ensure that the direct marketing principles and requirements are adhered to as well as the effects of termination of agreements by clients and services by representatives.

8.1 CUSTODY, CLIENT FUNDS AND PREMIUMS

The General Code\textsuperscript{51} 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 regards to the custody of financial products and funds.

The key individual must ensure that there are adequate systems in place to adhere to the prescribed requirements.

\textsuperscript{51} PART VIII, Section 10 of the General Code
The following must be done:

### Table 8.1

<table>
<thead>
<tr>
<th>Separate bank account</th>
<th>The FSP must have a separate bank account at a bank, designated to receive funds and premiums from clients, which is separate from any other funds, except a short term insurer that complies with Section 45 of the Short-term Insurance Act.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The FSP is responsible for bank charges except the charges that relate to deposit or withdrawal, which the client must pay.</td>
</tr>
<tr>
<td></td>
<td>The FSP must pay all interest accumulating in the account to the client or owner of the funds.</td>
</tr>
<tr>
<td>Receipt of funds</td>
<td>When the FSP receives funds from a client, without a bank being involved, it must issue a written confirmation when the money is received.</td>
</tr>
<tr>
<td></td>
<td>The money must be paid into the bank account within one (1) business day of receipt.</td>
</tr>
<tr>
<td>Receipt of documents</td>
<td>When title documents are lodged with an FSP on behalf of a client, the FSP must issue a written confirmation when the documents are received, indicating description of the documents so that they can be identified.</td>
</tr>
<tr>
<td>Safeguarding</td>
<td>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:</td>
</tr>
<tr>
<td></td>
<td>– the funds or financial products are dealt with according to the client's mandate.</td>
</tr>
<tr>
<td></td>
<td>– the funds or financial products are easily distinguished from the FSPs funds or assets.</td>
</tr>
<tr>
<td></td>
<td>– 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,</td>
</tr>
</tbody>
</table>

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52 Section 10(1)(d)(iii) of the General Code  
53 Section 10(1)(d)(iv) of the General Code  
54 Section 10(1)(b) of the General Code  
55 Section 10(1)(d)(i) of the General Code  
56 Section 10(1)(a) of the General Code  
57 Section 10(1)(e)(i) of the General Code  
58 Section 10(1)(e)(ii) of the General Code
8.2 DISCLOSURE RELATING TO PRODUCT SUPPLIERS, FSPs AND COMMISSION

8.2.1 Disclosures of product suppliers and FSP information

The General Code, the Specific Codes for Administrative and Discretionary FSPs, as well as the Code of Conduct for FSPs and their representatives involved in forex investment business, have specific requirements regarding disclosures, which must be made to clients.

**Disclosure is one of the key protection objectives of the FAIS Act.** Clients must be able to **make informed decisions and choices** and must therefore receive all the relevant information.

Disclosure must be made on:

- product information;
- any commission;
- personal interest; or
- benefit the representative may get as a result of the client entering into a transaction or buying a product.

**Disclosure of product supplier information**

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.

- 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

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Section 10(1)(e)(iii) of the General Code

© Inseta RE Section 1 Key Individuals 14b 126
• Names and contact details of the relevant compliance and complaints departments of the product supplier.
• 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 by the provider.
• If applicable, that the FSP holds more than 10% shares or has the equivalent financial interest in the product supplier and that the FSP received more than 30% of total remuneration, including commission in the last 12 months, from the product supplier.
• 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 (other) provider can comply with the disclosure requirements.

A provider must, where it is enabled to provide clients with financial services in respect of a choice of product suppliers, **exercise judgment objectively in the interest of the client** concerned. 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.

**Disclosure of FSP information**

The FSP must give clients the information below as soon as possible, where appropriate. **Oral information must be confirmed in writing within 30 days** (if a transaction was concluded).

<table>
<thead>
<tr>
<th>Information requested</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Full business and trade names, registration number (if any), postal and physical addresses, telephone and, where applicable, cellular phone number, 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</td>
</tr>
<tr>
<td>• Information about the legal relationships between FSP, product supplier and representative (if any), so that it is clear to the client who accepts responsibility for the actions of the FSP or representative or the extent to which the client must accept such responsibility</td>
</tr>
<tr>
<td>• Names and contact details of the relevant compliance departments or, in the case of a representative, such detail concerning the provider to which the representative is contracted</td>
</tr>
</tbody>
</table>
Specific disclosure requirements of the Code of Conduct for authorised FSPs and their representatives involved in forex investment business

- The name and address of the foreign forex services provider or clearing firm used, if applicable
- The name and address of the foreign regulator regulating the foreign forex services provider or clearing firm, and whether such provider or firm is approved or registered by such regulator
- The name and address of the foreign regulator under whose jurisdiction the dealing activity falls
- Whether the foreign forex service provider or clearing firm, which holds investments on behalf of clients, has insurance cover to cover the risk of losses due to fraud, dishonesty and negligence by the foreign forex services provider or clearing firm and the extent of such cover.

8.2.2 Disclosures of commission

General commission disclosures

Clients must be advised of the commission payable in respect of a financial product or service in rand value/amounts where possible:

- 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.

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60 Section 3(n)(i) to (iv) of the Forex Code
61 (Section 7(1)(c)(vi) & 8(1)(d)((ix) of the General Code
• 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.

Specific commission disclosure requirements of the Code of Conduct for authorised FSPs and their representatives involved in forex investment business and for administrative and discretionary FSPs

• 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.\(^{62}\)

• 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.\(^ {63}\)

• 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.\(^ {64}\)

8.3 Disclosure of product information and services

8.3.1 Disclosures of product suppliers and FSP information

Not only must FSPs ensure that there is adequate disclosure on product suppliers, FSPs and commission; but there should also be adequate disclosure

\(^ {62}\) Section 3(a)(j) of the Forex Code

\(^ {63}\) Section 5(1)(h) of the Forex Code

\(^ {64}\) Section 5(1)(h) of the Discretionary Code
with regard to the products being offered to clients. **This is to ensure that clients get adequate information on financial products.**

### Table 8.2

Disclosure must include the following:

- Any rebate arrangements and thereafter on a regular basis (at least 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.

- 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, ‘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.

- Where the specific structure of the product entails other underlying financial products, disclosure must be made in such a manner that the client can determine the net investment amount ultimately invested for the benefit of the client.\(^{65}\)

- 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 and details of guaranteed minimum benefits or other guarantees.\(^ {66}\)

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\(^{65}\) Section 7(1)(c)(iii)(bb)(E) of the General Code

\(^{66}\) Section 7(1)(c)(vii) of the General Code
Is the product readily realisable or the funds accessible and any restrictions on or penalties for early termination of or withdrawal from the product, or other effects, if any, of such termination or withdrawal?\textsuperscript{67}

Material tax considerations and whether cooling off rights are offered and, if so, procedures for the exercise of such rights.\textsuperscript{68}

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.\textsuperscript{69}

Amounts of insurance premium increases of an insurance product, for the first five (5) years and thereafter on a five-year (5-year) basis not more than 20 years.\textsuperscript{70}

Written statement to the client, at least once a year, which identifies the products and states the ongoing monetary obligations of the client, main benefits of the product, value of an investment and how much is accessible to the client and ongoing incentives, consideration, commission, fee or brokerage payable to the provider in respect of the product/s (except if the client knows or should have known that the provider does not render financial services anymore or not to the client anymore).\textsuperscript{71}

Where a financial product is being replaced (the terminated product) by another financial product (the replacement product) held by the client, disclosure must be made of:

- the actual and potential financial implications, costs and consequences of the replacement, including:\textsuperscript{72}
  - comparison of fees and charges between the two products.
  - 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.
  - to what extent the replacement product is readily realisable or the relevant funds accessible, compared to the terminated product.
  - loss of rights and minimum guaranteed benefits which will be lost due to the replacement.

\textsuperscript{67} Section 7(1)(c)(ix)(x) of the General Code
\textsuperscript{68} Section 7(1)(c)(xi) & (xii) of the General Code
\textsuperscript{69} Section 7(1)(c)(xiii) of the General Code
\textsuperscript{70} Section 7(4) of the General Code
\textsuperscript{71} Section 8(1)(d) (i)/(ii)/(vii)/(viii) of the General Code
\textsuperscript{72} Section 8(1)(d) (i)/(ii)/(vii)/(viii) of the General Code
In relation to the services provided by the FSP, the FSP must 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. Whenever it is reasonable and appropriate, the FSP must provide any material contractual information and any material illustrations, projections or forecasts in the possession of the provider to the client.  

8.4 MANAGING TRANSPARENCY AND CONFLICT OF INTEREST

8.4.1 Transparency

Transparency is a direct result of adequate disclosures. Disclosure will ensure transparency in the relationships between clients and FSPs as well as between FSPs, product suppliers and representatives. Transparency starts even before a financial service has been rendered.

The information about products, financial services, FSPs and product suppliers must be transparent in all its formats. Commission and related disclosures add to the transparency of the services and products and it forms the cornerstone for avoiding or disclosing possible conflict of interest. The requirements for commission disclosures especially, apply to the management of conflict of interests.

8.4.2 Conflict of interest

Conflict of interest means a situation where a provider or a representative has an actual or potential interest that may influence the objective exercising of obligations to the client or prevent the rendering of financial services in an unbiased and fair manner.

It will therefore occur when two (2) or more interests conflict with one another and can render the financial service biased or inadequate.

This typically presents itself where product sales are linked to incentives, monetary or other lavish rewards (such as overseas trips). The danger is that the representative or provider may be influenced by these considerations without due care to the client and his needs, to the detriment of the client.

73 Section 7(1)(a) and (b) of the General Code
### Table 8.3

The General Code requires the following in respect of conflict of interest management:

| When a provider (including a representative) renders a financial service the provider must disclose to the client: | • the existence of any personal interest in the relevant service;  
| | • or of any circumstance which gives rise to an actual or potential conflict of interest in relation to the service;  
| | • and the provider must take all reasonable steps to ensure fair treatment of the client.  
| 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. |

The Code of Conduct for FSPs and their representatives involved in forex investment business requires the following in respect of conflict of interest management:

| A forex investment intermediary must: | avoid any conflict between their own interests and the interests of a client and where a conflict of interest does arise, the forex investment intermediary must:  
| | • adequately disclose details of such conflict to the client while maintaining the confidentiality of other clients; or  
| | • decline to act for that client.  

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

Below are a few more definitions in order to understand the impact of Section 3 and 3A.

**Associate** includes the following:

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)

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74 Sections 3(1)(b) & (c) of the General Code
75 Section 3(h)(i)& (ii) of the Forex Code
76 Section 3A of Board Notice 58 of 2010
• 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, which 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 and industry information, third-party systems which you need but excluding travel and 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.

Financial interest
A provider or its representative may only receive or offer the following financial interest:

- Commission or fees authorised under the Long-term Insurance Act, the Short-term Insurance Act or the Medical Schemes Act
- Other fees if those fees:
  - are agreed by client in writing and
  - may be stopped by client.
- Fees, remuneration for service to third party if reasonable to service
- An immaterial financial interest subject to other laws
- Another financial interest for which a fair value was given/payment made by that provider or Representative when received.

**Important notes:**

The above provisions do not apply to FSPs who are in the same legal entity. This section is effective from 19 October 2010.

What can't be done by the provider?

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

- giving preference to the quantity of business secured for the provider to the exclusion of quality of service rendered to clients.
- giving preference to a specific product supplier, where a representative may recommend more than one product.
- giving preference to a specific product of a product supplier, where a representative may recommend more than one product.

**Important note:**

The above provisions are effective from 19 April 2011. The provisions of this section apply to all FSPs and representatives, regardless of whether or not they are part of the same legal entity.

What must be disclosed?

A provider/rep, must, at the first reasonable opportunity disclose, in writing, to a client any conflict of interest in respect of that client, including:

- what measures were taken to avoid/mitigate the conflict.
• any ownership interest or financial interest, except an immaterial financial interest, that the provider or representative may get.
• any relationship/arrangement with any third party that may be a conflict, in sufficient detail so that the client can understand the relationship and the conflict.

A provider/representative must, at the first reasonable opportunity, inform a client of the conflict of interest management policy and how it may be accessed.

Conflict of interest management policy

1. Every FSP must have, maintain and implement the policy, and it must:
   a) Manage conflicts of interest as well as provide:
      • mechanisms to identify conflict.
      • methods to avoid conflict, or reasons for conflict and how it is mitigated.
      • methods to disclose conflict.
      • processes, etc., to ensure compliance with the policy and consequences for non-compliance.
   b) Specify the ‘type and basis’ on which a representative will qualify for a financial interest offered and that it is not prohibited.
   c) Include a list of all associates, names of third parties who have an ownership interest in the FSP (and vice versa) as well as include details regarding the nature and extent of the ownership interest.
   d) The policy must be easy to understand.

2. The policy must be adopted by the Board.
3. Employees, representatives and associates must be aware of policy with training and educational material.
4. Providers must monitor compliance with requirements pertaining to conflicts of interest and review the policy annually.
5. The policy must be published in appropriate media and be easily accessible.

The compliance report must include a report on the policy, including details pertaining to implementation of the policy, monitoring compliance with the policy and accessibility of the policy.
An FSP or representative may not avoid, limit or circumvent or attempt to avoid, limit or circumvent compliance through an associate or an arrangement involving an associate.

- A financial 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 or a representative.
- Transactions of a client must be accurately accounted for.

The FSP 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.

8.5 ETHICAL CONDUCT IN THE FINANCIAL SERVICES INDUSTRY

Ethics is the study of morality, or right and wrong behaviour. Businesses often compile their own Codes of Ethics, which serve both as a ‘compass’ for staff and a declaration to clients, stakeholders and the public.

It is often said that countries have different approaches to business ethics. One of the reasons is found in the cultural differences between countries and even between cultural groups within a country. What is regarded as ethical in South Africa may be unacceptable in China. Therefore, one cannot rely on cultural issues to define business ethics; the focus should rather be on the human moral understanding and application that transcend international and corporate boundaries.

“When ethics is applied to business we consider the implications of economic activity in the interests of all who are part of such activity.”

Ethical conduct in the financial services industry includes the following – but is definitely not limited to:

- Disclosure and transparency by FSPs when applying for licences and conducting business thereafter.

• Disclosure, honesty and integrity of representatives, key individuals and FSPs
• Internal measures in an FSP, – such as conflict of interest policy, code of ethics
• Interaction between product suppliers and FSPs should be transparent and based on mutual understanding and applications of ethical conduct.
• Clearly defined rules, such as the FAIS Codes, which provide guidance and instructions towards ethical business conduct
• Transparency and disclosure between clients and their financial advisers
• Record-keeping, as required in the FAIS Act, also contributes towards ethical conduct.

An example of unethical conduct is insider trading.

Each individual should develop and maintain an ethical compass, which clearly defines between right and wrong behaviour, and collectively our compasses should be able to guard us against unethical conduct.

8.6 STEPS TO BE TAKEN BY A REPRESENTATIVE WHEN GIVING ADVICE TO A CLIENT

We discussed the concept of ‘financial service’ in Topic 1.5 above. To provide a financial service means that a representative gives advice or provides an intermediary service or both. The FSP has a duty to ensure that internal control structures, procedures and controls are in place to ensure training for all key individuals and representatives regarding the giving of advice and/or rendering of intermediary services

The General Code prescribes the steps to be followed and the action to be taken when representatives give advice to clients. The general duty of the provider is to 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.

When making contact arrangements, and in all communications and dealings with a client, a FSP must act honourably, professionally and with due regard to the convenience of the client. At the start of any contact, visit or call initiated by the FSP, the purpose of the call or visit must be explained and the required contact information of the FSP must be provided at the earliest opportunity.
Key individuals must ensure that these requirements are met and that representatives are aware of and following these principles.

The two (2) main requirements of giving advice is establishing suitability and keeping a record of advice.

We look at **Suitability** first.

### 8.6.1 Suitability

A provider other than a direct marketer must, before providing a client with advice, do the following:  

1. Take reasonable steps to get information from the client on his financial situation, experience and objectives and do an analysis for the purpose of the advice, based on information obtained.
2. 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. If there is a replacement of a financial product, full disclosures of that fact must be given. Where a **financial product** is being **replaced** (the **terminated product**) by another financial product (the **replacement product**) held by the client, disclosure must be made of the actual and potential financial implications, costs and consequences of the replacement, including:  

    - comparison of fees and charges between the two products;
    - 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;
    - to what extent the replacement product is readily realisable or the relevant funds accessible, compared to the terminated product; loss of rights and minimum guaranteed benefits which will be lost due to the replacement.

If a 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

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78 Section 8(1)(a) to (c) of the General Code  
79 Section 8(1)(d) (i)/(ii)/(vii)/(viii) of the General Code
provider must inform the client that it was not done and must make sure the client understands: 80

- a full analysis in respect of the client was not done.
- there may be limitations on the appropriateness of the advice provided.
- the client should take particular care to consider on his own whether the advice is appropriate considering the client’s objectives, financial situation and particular needs.

If a 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: 81

- 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 care to consider if any product selected is appropriate to the client’s needs, etc.

8.6.2 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 the following: 82

<table>
<thead>
<tr>
<th>Table 8.4</th>
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<tbody>
<tr>
<td>1. Brief summary of information and material on which advice was based.</td>
</tr>
<tr>
<td>2. The financial products that were considered.</td>
</tr>
<tr>
<td>3. 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.</td>
</tr>
<tr>
<td>4. Where the financial product or products recommended is a replacement product, the following must be recorded: 83</td>
</tr>
<tr>
<td>- Comparison of fees, charges, special terms, conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided, between terminated product and replacement product; and</td>
</tr>
<tr>
<td>- reasons replacement product was considered to be more suitable to client's needs than keeping or modifying terminated product.</td>
</tr>
</tbody>
</table>

80 Section 8(4) of the General Code
81 Section 8(4)(b) of the General Code
82 Sections 9(1)(a) to (c) of the General Code
83 Section 9(1)(d) of the General Code
5. 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.\textsuperscript{84}

6. A provider, except a direct marketer, must give the client a copy of the record of advice in writing.\textsuperscript{85}

### 8.6.3 Recording the advice for forex investment business

A forex investment adviser must, subject to and in addition to the duties to keep records, maintain a record of the advice furnished to a client, including:

<table>
<thead>
<tr>
<th>Table 8.5</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. A brief summary of the information and material on which the advice was based.</td>
</tr>
<tr>
<td>2. The financial product that was considered.</td>
</tr>
<tr>
<td>3. 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.</td>
</tr>
<tr>
<td>4. A forex investment adviser must maintain records recording the investments owned by each client individually.</td>
</tr>
<tr>
<td>5. The agreement between the forex investment adviser and any forex investment intermediary must provide for providing a written report.</td>
</tr>
</tbody>
</table>

### 8.7 COMPLAINTS HANDLING

The General Code prescribes the requirements for complaints handling.

<table>
<thead>
<tr>
<th>Table 8.6</th>
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<tbody>
<tr>
<td><strong>GENERAL OBLIGATIONS OF FSP\textsuperscript{86}</strong></td>
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<tr>
<td><strong>A FSP MUST</strong></td>
</tr>
<tr>
<td>• request clients who want to complain to do so in writing and attach relevant documentation</td>
</tr>
<tr>
<td>• maintain records of complaints for five (5) years</td>
</tr>
<tr>
<td>• handle complaints from clients in a timely and fair manner</td>
</tr>
<tr>
<td>• take steps to investigate and respond promptly to complaints; and</td>
</tr>
<tr>
<td>• where such a complaint is not resolved to the client’s</td>
</tr>
</tbody>
</table>

\textsuperscript{84} ibid
\textsuperscript{85} Section 9(2) of the General Code
\textsuperscript{86} Section 16(2) of the General Code
satisfaction, advise the client of any further steps which
may be available to the client in terms of the Act or any
other law.

### SPECIFIC OBLIGATIONS OF FSP

- **The internal complaint resolution system and procedures of an FSP must include the following:**
  - Written version of the complaints resolution system and procedures plus all updates to it.
  - 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.
  - Include the following in the written complaints policy:
    - Duties of the FSP and rights of clients
    - 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
    - Name, address and contact details of the Ombud for Financial Services Providers (FAIS Ombud). We discuss the role and power of the Ombud for Financial Services Providers (FAIS Ombud) in Topic 16.
  - Acknowledge complaints received in writing, with communication details of contact staff and record complaints internally.
  - After receipt and recording, the complaint must be forwarded to the relevant staff and provision must be made that:
    - the complaint receives proper consideration.
    - appropriate management controls are available to exercise effective control and supervision of the consideration process.
    - the client is informed of results of the consideration within the required time: 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 within six (6) months be pursued with the Ombud whose name, address and other contact particulars must simultaneously be provided to the client.
  - 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.

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87 Section 19(1) and 19(2) of the General Code
8.8 OTHER PROVISIONS OF THE GENERAL CODE

8.8.1 Risk management

The risk management principles are generally the same across the financial services industry. The FAIS General Code addresses the concept of risk management in general terms, not prescribing specific requirements, but ensuring that the FSP takes notice and ensures that the general requirements are addressed in the business-specific risk management models with specific reference to operational risk management.

The FSP/key individual in complying with risk management must have training and processes in place to provide representatives with information and skills regarding:

- Processes – includes policies and procedures for efficient running of the provider. This will include how things have to be done.
- Systems – that include use of technology to further assist in ensuring that risk is minimised and processes are followed.
- Products – that the representative is appointed to give advice or render intermediary service must be trained and will require the representative completing the Level 2 Regulatory examinations.
- Services – include advice and intermediary services.
- Compliance – ensuring the representative at all times conducts himself in a fit and proper manner.

Regulatory requirements – in fulfilling his duties including rendering financial services. This will include Money laundering requirements.

FSPs should ensure that they use resources, procedures and appropriate technological systems, that can be expected to reasonably eliminate the risk of clients, other providers and representatives suffering financial loss through:

- theft
- fraud
- other dishonest acts
- poor administration
- negligence
- professional misconduct; or
- blameworthy oversights.

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88 Sections 11 and 12 of the General Code
89 Section 11 of the General Code
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; and
- all applicable laws are complied with.

8.8.2 Contingency planning

One of the questions in the compliance report (which we discuss later when looking at the role of compliance officers) relates specifically to the existence of business continuity planning in order to ensure that clients will be serviced if the business is terminated for any reason.

The FSB feels strongly about the fact that FSPs must have adequate contingency measures in place, especially where the FSP is a sole proprietor. This topic was discussed in the July 2008 edition of the FSB FAIS newsletter.

The insert reads as follows:

"One of the areas of concern is the business approach and business continuity plans of 'small' FSPs. 29% of FSPs visited operate and are registered as sole proprietors. During the visits to these FSPs, it became evident that the majority of sole proprietors have not made plans for their own retirement/future of the business. This poses a real threat to the relevant FSP and the FSB. The above is also true for other 'small' FSPs such as close corporations, but they will be able to sell the business, or appoint other people on their behalf should they wish to.

It is important to take note of the following in case of the passing away or any other limiting factor of a key individual:

a) Sole proprietors
The sole proprietorship is attached to the key individual. If the key individual passes away or any situation occurs that will lead to the key individual not being able to perform his/her duties in terms of the FAIS Act, the licence will be lapsed and the business will cease to exist. The FSB needs to be informed of the above situation or of the passing away of the key individual. The licence cannot be transferred to another person. The license can therefore not be

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90 Section 12 of the General Code
91 Question 8.9.2
inherited by anyone. The sole proprietor can make an arrangement with
another FSP to take over his client book in the case of the above circumstances
occurring and clients must be notified of this transfer.

b) Close corporations and companies

A close corporation is a legal entity. The business is therefore not attached to
the key individual. In a close corporation with more than one key individual the
passing away or occurrence of any situation that will lead to the key individual
not being able to perform his/her duties in terms of the FAIS Act will not have
any effect on the status of the FSP. Where the close corporation only has one
key individual and one of the above circumstances occurs the business will
continue to exist. For this business to continue as an authorised FSP, a new key
individual will have to be appointed and authorised as such by the FSB. It is
important to take note that the FSP is not allowed to perform any regulated
function until such time as the new key individual is approved by the FSB. The
same principle applies to companies.”

8.8.3 Insurance

One of the risks for consumers in the provision of financial services in relation
to the FAIS-defined financial products is the recourse they have when the FSP
fails in one way or another.

Will they get their investment money back if there was product or institution
failure? The General Code\textsuperscript{93} 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.

New FSPs (authorised after 21 September 2009) must comply with the
insurance requirements within six (6) weeks of authorisation.

The following is a summary of the insurance cover requirements, effective from
21 September 2009.

Table 8.7

\textsuperscript{92} Section 13 of the General Code
\textsuperscript{93} Section 13 of the General Code
<table>
<thead>
<tr>
<th>WHO?</th>
<th>BY WHEN?</th>
<th>WHAT?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Category I or IV provider</strong> who does not receive or hold clients’ financial products or funds on behalf of clients on 21 September 2009 MUST</td>
<td><strong>BY 21 SEPTEMBER 2010</strong></td>
<td>have in force, in respect of the clients:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• suitable <strong>guarantees</strong> of a minimum R1 million <strong>OR</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• suitable <strong>professional indemnity</strong> cover of a minimum of R1 million.</td>
</tr>
<tr>
<td><strong>Category I or IV provider</strong> who does receive or hold clients’ financial products or funds on behalf of clients on 21 September 2009 MUST</td>
<td><strong>BY 21 SEPTEMBER 2010</strong></td>
<td>have in force, in respect of the clients:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• suitable <strong>guarantees</strong> of a minimum R1 million <strong>OR</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• suitable <strong>professional indemnity and fidelity insurance cover of a minimum amount of R1 million.</strong></td>
</tr>
<tr>
<td><strong>Category II provider</strong> who does not receive or hold clients’ financial products or funds on behalf of clients on 21 September 2009 MUST</td>
<td><strong>BY 21 MARCH 2010</strong></td>
<td>have in force, in respect of the clients:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• suitable <strong>guarantees</strong> of a minimum R1 million <strong>OR</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• suitable <strong>professional indemnity</strong> cover of a minimum of R1 million.</td>
</tr>
<tr>
<td><strong>Category II provider</strong> who does receive or hold clients’ financial products or funds on behalf of clients on 21 September 2009 MUST</td>
<td><strong>BY 21 MARCH 2010</strong></td>
<td>have in force, in respect of the clients:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• suitable <strong>guarantees</strong> of a minimum R5 million <strong>OR</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• suitable <strong>professional indemnity and fidelity insurance cover of a minimum amount of R5 million RESPECTIVELY.</strong></td>
</tr>
</tbody>
</table>

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94 Section 3(a) of BN 123 of 2009
95 Section 3(b) of BN 123 of 2009
96 Section 3(d) of BN 123 of 2009
97 Section 3(e) of BN 123 of 2009
<table>
<thead>
<tr>
<th>WHO?</th>
<th>BY WHEN?</th>
<th>WHAT?</th>
</tr>
</thead>
</table>
| **Category IIA provider**<sup>98</sup> who does not receive or hold clients' financial products or funds on behalf of clients on 21 September 2009 MUST | **By 21 March 2010** | have in force, in respect of the clients:  
- suitable **guarantees** of a minimum amount of R5 million  
- suitable **professional indemnity** cover of a minimum of R5 million. |
| **Category IIA provider**<sup>99</sup> who does receive or hold clients' financial products or funds on behalf of clients on 21 September 2009 MUST | **By 21 March 2010** | have in force, in respect of the clients:  
- suitable **guarantees** of a minimum R5 million  
- suitable **professional indemnity and fidelity insurance** cover of a minimum amount of R5 million respectively. |
| **Category III provider**<sup>100</sup> who receives or holds clients' financial products or funds on behalf of clients on 21 September 2009 MUST | **By 21 March 2010** | have in force, in respect of the clients:  
- suitable **guarantees** of a minimum amount of R5 million  
- **professional indemnity and fidelity insurance** cover of a minimum of R5 million, respectively. |

8.8.4 Advertising

The General Code requires that FSPs or representatives must adhere to certain advertising principles<sup>101</sup>. These principles are discussed on the next page.

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<sup>98</sup> Section 3(f) of BN 123 of 2009  
<sup>99</sup> Section 3(g) of BN 123 of 2009  
<sup>100</sup> Section 3(h) of BN 123 of 2009  
<sup>101</sup> Section 14 of the Code
Table 8.8

Advertisements must not contain any statement, promise or forecast which is fraudulent, untrue or misleading.\(^{102}\)

<table>
<thead>
<tr>
<th>Advertisements which include</th>
<th>Performance Data, must include references to their source and date.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advertisements which include</td>
<td>Illustrations, forecasts or hypothetical data must:</td>
</tr>
<tr>
<td></td>
<td>• show support through clearly-stated basic assumptions with a reasonable prospect of being met under current circumstances.</td>
</tr>
<tr>
<td></td>
<td>• make it clear that they are not guaranteed and are provided for illustrative purposes only.</td>
</tr>
<tr>
<td></td>
<td>• show dependence on performance of underlying assets or variable market forces, where applicable.</td>
</tr>
<tr>
<td>Advertisements which include</td>
<td>A warning statement about risks involved in buying or selling a financial product, must clearly be identified as a warning statement;</td>
</tr>
<tr>
<td>Advertisements which include</td>
<td>Information about past performance must also have a warning that past performances are not necessarily indicative of future performances.</td>
</tr>
</tbody>
</table>

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\(^{103}\)

- 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 (7) days of the request.
- If the basic details of the product supplier/provider are mentioned in the telephone conversation, then detailed disclosures of the name, physical location, postal and telephone details of product suppliers, conditions or restrictions and full business details of providers as well as information on providers’ compliance departments, 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

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\(^{102}\) Section 14(1)(a) to (c) of the General Code

\(^{103}\) Section 14(2) of the General Code
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.\textsuperscript{104}

### 8.8.5 Direct marketing

The General Code requires that direct marketers adhere to certain advertising principles.\textsuperscript{105}

**Providing financial service**\textsuperscript{106}

When a \textit{direct marketer provides a financial service} to or on behalf of a client, it must provide the client with the following information at the first reasonable opportunity:

- The business or trade name of the direct marketer (if the direct marketer is a representative, the information must be about the FSP who the marketer acts for).
- Confirmation if the direct marketer is an authorised FSP including the licence categories and applicable restrictions (if the direct marketer is a representative, the information must be about the FSP who the marketer acts for).
- Telephone contact details of direct marketer (unless the contact was initiated by the client) – if the direct marketer is a representative, the information must be about the FSP who the marketer acts for.
- Telephone contact details of the Compliance Department of the direct marketer.
- Whether the direct marketer holds professional and indemnity insurance.

**Providing advice**\textsuperscript{107}

When a \textit{direct marketer provides advice to clients in respect of a product}, it must at the first reasonable opportunity:

\[
\begin{align*}
\textsuperscript{104} & \text{Section 14(3) of the General Code} \\
\textsuperscript{105} & \text{Section 15 of the Code} \\
\textsuperscript{106} & \text{Section 15 (1) (a) to (e) of the General Code} \\
\textsuperscript{107} & \text{Section 15 (2) (a) to (c) of the General Code as amended by BN 43 of 2008}
\end{align*}
\]
make enquiries to establish whether the financial product or products concerned will be appropriate, in relation to the client's risk profile and financial needs, and circumstances;

and provide the following information to the client where appropriate:
   (i) business or trade name of the product supplier
   (ii) legal status and relationship with product supplier
   (iii) the following information on the product:
      a) Name, class or type of financial product concerned
      b) Nature and extent of benefits to be provided
      c) Manner in which the benefits are calculated, specifically the manner in which the value of underlying assets in the investment is determined
      d) Client's monetary obligations and the manner of payment
      e) Existence of cooling rights and the procedures to exercise the rights
      f) Any material investment or other risks associated with the product.

Take reasonable steps to find out if the financial product under discussion is a wholly or partial replacement for an existing product and advise client of the costs and financial implications, before finalisation (refer to the discussion around disclosure on replacement products above).

**Before concluding the transaction**$^{108}$

Before concluding the transaction, and if a contract is concluded, the direct marketer must provide the client with certain information. If the information was provided orally, it must be confirmed within 30 days.

The following information must be provided:

1. Telephone contact details of the compliance department of the product supplier.
2. To what extent the product is readily realisable or the funds concerned are accessible, where appropriate.
3. Details of manner in which benefits will be paid.
4. Any restrictions on or penalties for early termination or withdrawal from the product, or other effects, if any, of the termination or withdrawal.

$^{108}$Section 15 (3) (a) to (l) of the General Code
5. Charges and fees to be levied against the product including the amount and frequency thereof and where the product has an investment component, the net investment amount ultimately invested for the benefit of the client.

6. Commission, consideration, fees, charges or brokerages payable to the direct marketer by the client, or by the product supplier or by any other person.

7. On request, the past investment performance of the product, where applicable, over periods and at intervals which are reasonable with regard to the type of product involved.

8. Consequences of non-compliance with monetary obligations assumed by the client and any anticipated or contractual escalations, increases or additions.

9. In the case of an insurance product in respect of which provision is made for increase of premiums, abbreviated disclosures of such contractual increases.

10. Concise details of any special terms and conditions, exclusions, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided.

11. Any guaranteed minimum benefits or other guarantees where appropriate.

12. That recordings of telephone discussions (where applicable) will be made available to the client on request.

**Record of advice**

A direct marketer must give the client a record of advice (where appropriate).

**Recording of calls**

A direct marketer must record all telephone conversations with clients in the course of direct marketing and must have appropriate procedures and systems in place to store and retrieve such recordings. Records of advice given telephonically need not be put in writing, but a copy of the voice-logged records must be provided to the client or Registrar within 30 days, if they request it.

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109 Section 15 (4) of the General Code as amended by BN 43 of 2008
Provide information

A direct marketer must ensure that information regarding the product supplier, the FSP and the record of advice which had not yet been given to the client before the transaction was concluded, must be provided to the client in writing, within 30 days after the transaction was concluded.

8.9 TERMINATION

The General Code addresses the requirements when clients want to terminate contractual agreements as well as when the FSP or representative terminate their business operations and or services.

8.9.1 Client wants to terminate agreement

Subject to the record-keeping obligations of the General Code and also mindful of 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.

8.9.2 Provider terminates business

A provider (other than a 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.

8.9.3 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 (as required), to notify all affected clients and ensure that any outstanding business is completed promptly or transferred to another provider.

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110 Section 15 (6) (a) to (c) of the General Code
111 Section 20 of the General Code
Waiver of rights

Section 21 of the General Code prohibits a provider from inducing or requesting a client to waive any of the rights or benefits which the General Code provides. This also includes that even if a client waives such a right or benefit, the FSP is not allowed to recognise, accept or act on such a waiver.

Any waiver of rights or benefits (under the General Code) is null and void.

Summary

- The General Code prescribes the manner in which client funds must be held in custody, which includes a separate bank account, written confirmation of money received and documents received, as well as adequate safeguarding of funds and documents.
- Adequate disclosures form the cornerstone of financial service. Disclosure of information relating to the product supplier, the FSP, commission, and product information must be done in the prescribed manner.
- Transparency is a direct result of adequate disclosure.
- Conflict of interest must be managed carefully and there must be disclosure of any real or potential conflict of interest, which may influence the objective exercising of obligations to the client or prevent the rendering of financial services in an unbiased and fair manner.
- Ethical conduct in the financial services industry begins with the individual taking responsibility for his actions and following the requirements for complying with the legislations.
- There are certain steps to be taken when giving advice to clients. These steps include:
  - establishing the suitability of products and services; and
  - recording the advice given.
- Although risk management is undefined in the General Code, it includes elimination of risk to clients through theft, fraud, other dishonest acts, poor administration, negligence, professional misconduct or blameworthy oversights.
- Contingency planning is required in order to ensure that clients will be serviced if the business is terminated for any reason.
- FSPs must meet certain insurance requirements.
- The General Code prescribes the principles applicable to advertising and this includes adequate warnings about products in certain circumstances.
• Direct marketing is prevalent in the SA financial services industry and it is important that there are adequate measures to ensure that clients get all the information they need, to make informed decisions.
• The General Code requires that direct marketers adhere to certain advertising principles. The gist of these principles is to ensure that there is adequate disclosure to clients and prospective clients.
• Disclosure includes the steps to be taken when a direct marketer provides advice for or on behalf of someone else, product information and information about the product supplier.
• The manner in which complaints must be handled is prescribed in the General Code and there is an onus on the FSP to ensure that the internal complaints resolution processes include:
  – a written complaints policy, accessible to clients
  – acknowledgement of complaints
  – appropriate redress and investigation.
• Clients have certain rights to terminate agreements with FSPs.
• FSPs must ensure that there are adequate steps taken when representatives terminate their arrangements with the FSPs, in order to protect clients.

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 requirements are NOT applicable to custody of client funds and premiums?
   a) The bank account must be designated to receive funds and premiums from clients.
   b) The account may contain other funds of the FSP.
   c) The FSP is responsible for bank charges except deposit or withdrawal charges.
   d) The FSP must have a separate bank account at a bank.

2. Which of the following disclosure requirements must be adhered to?
   a) A representative need not disclose that he is rendering services under supervision.
b) Representatives need not disclose detail about the legal relationships between the FSP, product supplier and representative.

c) There must be adequate disclosures on the product supplier. The disclosure must include the name, physical location, postal and telephone contact details of the product supplier.

d) All the above

3. Which of the following requirements are NOT applicable when an FSP receives money from a client without a bank being involved?
   a) The FSP must pay the money into the bank account within a month of receipt.
   b) The FSP must pay the money into the bank account within one (1) business day of receipt.
   c) The FSP must issue a written confirmation when the money is received.
   d) When title documents are lodged with an FSP on behalf of a client, the FSP must issue a written confirmation when the documents are received.

4. What needs to be disclosed to clients in terms of commissions received by representatives?
   a) Any fees or commission that the provider may earn as a result of the rendering of the financial service must be disclosed.
   b) Where the maximum commission amount or rate is prescribed by law, it must state that the amount is not determinable.
   c) The forex intermediary must disclose to a client only cash-related incentives offered or other indirect consideration payable to the forex intermediary because of the intermediating on the client's investments.
   d) Remuneration, also known as valuable consideration, which is payable to a provider must be disclosed but not the identity of the product supplier who is paying it.

5. Where a financial product is being replaced by another financial product held by the client:
   a) only disclosure of the potential financial implications must be made.
   b) only disclosure of the actual financial implications must be made.
c) only disclosure of the costs and consequences of the replacement must be made.
d) disclosures must be made of the actual and potential financial implications.

6. The General Code states that:
   a) where a provider advertises a financial service by means of a public radio service, the advertisement need not include a reference to the fact that the provider is an authorised or licensed FSP.
   b) the FSP should ensure that they use resources, procedures and appropriate technological systems that can be expected to reasonably eliminate the risk of clients, other providers and representatives suffering financial loss through theft, fraud, other dishonest acts, poor administration, negligence, professional misconduct or blameworthy oversights.
   c) the FAIS Registrar may not prescribe the guarantee or professional indemnity amounts that providers need to have in place.
   d) All the above.

7. When a provider (including a representative) renders a financial service, the provider must disclose to the client:
   a) the existence of any circumstance which gives rise to an actual or potential conflict of interest in relation to the service.
   b) his experience and qualifications.
   c) the existence of any personal interest in the relevant service.
   d) a) and c)

8. The two main requirements of giving advice are:
   a) ensuring the client trusts you.
   b) establishing suitability.
   c) keeping a record of advice.
   d) b) and c)

9. The advertising principles in the General Code include the following:
   a) Performance Data must include references to their source and date.
   b) Illustrations, forecasts or hypothetical data must show dependence on performance of underlying assets or variable market forces, where applicable.
c) A warning statement about risks involved in buying or selling a financial product, must clearly be identified as a warning statement.

d) All of the above

10. When a client wants to terminate an agreement, a provider:

a) may, after referring it to the compliance officer, allow a request from a client for voluntary termination of an agreement.

b) must request reasons from a client for voluntary termination of an agreement.

c) must, with immediate effect, allow a request from a client for voluntary termination of an agreement.

d) is under no obligation to consider such a request.
Oversee and manage the compliance function

This topic covers the following criteria:

**KNOWLEDGE CRITERIA:**

| Explain the requirements for approval of a Compliance Officer by the Registrar. (Task 9) |
| Describe the role and function of a Compliance Officer. (Task 9) |
| Explain why it is important for the Compliance officer to be/act independent from the management of the FSP. (Task 9) |
| Explain what internal audit and control functions are required to enable the CO to function in a manner ensuring that no actual or potential conflicts of interests arise as regards the duties and functions of other employees. (Task 9) |
| Demonstrate understanding of the content of the compliance report in order to be able to sign it off. (Task 9) |
| Explain what the compliance function requirements are within the FSP. (Task 9) |

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

- Check that the CO is approved by the Registrar.
- Replace the intended CO if he/she does not have the required approval of the Registrar.
- Confirm the compliance practice has sufficient resources to provide a proper compliance service where an outsourced compliance practice is used.
- Confirm that the CO / compliance practice can function objectively and sufficiently independent of the FSP.
- Verify that any internal compliance function is staffed and equipped to provide a proper compliance service.
- Manage potential conflict of interest where management is also responsible for the compliance function, i.e. a sole proprietor.
- Implement internal audit and control functions to enable the CO to function in a manner ensuring that no actual or potential conflicts of interests arise as regards the duties and functions of other employees.
- Verify that the FSP has procedures in place to monitor the compliance of supervisors with the requirements as set out in the relevant Determination.
- Check that the compliance officer performs monitoring procedures on rendering of services under supervision.
• Establish the compliance function with the FSP.
• Confirm that where the compliance officer found any instances of non-compliance that this is addressed and rectified.
• Confirm that the CO performs monitoring procedures on rendering of financial services within the limitations on categories and subcategories for which the license is issued.

INTRODUCTION

This topic introduces you to the compliance function. As a key individual you need to ensure that the compliance function is adequately resourced and equipped to meet the legislative requirements.

You will get an understanding of the approval process of compliance officers as well as the role and functions of compliance officers. You will have to sign off the compliance report, so it is important to understand the basic requirements of the function and obligations.

9.1 APPROVAL OF COMPLIANCE OFFICERS

One of the role-players in the FAIS Act is the compliance officer. An FSP must appoint a compliance officer to fulfil the functions required by the FAIS Act.112

Key individuals must oversee and manage the compliance functions although the compliance officer must be objective and must act independently from the management of an FSP. (We discuss this in more detail further on in this topic.)

The FAIS Act113 requires the following in respect of compliance officers and compliance arrangements:

1. An FSP with more than one key individual or one or more representatives must appoint a compliance officer to oversee and monitor compliance with the Act (subject to any FAIS Regulations);114
2. Compliance officers must be approved by the Registrar;115

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112 Section 17 of the FAIS Act
113 Ibid
114 Section 17(1)(a) of the Act
115 Chapter IV of the Financial Advisory and Intermediary Services Regulations, 2003, Section 17(2)(a) of the Act
3. The FSP must establish and maintain procedures for compliance with the Act; and

4. Compliance officers or FSPs must take responsibility for liaison and submit compliance reports to the Registrar.

As with key individuals, the FSP appoints compliance officers and the Registrar approves the appointments. One of the functions of the key individual is to ensure that a compliance officer is approved by the Registrar in terms of the specific FSP licence/s.

The compliance officer must comply with fit and proper requirements for appointment and continue to comply with the relevant requirements after approval.

A compliance officer must be approved by the Registrar in accordance with the criteria and guidelines determined by the Registrar. The Registrar may however 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.

9.1.1 Requirements for the approval of compliance officers:

Board Notice 127: New approval process

One of the functions of the key individual is to ensure that a compliance officer is approved by the Registrar in terms of the specific FSP licence/s.

On 9 September 2010, the FSB published various amendments to regulations pertaining to compliance officers.

Some of the material changes relate to the approval of compliance officers.

Compliance officers are now approved in two phases.

Board Notice 127 of 2010 sets out the qualifications, experience and criteria for approval of compliance officers.

- ‘Phase I approval’ pertains to approval by the Registrar of an applicant’s qualifications, experience and personal character qualities of honesty and integrity.

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116 Section 17(3) of the Act
117 Section 17(4) of the Act
‘Phase II approval’ pertains to the approval granted by the Registrar to an applicant to render compliance services to a specific FSP.

**Important definitions in Board Notice 127:**

‘applicant’ means the natural person applying to the Registrar for approval as a compliance officer, including the natural person appointed by the compliance practice to render compliance services in respect of a particular provider.

‘compliance officer’ means –

(i) a natural person appointed to render compliance services, including a natural person appointed by a compliance practice; or

(ii) a compliance practice appointed to render compliance services, and approved, on application, by the Registrar for such purpose.

‘compliance practice’ means a company, close corporation or partnership that appoints one or more natural persons to render compliance services in respect of a particular provider and such natural persons are approved by the Registrar for that purpose as compliance officers.

‘compliance services’ means the performance by a compliance officer of functions contemplated in Section 17 of the Act;

‘external compliance officer’ means a compliance officer other than an internal compliance officer and includes a compliance practice.

‘generic recognised compliance qualification’ means a qualification recognised by the Registrar that addresses knowledge, skills and competence that are broadly applicable to the rendering of compliance services;

‘internal compliance officer’ means a compliance officer that is a natural person in the permanent employ of a financial services provider and that renders compliance services in respect of that particular provider or another financial services provider that is a subsidiary holding company or subsidiary of the holding company of the first-mentioned provider.

**9.1.2 The application process**

In line with BN127, no person may render compliance services without having obtained Phase I and Phase II approval (except persons to whom an internal compliance officer has delegated. See discussion on delegation below).
Phase I approval

An applicant must:

- have 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.
- meet the requirement in respect 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 wants to render services to.
- not be an unrehabilitated insolvent.
- have adequate communication facilities.

Additional requirements for Phase I approval for external compliance officers:

- Fixed business address
- Operational ability

Phase II approval

For this phase, the applicant must:

- have Phase I approval.
- have adequate resources to ensure efficient rendering of compliance services.
- have direct access to and demonstrable support from senior management of the FSP.
- have the ability to render services independently and objectively.
- have the ability to avoid conflict of interest.
- have the ability to keep records and assist provider in compiling compliance risk management strategy.
- be able to liaise directly with Registrar.
- have the ability to conduct regular reviews.

The following additional requirements must be met in order for Phase II approval to be obtained. You will note that these requirements relate to the ability of the compliance officer/compliance practice to conduct site visits and differ for external and internal compliance officers.
External compliance officer:

- where the compliance service will be rendered in respect of Category I and IV FSPs, the applicant must show the ability to conduct regular visits as follows: not less than quarterly visits to the business premises, units or branches of the FSP. In respect of visits to representatives of FSP, not less than twice a year.
- where the compliance service will be rendered in respect of Category II, IIA and/or III FSPs the applicant must have the ability to conduct monthly visits to business premises, business units and branches of FSP and any representatives.

Internal compliance officer:

- where the compliance service will be rendered in respect of Category I and IV FSPs, the applicant must have the ability to conduct annual visits to business premises, units and branches of FSP and any representatives.
- where the compliance service will be rendered in respect of Category II, IIA and/or III FSPs the applicant must have the ability to conduct quarterly visits to business premises, units and branches of the FSP and any representatives.

9.1.3 Delegation of the rendering of a compliance service

As mentioned above, no person or compliance practice may render compliance services without having obtained Phase I and II approval. This is subject to one exception: an internal compliance officer may delegate the rendering of compliance services but only on the following conditions:

- such other person must be a natural person in the employ of the FSP, AND
- must comply with the Phase I requirements unless the person will do compliance monitoring in terms of documented procedure and will exercise no judgement, OR
- be an approved compliance practice.

The internal compliance officer must still oversee such person and remains accountable for the service rendered. The internal compliance officer must also maintain a register of the names of persons to whom the rendering of the compliance service has been delegated.
As with representatives and key individuals, there are transitional arrangements that apply to compliance officers already approved prior to the implementation of the new amendments. In this regard, existing compliance officers do NOT have to meet the qualification requirement and will have to complete the Regulatory Exam within three years of publication of the Board Notice.

9.1.4 Board Notice 126: The rendering of compliance services under supervision

BN 126, also published in September 2010, has introduced the option for compliance services to be rendered under supervision. The requirement is, though, that the supervisee must already have the relevant qualification, but the experience and Regulatory Exam requirements may be gained under supervision.

The supervisor must be an approved compliance officer and the Board Notice also makes provision for direct and ongoing supervision. The timeframes are the same as those applicable to representatives, as follows:

‘direct supervision’ occurs on a daily to weekly basis.

‘ongoing supervision’ occurs on a fortnightly to monthly basis.

A compliance officer or practice that allows for services to be rendered under supervision must have the operational ability to monitor such services and meet the requirements in respect of the supervisor as above. The supervisor must ensure that the supervisee is monitored on both a direct and ongoing basis.

Supervision period

A person cannot render compliance services under supervision for more than three years from the date that the person is approved as a supervisee.

Supervision in respect of different categories on FSPs

Categories I and IV FSPs:

- The supervisee may not conduct unaccompanied monitoring during the first year under supervision.
• During the second and third year, the supervisee may not sign off compliance reports and may not complete the annual compliance report on behalf of an FSP.

**Categories II, IIA and III FSPs:**

• The supervisee may not conduct unaccompanied monitoring during the first two years under supervision.
• During the third year the supervisee may not sign off compliance reports and may not complete the annual compliance report on behalf of an FSP.

9.1.5 **Withdrawal of a compliance officer’s approval**

Regulations pertaining to withdrawal of the Approval of a compliance officer are addressed both in Section 17 of the Act as well as in Board Notice 127 of 2010.

Section 17 of the Act provides that the Registrar may at any time withdraw the approval if satisfied 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) no longer complies with the criteria and guidelines.

The Registrar may publish the withdrawal of approval and the reasons therefore by notice on the official website or by means of any other appropriate public media.

Key individuals must ensure that there are adequate provisions in the appointment or other contractual arrangements with compliance officers to state that approval by the FAIS Registrar is a prerequisite for employment as the FAIS compliance officer within the business.

9.2 **THE ROLE AND FUNCTIONS OF A COMPLIANCE OFFICER**

9.2.1 **The compliance function**

An FSP must ensure that a compliance function exists or is established as part of the risk management framework of the business. This function must be overseen by an approved compliance officer as required by the Act, or
managed and controlled by the FSP alone (where the FSP has one key individual and no representative).\textsuperscript{118}

Compliance officers are responsible for the compliance functions in relation to the particular categories and subcategories in terms of the FSP licence, for which they are approved by the Registrar.

The FSP/key individual is responsible for ensuring that the appointed FAIS compliance officer has adequate resources available to meet all the compliance requirements of the FAIS Act.

The legislation\textsuperscript{119} also requires that the "compliance function must be exercised with such diligence care and degree of competency as may reasonably be expected from a person responsible for such function".

The General Code requires specific control measures, which we discussed under "Risk Management". The internal control procedures include the establishment of a compliance function as part of the risk management framework of the business.

The compliance officer must provide the FSP with written reports on the compliance-monitoring duties and must also make recommendations to the FSP as and when required in relation to the compliance or monitoring functions.

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.

Remember the establishment of the compliance function is the responsibility of the FSP/key individual and it includes the appointment of a compliance practice.

9.2.2 The duties of a compliance officer

The compliance officer must:

- oversee the provider’s compliance function and monitor compliance with the Act\textsuperscript{120};

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\textsuperscript{118} Section 5(1) of FAIS Regulations
\textsuperscript{119} Part IV, Section 5(2) of the FAIS Regulations 2003, GG 25092
\textsuperscript{120}
and take responsibility for liaison with the Registrar;\textsuperscript{121}

- supervise the compliance function;\textsuperscript{122}

- make recommendations to the provider as regards any aspect of the required compliance or monitoring functions (Regulations Ch IV paragraph 5);\textsuperscript{123}

- submit reports to the Registrar in the manner and regarding matters, as from time to time determined by the Registrar by notice on the official website.\textsuperscript{124} The authorised financial services provider must ensure that the reports referred to are submitted in accordance with the provisions of Act.

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:

1. identify and improve weak/vulnerable areas in business.
2. ensure that the compliance controls in business are effective and implemented.
3. constantly test/review the integrity of the compliance controls.

As discussed above, an internal compliance officer approved by the Registrar may not delegate the compliance monitoring function, unless certain prescribed conditions are met.\textsuperscript{125}

The monitoring duties of the compliance officer must be performed within the scope and application of the categories and subcategories for which the FSP is licensed.

**The Act also requires compliance officers to "oversee"**

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.\textsuperscript{126} The compliance officer must in effect only ensure that the requirements of the Act are met.

\textsuperscript{120} Section 17(1)(a) of the Act
\textsuperscript{121} Section 17(1)(a) of the Act
\textsuperscript{122} (Regulations Ch IV paragraph 5)
\textsuperscript{123} ibid
\textsuperscript{124} Section 17(4) of the Act
\textsuperscript{125} BN 127 OF 2010
\textsuperscript{126} Section 17(3) of the Act
through the procedures, which the FSP (key individual) must establish, hence the requirement for the compliance officer to "oversee".

There must be adequate measures in place to ensure that non-compliance issues identified by the compliance officer are rectified.

**Written reports to FSP**

The compliance officer also has to 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.

**Annual report to Registrar**

The compliance officer’s report of the FSP must also include reporting any irregularity or suspected irregularity in the conduct of the FSP business of which the compliance officer is aware and that the compliance officer regards as material, to the Registrar. This must also be done if the services of the compliance officer have been terminated by the FSP.127

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.

In addition to these ‘formal’ reports, compliance officers must at any time report any material breach by the FSP to the FAIS Registrar.

**9.2.3 Avoid conflict of interest**

One of the Phase I requirements for approval of a compliance officer by the Registrar, is the avoidance of conflict of interest between the duties of compliance officer with the duties of other employees, internal audit and control and functions of representatives.

Why is this required?

The functions and role of a compliance officer require that such person must be able to monitor, supervise and report on the functions of the FSP and representatives. If there are conflicts of interests across the functions, the

127 Section 17(3) read with S19(4) of the Act.
Compliance Officer will not be able to perform the function objectively, nor to identify and report on instances of non-compliance or irregularities.

Another requirement is that the compliance officer must have direct access to senior management and must have the "demonstrable" support of senior management.

The **functions of internal audit and compliance should also be separated** as the scope of the functions is quite different.

Internal auditors do not ‘monitor’ or ‘supervise’ FAIS-related functions; compliance officers do that.

Internal auditors normally audit compliance findings and related processes and report accordingly. If the two (2) functions are conflicted or the lines are blurred, then neither of the functions will be able to operate independently and objectively.

The **primary goal of internal audit is to evaluate the company’s risk management, internal control and corporate governance processes** and ensure that they are adequate and are functioning correctly.

The internal audit function is normally responsible to and report to the Board of Directors.

Key individuals are responsible for ensuring that there is no conflict of interest between the role and functions of compliance officers and other employees.

**9.2.4 Compliance reports**

The FSP is responsible to sign off the compliance report, which has to be submitted to the Registrar on an annual basis. There are different compliance reports for the different licence categories and the reports also differ between FSPs with and those without compliance officers.

**Compliance report for Category I provider, with a compliance officer**

Key individuals must be familiar with the content of the report so that they will have an understanding of what they sign off.

In this section we discuss the above compliance report, which is in the format of questions to be answered, so that a key individual can have a high level overview of the content and requirements.\(^{128}\)

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\(^{128}\) BN 106 of 2013
SECTION 1: GENERAL

1. Information on conditions and restrictions regarding the FSP licence.
   - Information on any changes in business information
   - Whether the FSP changed its legal status, and whether a new license was obtained
   - Information on the financial products in respect of which the FSP renders financial service
   - Functions performed by FSP
   - Information regarding the main business of the FSP
   - Instructions to other FSPs
   - Information about other regulators

2. Information about the group structure – provide organogram/s

3. Key individuals
   - Information about approval and replacement of key individuals.
   - Information about the fit and proper status of key individuals
   - Information on the structure with regards to key individuals (e.g. their position in the organisation and where they are situated)

4. Operational ability and financial soundness
   - Compliance with solvency requirements, monthly accounting records.
   - Whether exempted from audited financial statements and whether there was a change in accounting officers or auditors.
   - Detail regarding internal controls and procedures to ensure compliance with operational ability requirements

SECTION 2: GENERAL CODE OF CONDUCT

5. General provisions
   - Information about how the FSP manages conflicts of interests.
   - Whether procedures and controls in place to ensure that confidential information acquired from clients are not obtained without written consent, unless required in terms of legislation

6. Insurance cover
   - Information about the insurance cover of the FSP
7. **Disclosure requirements**
   - Information on procedures to ensure disclosure documentation regarding product suppliers and the provision of advice complies with the General Code.

8. **Direct marketing**
   - Whether the FSP acts as such

9. **Furnishing of advice and record of advice**
   Information about the FSP’s adherence to the requirements for provision of advice

10. **Custody of financial products and funds**
    Information about the FSP’s adherence to the requirements for custody of financial products and funds

11. **Information about the FSP’s adherence to the risk management requirements in the General Code**

12. **Information about the advertising practices of the FSP**

13. **Information about the complaints-handling procedures of the FSP**

14. **Maintenance of records**
   - Information about the record-keeping procedures and policies of the FSP.

15. **Information about the FSP’s procedures to comply with the requirements of the General Code in respect of termination of agreements or business**

16. **Information about the procedures to avoid waiver of rights by clients**

**SECTION 3: REPRESENTATIVES**

17. **Information regarding representatives, fit and proper status and debarment**
   - Information about number and competency of representatives.
   - Information about representatives rendering services under supervision
   - Information about representatives’ compliance with the General Code of Conduct
   - Information about the debarment of representatives
SECTION 4: MONEY-LAUNDERING CONTROL PROCEDURES

18. Money Laundering Control Procedures
    Information about compliance with anti-money-laundering requirements as per FICA $^{129}$

SECTION 5: COMPLIANCE FUNCTION

19. Compliance function
    • Questions around the establishment of the compliance function in the FSP business

20. Monitoring
    • Questions regarding monitoring activities - the type of monitoring and monitoring methodology/sample

SECTION 6 OF THE COMPLIANCE REPORT FOREX FSPs

21. Information about the duties/obligations of the Forex FSP

SECTION 7 OF THE COMPLIANCE REPORT HEALTH SERVICE BENEFITS

22. Information about the accreditation in terms of the Medical Schemes Act $^{130}$

Signing the report

The last part of the compliance report requires completion by the compliance officer as well as a key individual. By co-signing with the compliance officer, the key individual states that the information is correct and that the report will be sent to the Registrar.

Some of the information required in the report is acquired through monitoring for the period under review. The monitoring should be done by the compliance officer/compliance function and reliance should not be placed on other monitoring conducted by other areas, such as internal audit or other risk management functions.

$^{129}$ Financial Intelligence Centre Act No 38 of 2001
$^{130}$ Act 131 of 1998
Compliance report for Category I provider, without a Compliance Officer

The compliance report\textsuperscript{131} is very similar to the one to be completed by an FSP with a compliance officer but the submission date is different. The main differences are as follows:

- The report requires information about the group structure of the FSP as well as any SLAs with other FSPs.
- The report requires information about the staff complement of the FSP and, in particular, the names and roles of staff who assist the FSP in providing financial service.

\textbf{Summary}

- The FAIS Act stipulates that FSPs must appoint compliance officers in certain circumstances.
- Compliance officers are appointed by the FSP and approved by the FSB.
- Board Notice 127, published in September 2010, now makes provision for a new process for the approval of compliance officer.
- Board Notice 126, published in September 2010, makes provision for the rendering of compliance services under supervision in specific circumstances.
- The duties of compliance officers include:
  - monitoring compliance with the Act;
  - supervising the compliance function;
  - making recommendations to the provider as regards any aspect of the required compliance or monitoring functions. (Regulations Ch IV paragraph 5); and
  - submitting reports to the Registrar as required by the Act.
- Compliance Officers must avoid a conflict of interest with other business units and must have direct access to senior management.
- Compliance reports must be submitted to the Registrar and the compliance officer is required to report on all aspects of the FAIS business.

\textsuperscript{131} BN 105 of 2013
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. Compliance officers are appointed:
   a) by the FSP and approved by the FSB.
   b) and approved by the FSB.
   c) and approved by the FSP.
   d) None of the above

2. The duties of a compliance officer include:
   a) monitoring compliance with the FAIS Act.
   b) appointing key individuals.
   c) overseeing the compliance function.
   d) a) and c)

3. The compliance report requires the following information:
   a) Information about how the FSP manages conflicts of interests
   b) Information about the FSP’s adherence to the risk management requirements in the General Code
   c) Information about the advertising practices of the FSP
   d) All the above

4. The primary goal of internal audit is to:
   a) ensure compliance with the FAIS Act.
   b) ensure compliance with all legislation.
   c) only evaluate the company’s risk management, internal control and corporate governance processes.
   d) evaluate the company’s risk management, internal control and corporate governance processes and ensure that they are adequate and are functioning correctly.
This topic covers the following criteria:

**KNOWLEDGE CRITERIA:**

| Explain the impact of licensing conditions on an FSP. (Task 10) |
| Describe the implications for the FSP if the licensing conditions regarding products and services are not met. (Task 10) |
| Explain what licensing conditions regarding products and services must be met. (Task 10) |
| Discuss the requirements around the display of licences. (Task 10) |
| Explain what changes must be reported. (Task 10) |
| Explain what the implication is for an FSP if a key individual leaves the employ of the FSP. (Task 10) |
| Describe the conditions under which suspensions, withdrawals and reinstatements of authorisation may be imposed. (Task 10) |
| Describe the conditions under which reinstatements of authorisation may be imposed. (Task 10). |
| Explain what the implications are for a key individual and/or FSP if an accreditation is suspended or withdrawn or lapsed in terms of the Medical Schemes Act, 1998, or any other enabling legislation such as the Banks or Insurance legislation. (Task 10) |
| Explain what the offences are under FAIS. (Part of Task 13) |
| Describe what actions will lead to the Registrar imposing civil remedies and penalties under FAIS. (Task 10) |
| Describe what civil remedies and penalties the Registrar may impose under FAIS. (Task 10) |
| Explain what levies are payable to the Registrar and when this should be paid. (Task 10) |
| Explain the relationship between different industry players. (Task 10) |
| Describe the interrelationships between FSPs in terms of co-responsibility. |

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

- Manage the licensing conditions.
- Confirm that all role-players are informed and able to execute their duties.
- Verify that there are processes in place to pay the levies, and that this is done within the correct timeframes.
• Confirm that the Registrar is informed within 15 days of any changes to the FSP licensing details.
• Confirm that the FSP has procedures in place to ensure that it can comply with condition 1 of the licensing conditions that requires the FSP to update its business information as provided during applications within 15 days of any change occurring.
• Verify that the FSP changes the name of the financial services business (as reflected on the license concerned) that the FSP obtains prior approval from the Registrar in compliance with condition 4 of the licensing conditions.
• Verify that the FSP has internal controls and procedures in place to ensure that financial services are rendered within the limitations on categories and subcategories for which the license is issued.

INTRODUCTION

The application process for an FSP licence was discussed in Topic 5. The Registrar will include certain conditions on every FSP licence and it is part of the management function of a key individual to ensure that these conditions are met.

Topic 10 looks at these conditions and unpacks the requirements that are contained in typical conditions. You will also gain an understanding of the effect and meaning of suspensions, withdrawals and reinstatements of the authorisation to carry on business as an FSP.

The various offences as defined in the FAIS Act, as well as the anti-money-laundering controls are also discussed.

It is important to know how the FAIS levies are calculated.

10.1 LICENSING CONDITIONS AND RESTRICTIONS

10.1.1 The impact of licensing conditions on an FSP

A FSP FAIS licence also carries 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 must 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.

An FSP may request additional product categories to be added to its licence and it may also 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. The FAIS Act requires that a certified copy of the FSP licence must be displayed in a prominent and durable manner within every business premises of the FSP.\(^{132}\)

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.

10.1.2 Different types of conditions

There are a few standard conditions that appear in each licence, for example:

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1. The licence authorises the licensee to carry on business in respect of financial advisory and/or intermediary services as ordinary financial services provider/discretionary FSP administrative FSP in respect of the following financial product/products: _______
2. Further conditions/restrictions:
   1. The financial services provider must inform the Registrar in writing, by facsimile or in an appropriate electronic format, within 15 days after the change has taken place, of any change in respect of business information of the financial services provider as provided in Form FSP1, FSP3, FSP4, FSP9, FSP10, FSP10A or FSP11, respectively, of the Application Form which was submitted by the provider for purposes of obtaining a licence, and in particular relating to the provider's representatives, auditor, compliance officer or any foreign clearing firm or foreign forex service provider involved (if any) and nominee company or independent custodian involved or the shareholders, directors or trustees of any such company or custodian (if any).
   2. The financial services provider must at all times during the currency of the provider's licence maintain the services of any key individual or key individuals
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\(^{132}\) Section 8(8) of the FAIS Act
mentioned in the information submitted on the said Application Form, and must as regards changes in respect of such information relating to a key individual, or appointment of a new key individual, of the provider, in addition to acting also in such cases in accordance with the procedure and time limit set out in Condition 1, also ensure full compliance with Section 8(4)(b) of the Act, the provisions of which must be regarded as included in this Condition.

3. The financial services provider must within 15 days of the date contemplated in Section 7 of the Act, submit a copy of the register kept in terms of Section 13(3) of the Act to the Registrar, and must thereafter in accordance with the procedure and time limit set out in Condition 1, inform the Registrar of any change effected to the details as contained in that register.

4. The financial services provider must not in any manner change the name of the financial services business as reflected on the licence concerned, or carry on any financial services business under such a changed name, unless- (a) the provider has fully complied with the provisions of any other law than the Act which regulates such change of business name if any); (b) the provider has fully disclosed to the Registrar the details of such compliance with such other law; (c) the Registrar is satisfied that such change of name is otherwise lawful and has approved such change of name; and (d) the Registrar has issued to the provider an appropriately amended licence under the provisions of Section 8(5)(b)Q) of the Act.

5. The financial services provider must at all times ensure that any financial product in respect of which the provider intends to render a financial service, qualifies as a financial product contemplated in the Act and is or will be lawfully issued by the relevant product supplier by virtue of an authority, approval or right granted to such supplier under a law as contemplated in the definition of 'product supplier' in Section 1 (1) of the Act."

3. Applicable exemptions (if any):”

### 10.1.3 Managing the licensing conditions

**Condition 1 – Reporting changes**

If there are certain changes, the FSP must have procedures in place to ensure that the Registrar can be advised (of the change) within 15 days after the change. There are designated forms to be used for this purpose and different fees are payable.
The changes include the following:

| Any change in the name of the business | Any change in the trading name or any division of the business |
| Any change in the type of business (conversion to a close corporation, partnership, etc.) | Any change in the business contact details (address, telephone, fax and email) |
| Any change in the contact person (address, telephone, fax and email) | Any change in the financial year-end |
| Any change in the bank details | Any change in nominee company or independent custodian involved |
| Any change in the contact person responsible for dealing with the payment of fees, penalties and levies | Any change in shareholders |
| Any change in directors | Any change in members |
| Any change in foreign clearing firm or foreign forex service provider involved | Any change of compliance officer |
| Any change in auditor | Any change in the representatives |

**Condition 2 – Reporting changes relating to key individuals**

This condition requires that there must be a key individual appointed in terms of a licence at all times and that the key individual's details and changes in personal circumstances of key individuals that may render such person to be no longer compliant with the fit and proper requirements of key individuals.

In the example of licensing conditions we see that Condition 2 stipulates that the FSP must inform the Registrar if and when there are changes to the approved key individual position(s). This means that when a key individual leaves the employment of the FSP, the necessary profile change must be done WITHIN 15 DAYS of the change.

In addition, Section 8(4)(b) of the FAIS Act requires that when a key individual leaves the employ, or is replaced, or there are changes in the person's personal circumstances of a key individual which makes him no longer compliant with fit and proper, the key individual must not be allowed to take part in the conduct or requirements management or oversight of the licensee’s business in relation to the rendering of financial services.
Pursuant to an evaluation of a new key individual, or a change in the personal circumstances of a key individual, referred to in subsection 8(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.

**Condition 3 - Submit representative register**

A newly authorised FSP must submit the representative register within 15 days of authorisation. Thereafter updates to the register must be sent to the Registrar within 15 days.

**Condition 4 – Change of business name**

If there is a change in the name of the business, the requirements of Condition 4 (above) must be met, which are the following:

- Ensure that the name change is not in conflict with any other law and complies with other applicable laws (such as the Companies Act or the Banks Act in relation to banks).
- Disclose compliance with other applicable laws to the Registrar.

If the Registrar is satisfied that the change of name is lawful and has approved the change of name, the Registrar will issue an amended licence.

Only when the amended licence is issued, may the FSP continue/start with providing financial service under that name.

**Condition 5 – Only deal with authorised FSPs**

This condition requires that the FSP must have internal controls and procedures in place to ensure that any financial product regarding which the FSP wants to render a financial service, qualifies as a financial product as required by the Act and is lawfully issued by the relevant product supplier.

Only financial products of product suppliers whose products are authorised by an authority or by approval or rights granted under an appropriate law (for instance the Insurance Acts) may be sold by FSPs.
10.2 SUSPENSION, WITHDRAWAL AND REINSTATEMENT OF AUTHORISATION

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

Suspension or withdrawal of a licence

10.2.1 Reasons for suspension or withdrawal

The Registrar may suspend or withdraw any licence if the Registrar is satisfied on the basis of available facts and information that the licensee:

- or any key individual no longer meets the fit and proper requirements of the Act.
- didn’t disclose all required information upon applying for a licence or submitted false or misleading information.
- failed to comply with any other provisions of the FAIS Act.
- 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.
- has failed to comply with any directive issued under the FAIS Act.
- has failed to comply with any condition or restriction imposed under this Act.

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133 Section 9(2) of the FAIS Act
134 Section 9(2) of the Act
Process of suspension or withdrawal

Figure 10.1

10.2.2 Urgent suspension or withdrawal

Notwithstanding the fact that the Registrar must follow certain procedures before suspension or withdrawal, the Registrar may do certain things on an urgent basis if there are reasonable grounds that the public or clients may be substantially prejudiced.

If such grounds exist, the Registrar:

- may provisionally suspend or withdraw a licence. The Registrar must inform the licensee of the grounds and the period 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.\(^\text{135}\)

\(^{135}\) Section 9(3)(a) of the Act
• may publish the provisional suspension or withdrawal ion the official web site and if necessary, by means of any other appropriate public media.\textsuperscript{136}

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

• lift the provisional suspension or withdrawal; or
• make it final.\textsuperscript{137}

The licensee must be advised accordingly and notification must happen on the official website and any other appropriate public if necessary. The Registrar must make known the terms of and the reasons for such final suspension or withdrawal, or the lifting thereof.\textsuperscript{138}

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

10.2.3 Debarment following suspension of withdrawal

If a licence has been withdrawn in terms of Section 9 of the 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 change the period if there are good grounds for the change.\textsuperscript{139}

10.2.4 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 above 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 (such as the Insurance Registrar) because suspension or withdrawal of an FSP licence may have dire consequences in the financial services industry.

\textsuperscript{136} Section 9(3)(b) of the Act  
\textsuperscript{137} Section 9(4)(a) of the Act  
\textsuperscript{138} Section 9(3)(b) of the Act  
\textsuperscript{139} Sections 9(5) & (6) of the Act
10.2.5 Accreditation under Medical Schemes Act 1998

Section 8(7) of the FAIS Act, which was discussed above, has certain implications in respect of the certain requirements for FSPs that are also accredited under the Medical Schemes Act.

If an accredited Medical Schemes FSP loses its accreditation in terms of the Medical Schemes Act, the FAIS Licence will also be deemed to be suspended or withdrawn.

Similarly, if the accredited (FAIS) FSP's licence is suspended or withdrawn in terms of the FAIS Act, it will also lose its accreditation in terms of the Medical Schemes Act.

The conditions under which a licence can be reinstated and reinstatements of authorisation may be imposed.

We mentioned above that the Registrar must inform the licensee of the grounds for suspension of withdrawal of a licence.

The licensee must be given 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.

The Registrar must, within a reasonable time after receipt of any response received consider the response, and may thereafter decide to-

- lift the provisional suspension or withdrawal; or
- render the suspension or withdrawal final,
  and must inform the licensee accordingly.

The Registrar must make known the terms of and reasons for the final suspension or withdrawal, or the lifting thereof, by notice in the Gazette and, if necessary, in any other appropriate public media.

Once the licensee meets the outstanding requirements (such as payment of levies) the Registrar may reinstate the licence. If the Registrar has set specific conditions and the licensee meets the conditions to the satisfaction of the Registrar, the licence may be reinstated.

Section 34 of the Constitution makes provision that anyone may approach a court to have a dispute resolved by a court or another independent and
impartial tribunal or forum. This implies that an FSP whose licence has been withdrawn may also approach the Court for reinstatement.

10.3 OFFENCES

10.3.1 Offences

When a person commits the offences listed below and is convicted by a court, the court may impose a fine of a maximum of R10 000 000 or a prison sentence of a maximum of ten (10) years or both.\(^\text{140}\)

The offences, which carry the above penalties, are the following:

Table 10.1

<table>
<thead>
<tr>
<th>1. Contravention of or failure to comply with the following Sections in the Act:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to get a licence to operate as an FSP – Section 7(1)</td>
</tr>
<tr>
<td>Failure to display a FAIS licence or to refer to the licence in business documentation, advertisements and other promotional material or failure to have the licence available when proof is requested or when required to enter into a business relationship with the licensee – Section 8(8).</td>
</tr>
</tbody>
</table>

\(^{140}\) Section 36 of the FAIS Act
| • 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 prove his/her agreement/mandate with an FSP  
  - or failure to ensure that a debarred representative’s reappointment meets the requirements of the Act – Section 13(1) | • Failure to ensure that the FSPs 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 – Section 13(2) |
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to debar a representative as described in Section 14(1)</td>
<td>Failure to submit compliance reports to the Registrar – Section 17(4)</td>
</tr>
</tbody>
</table>
| Failure to maintain and keep records as required in Section 18 | Failure to have the financial statements audited and reported within four (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) |
| Carrying on with business as an FSP after the Registrar declared the business an undesirable practice – Section 34(4) | Failure to rectify the effects of an undesirable practice within 60 days of being ordered to do so by the Registrar – Section 34(6) |
| Deliberately making a misleading, false or deceptive statement, or concealing any material fact with regard to anything relating to the Act – Section 36(b) | Giving an appointed auditor or compliance officer information which is false, misleading or concealing any material fact in the execution of duties imposed by this Act – Section 36(c) |
| Pretending to be an appointed or mandated representative of a licensed FSP when providing financial services to clients – Section 36(d) |
10.3.2 Civil remedies

With effect from 28 February 2014, the Registrar can no longer claim in court for damages on behalf of clients of offenders. This remedy has never been used by the Registrar and such cases are referred to the established Enforcement Committee.

10.3.3 Anti-money-laundering controls

There is an obligation on FSPs who are accountable institutions as defined in the Financial Intelligence Centre Act\(^\text{141}\) (FIC) to have all the necessary policies, procedures and systems in place to ensure full compliance with the FIC Act and other applicable anti-money-laundering or terrorist financing legislation.\(^\text{142}\)

The FAIS Act does not have specific penalties for non-compliance with the FIC Act requirements BUT the FIC Act imposes severe penalties for non-compliance.

Therefore, the FIC Act penalties will apply if an FSP does not comply with the FAIS requirements in respect of the FIC Act. We discuss the FIC Act in more detail later.

10.3.4 Administrative penalties

Late submission

Where a person does not submit a return, information or document to the Registrar as required by the FAIS Act, that person is liable, in addition to other legal action instituted by the Registrar, to pay a fine of up to R1 000 (or as determined by the Registrar) per day for every day that the return, information or document is late, plus interest.\(^\text{143}\)

Penalties relating to the Ombud for Financial Services Providers (FAIS Ombud)

If a person does something in relation to the Ombud for Financial Services Providers (FAIS Ombud) or in relation to an investigation by the Ombud that could be regarded as contempt of court by a court, the person is guilty of an offence and liable on conviction to a penalty, which could have been imposed by a court.

\(^{141}\) Act 38 of 2001
\(^{142}\) Paragraph VIII(1)(e) of Board Notice 106 of 2008
\(^{143}\) Section 41 (2)(a) of the FAIS Act
A person who anticipates a determination of the Ombud and does something to influence the determination or who wilfully interrupts any proceedings of the Ombud, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.

10.4 LEVIES PAYABLE IN TERMS OF THE FAIS ACT

10.4.1 Levies to the FSB

The FSB raises levies in terms of the legislation that it oversees. The FAIS Act also allows the Registrar (FSB) to raise levies in respect of authorised FSPs.

The levies are based on a formula that takes into account the number of key individuals and representatives of each licence. The formulae differ between the various categories.

Let's look at an example of a levy calculation based on the 2013\(^{144}\) levy structures:

For a Category I FSP the calculation uses the base amount of R3 197 PLUS ‘A’ \times R511.

‘A’ is the total number of key individuals of the financial services provider approved by the Registrar plus the total number of representatives appointed by the FSP, less key individuals that are also appointed as representatives, as at 31 August of the levy year.\(^{145}\)

If the FSP has three (3) key individuals (who are also reps) and 15 representatives, the calculation will be \(\text{R3 197 PLUS (15 \times R511)} = \text{R10 862}\) subject to a maximum of \text{R1 385 363}.

Where there are multiple FSPs in one legal entity, the key individuals and representatives of the different FSPs are regarded as belonging to one FSP and only one levy is paid.

An example is a large insurance company that has different subsidiaries each with its own FSP licence, but part of the group. The group will pay one levy in respect of all the representatives and key individuals operating in the respective licences where licences span across one legal entity.

\(^{144}\) BN 121 of 2013

\(^{145}\) Section 18(2) of BN 121 of 2013
The levies are payable by a certain time each year, normally on or before 31 October of the levy year. Failure to pay the levies is an offence in terms of FAIS and the FSP licence may be withdrawn or suspended.

The key individual must ensure that there are adequate systems and procedures in place to account for the number of key individuals and representatives in the FSP to pay both the FSB and the Ombud for Financial Services Providers (FAIS Ombud) levies.

10.4.2 Levies to the Ombud for Financial Services Providers (FAIS Ombud)

Authorised FSPs, regardless of product categories, which they are licensed for, pay annual levies to the Ombud for Financial Services Providers (FAIS Ombud), calculated as follows, using the 2013 levy structures:

The base amount of R729 PLUS ‘A’ × R278

‘A’ is the total number of key individuals of the financial services provider approved by the Registrar, plus the total number of representatives appointed by the FSP, less key individuals who are also appointed as representatives, as at 31 August of the levy year.146

Using the same example as above, if the FSP has three (3) key individuals (who are also Reps) and 15 representatives, the calculation will be:

R729 PLUS (15 × R278) = R4 899 subject to a maximum of R197 530

As with the FSB levies, where there are multiple FSPs in one legal entity, the key individuals and representatives of the different FSPs are regarded as belonging to one FSP and only one levy is paid, as discussed above.

10.5 INTERRELATIONSHIPS BETWEEN FSPs AND CO-RESPONSIBILITIES

In terms of Section 7(3) of the FAIS Act, FSPs are only allowed to conduct FAIS-related business with other authorised FSPs. Similarly, FSPs may only provide financial services in respect of products of product suppliers that have been authorised under applicable legislation.

146 Section 19 of BN 121 of 2013
The key individual must ensure that the FSP has procedures to ensure that, if the provider does any financial services-related business with any other FSP, such other provider is properly authorised.

Any contravention of or failure to comply with Section 7(3) of the FAIS Act, is an offence subject to penalties. This section requires that every authorised FSP 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 if that person is a representative as described in the Act.

10.6 DIRECTIVES

With effect from 28 February 2014, the Registrar may, in order to ensure compliance with or to prevent a contravention of this Act, issue a directive to any person or persons to whom the provisions of this Act apply.

A directive issued takes effect on the date determined by the Registrar in the directive. The Registrar MUST, where a directive is issued to ensure the protection of the public in general, publish the directive on the official web site and any other media that the Registrar deems appropriate, in order to ensure that the public may easily and reliably access the directive.

Summary

- FSPs must adhere to the conditions and key individuals must ensure that there are adequate systems and processes in the business to ensure compliance with the licence conditions.
- The licensing conditions create certain obligations for FSPs and these conditions must be complied with on a continuous basis.
- A FAIS licence may be withdrawn or suspended by the Registrar under certain conditions.
- The FAIS Act describes the various offences and when offences are committed, a court may impose a fine of R1 million and/or imprisonment of ten (10) years.
- There are certain anti-money laundering controls built into the FAIS Act and FSPs must comply as such.
- The FAIS Act also allows the Registrar (FSB) to raise levies in respect of authorised FSPs.
• Authorised FSPs, regardless of product categories pay **annual levies to the Ombud for Financial Services Providers (FAIS Ombud).**
• There is a responsibility on FSPs to only conduct FAIS-related business with other authorised FSPs.

**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 statements is TRUE?
   a) The FAIS Act requires that a certified copy of the FSP’s licence must be displayed in a prominent and durable manner at the head office/s of the FSP.
   b) An FSP may request additional product categories to be added to its licence.
   c) Standard conditions are specifically applicable to insurance FSP licences.
   d) FSPs may not have more than one licence.

2. Before suspension of a FAIS licence, the Registrar must inform the:
   a) FSP of the intended period of suspension.
   b) FSP of any terms attached to the suspension.
   c) Advisory Committee.
   d) a) and b)
   e) a) and c)
   f) Only c)

3. Urgent suspension or withdrawal of a licence may only happen:
   a) after the Registrar has obtained a court order.
   b) after the Registrar has consulted with all the parties.
   c) if there are reasonable grounds that the public or clients may be substantially prejudiced.
   d) None of the above

4. The FAIS offences include failure to:
   a) get a licence to operate as an FSP.
   b) have the licence available when proof is requested.
   c) debar a representative as described in Section 14(1).
   d) All the above
Lapsing an FSP licence

This topic covers the following criteria:

**KNOWLEDGE CRITERIA:**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Task 11</td>
<td>Discuss the effect of voluntary sequestration, winding-up or closure of a business on its licensing status.</td>
</tr>
<tr>
<td>Task 11</td>
<td>Explain the reasons why a licence can be suspended or withdrawn.</td>
</tr>
<tr>
<td>Task 11</td>
<td>Discuss what recourse the FSP has in such a case where a licence was suspended/withdrawn.</td>
</tr>
<tr>
<td>Task 11</td>
<td>Discuss the reasons why an FSP would lapse a licence.</td>
</tr>
<tr>
<td>Task 11</td>
<td>Describe how lapsing a licence differs from suspension or withdrawals.</td>
</tr>
</tbody>
</table>
INTRODUCTION

As a key individual, you need to understand when and how the FSP licence may lapse or be surrendered to the FAIS Registrar.

Topic 11 takes you through these requirements and creates an understanding of the differences in the processes.

11.1 LAPSING OF A FAIS LICENCE

11.1.1 Lapsing a FAIS licence

A licence of a **NATURAL** person may lapse in the following instances:

![Diagram showing the conditions for lapsing a FAIS licence:]

- The licensee (FSP) is **FINALLY SEQUESTRATED**
- The licensee (FSP) **DIES**
- The licensee (FSP) becomes permanently UNABLE to CARRY ON BUSINESS because of PHYSICAL or MENTAL ILLNESS

Figure 11.1
A licence of **ANY FSP** may **lapse** in the following instances:

- **The licensee (FSP) is FINALLY LIQUIDATED or DISSOLVED**
- **The BUSINESS of the licensee (FSP) has become DORMANT**
- **In ANY OTHER CASE where the licensee VOLUNTARILY AND FINALLY SURRENDERS THE LICENCE TO THE REGISTRAR**

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 website and, if necessary, in any other appropriate public media announcement.

**11.1.2 Difference between lapsing and suspension or withdrawal of a licence**

**Table 11.1**

<table>
<thead>
<tr>
<th>Suspension or withdrawal of a FAIS licence</th>
<th>Lapsing of a FAIS licence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Suspension or withdrawal of a licence is initiated by the Registrar following actions or omissions by the FSP.</td>
<td>Lapsing of a licence is initiated by the FSP following an event, which gave reason for the lapse.</td>
</tr>
<tr>
<td>The Registrar may allow reinstatement of a suspended licence under certain conditions.</td>
<td>There are no provisions in the Act for the reinstatement of a lapsed licence.</td>
</tr>
<tr>
<td>After withdrawal of a licence, the person will be debarred from applying for a new licence. This is slightly different to debarment as it is applicable to honesty and integrity requirements.</td>
<td>There are no requirements for debarment in terms of lapsing a licence.</td>
</tr>
<tr>
<td>There are implications for accredited FSPs under the Medical Schemes Act (discussed above) as the FSP will lose the accreditation if the FAIS licence is suspended or withdrawn and vice versa.</td>
<td>Accreditation in terms of the Medical Schemes Act (where applicable) also deemed to have lapsed.</td>
</tr>
</tbody>
</table>

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147 Section 11 of the FAIS Act
### 11.2 EFFECT OF VOLUNTARY SEQUESTRATION, WINDING-UP OR CLOSURE OF A BUSINESS ON ITS LICENSING STATUS

**Section 38** of the FAIS Act states that:

<p>| | | |</p>
<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>NO</td>
<td><strong>Application for voluntary surrender</strong> of an estate brought before a court in terms of Section 3 of the Insolvency Act</td>
<td></td>
</tr>
<tr>
<td>NO</td>
<td><strong>Special resolution</strong> relating to the <strong>winding-up</strong>, as provided for in Section 349 of the Companies Act, and registered in terms of that Act</td>
<td></td>
</tr>
<tr>
<td>NO</td>
<td><strong>Written resolution</strong> relating to the <strong>winding-up</strong>, as provided for in Section 67 of the Close Corporations Act, and registered in terms of that Section</td>
<td></td>
</tr>
<tr>
<td>NO</td>
<td><strong>Voluntary closure of business</strong></td>
<td></td>
</tr>
<tr>
<td>UNLESS</td>
<td>By any authorised FSP, or <strong>representative</strong> of such provider, and no <strong>special resolution</strong> in terms of the constitution of such a provider or representative, which is not a company, to close its business, <strong>have legal force</strong></td>
<td></td>
</tr>
<tr>
<td>UNLESS</td>
<td>a copy or notice of the intended process has been lodged with the Registrar</td>
<td>AND</td>
</tr>
<tr>
<td>UNLESS</td>
<td>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</td>
<td>OR</td>
</tr>
<tr>
<td></td>
<td>The Registrar may declare that the application, resolution or closure is contrary to the FAIS Act and that it has no legal effect</td>
<td></td>
</tr>
</tbody>
</table>

**Figure 11.2**
It is clear from the above that the FSP must get the ‘approval’ of the Registrar before sequestration, winding-up or closure of the business will become effective and legal. Such approval will only be given if the Registrar is satisfied that there are arrangements in place to meet obligations to clients. Until such time, the business of the FSP will be regarded as ‘ongoing’ and the FSP cannot rely on any protection or remedies available under the relevant legislation.

The FAIS Act was amended with effect 28 February 2014 to provide for specific requirements when a provider applies for business rescue proceedings under the Companies Act. Section 38A stipulates that Chapter 6 of the Companies Act shall apply in relation to the business rescue of a FSP, whether or not it is a company. Chapter 6 deals with business rescue. The Registrar may make an application under Section 131 of the Companies Act in respect of a provider if the Registrar is satisfied that it is in the interests of the clients of the provider or the financial services industry.

The following acts are subject to the approval of the Registrar:

- The resolution of a provider to begin business rescue proceedings
- The appointment of a business rescue practitioner
- The adoption of a business rescue plan
- The exercise of a power by the business rescue practitioner under the Companies Act

In the application of Chapter 6 of the Companies Act -

- any reference to the Commission shall be construed as a reference also to the Registrar;
- the reference to creditors shall be construed as a reference also to clients of the provider;
- any reference relating to the ability of a provider to pay all debts, shall be construed as relating also to the provider’s inability to comply with the financial soundness requirement under Section 8(1)(c) of this Act;
- there shall be considered, in addition to any question relating to the business of a provider, also the question whether any cause of action is in the interests of the clients.

If an application to a Court for an order relating to the business rescue of a provider is made by an affected person other than the Registrar -

- the application shall not be heard unless copies of the notice of motion and of all accompanying affidavits and other documents filed in support
of the application are lodged with the Registrar, before the application is set down for hearing;

- the Registrar may, if satisfied that the application is not in the interests of the clients of the provider, join the application as a party and file affidavits and other documents in opposition to the application.

As from the date upon which a business rescue practitioner is appointed, the business rescue practitioner of a provider shall not conduct any new business unless the practitioner has been granted permission to do so by a court.

11.3 APPLICATION BY REGISTRAR FOR SEQUESTRATION OR LIQUIDATION

The Registrar now also has locus standi to apply to court for the sequestration or winding up of a financial services provider.

Section 38B stipulates that if the Registrar considers it necessary in light of the interests of clients or members of the public, he may, after an on-site visit or an inspection, apply to court for the sequestration or liquidation of the FSP.

In deciding on such an application, the court:

- may take into account whether sequestration or liquidation of the financial services provider concerned is reasonably necessary in order to protect the interests of the clients of the provider; and for the integrity and stability of the financial sector;
- may make an order concerning the manner in which claims may be proved by clients of the financial services provider concerned; and shall appoint as trustee or liquidator a person nominated by the Registrar.

This section does not apply if another Registrar is authorised in terms of Financial Services Board legislation as defined in Section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), or in terms of banking legislation, to apply to the court for the sequestration or liquidation of that provider.
Summary

- An FSP who is a natural person may lapse a licence if the FSP is finally sequestrated, dies or becomes permanently unable to carry on business because of physical or mental illness.
- Any other FSP may lapse a licence if it is finally liquidated or the business is dissolved, or became dormant or the FSP voluntarily and finally surrenders the licence to the Registrar.
- The FSP must get the ‘approval’ of the Registrar before sequestration, winding-up or closure of the business will become effective and legal. Such approval will only be given if the Registrar is satisfied that there are arrangements in place to meet obligations to clients.
- Until such time, the business of the FSP will be regarded as ‘ongoing’ and the FSP cannot rely on any protection or remedies available under the relevant legislation.
- The Registrar now also has locus standi to apply to court for the sequestration or winding-up of a financial services provider.
- The FAIS Act also provides for specific requirements when a provider applies for business rescue.
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. A natural person may lapse a FAIS licence:
   a) only if the licensee is finally sequestrated.
   b) only with permission from the FAIS Registrar.
   c) if the licensee is finally sequestrated.
   d) if the licensee dies.
   e) if the licensee becomes permanently unable to carry on business because of physical or mental illness.
   f) c), d), and e)

2. A licence of ANY FSP may lapse:
   a) if the licensee is finally liquidated or dissolved.
   b) if the business of the licensee has become dormant.
   c) in any other case where the licensee voluntarily and finally surrenders the licence to the Registrar.
   d) All the above

3. Which of the following statements is TRUE?
   a) Suspension or withdrawal of a licence is initiated by the Registrar following actions or omissions by the FSP.
   b) Lapsing of a licence is initiated by the FSB following an event that gave reason for the lapse.
   c) There are provisions in the Act for the reinstatement of a lapsed licence.
   d) There are severe implications in terms of other legislation when a FAIS licence lapses.

4. Which of the following statements is FALSE?
   a) The Registrar may allow reinstatement of a suspended licence under certain conditions.
   b) There are no implications in terms of other legislation when an FSP’s licence lapses, except that such FSP will also lose its accreditation as an accredited Medical Schemes FSP (if relevant).
c) The Registrar must be advised in writing by the licensee, of the lapsing of a licence and the reasons therefor and the Registrar may not publish any detail about the lapsing.

d) The Registrar must be advised in writing by the licensee, of the lapsing of a licence and the reasons therefor and the Registrar may publish the lapsing of a licence by notice in the *Gazette*.

5. Before sequestration, winding-up or closure of an FSP business will become effective and legal under the following condition/s:

a) The FSP must lodge the necessary documentation with the FAIS Registrar.

b) The FSP must get the ‘approval’ of the Registrar.

c) The court must agree to adequate distribution of assets.

d) a) and b)
This topic covers the following criteria:

<table>
<thead>
<tr>
<th>KNOWLEDGE CRITERIA:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Explain the record-keeping obligations as imposed by the FAIS Act. (Task 12)</td>
</tr>
<tr>
<td>Explain the record-keeping requirements in terms of Section 18 of the FAIS Act and the General Code of Conduct. (Task 12)</td>
</tr>
<tr>
<td>Explain the requirements regarding the maintenance of records in terms of the FAIS Act. (Task 12)</td>
</tr>
<tr>
<td>Explain in what format the records should be stored and retrieved in accordance with the industry standard. (Task 12)</td>
</tr>
<tr>
<td>Explain what the security requirements for these records are in terms of confidentiality and access to records. (Task 12)</td>
</tr>
<tr>
<td>Understand the requirements regarding records and the maintenance thereof in terms of the Act and other applicable legislative requirements, including the FIC Act. (Task 12)</td>
</tr>
</tbody>
</table>

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

- Ensure that there are processes in place to provide the management information that is required to complete the reports required by the legislation.
- Ensure that there are processes in place to submit the reports required by the legislation by the due dates.
- Confirm that third party outsourcing agreements are executed correctly.
- Verify the necessary checks and balances are carried out regarding the record keeping functionality, including retrieval of records.
- Verify that the reporting obligations are met in accordance to the Act.
- Ensure that there are processes in place to submit the reports required by the legislation by the due dates.
INTRODUCTION

In Topic 12 you will find the requirements relating to record-keeping, as required by the FAIS Act as well as the FAIS General Code. It is important that key individuals manage and oversee the record-keeping processes and systems of the FSPs, as failure to do so may constitute an offence under the Act.

12.1 RECORD-KEEPING OBLIGATIONS UNDER THE FAIS ACT

12.1.1 Record-keeping obligations in terms of the FAIS Act

The FSP, (and by implication it will be part of the management duties of a key individual) must ensure that records are kept for a minimum of five (5) years, except if the Registrar allowed specific exemptions in this regard.

Section 18 of the FAIS Act requires that certain records be kept for five (5) years (unless the Registrar granted an exemption in this regard).

These records include the following:

| Table 12.1 |
|-----------------|-------------------------------------------------------------------------------------------------|
| 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** | 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** |
| 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 FSP accepts responsibility for the activities of the representative accordingly. There must be adequate processes & systems in place to ensure continued fitness & propriety of key individuals and representatives. |
FSPs must ensure that their risk management models include internal control structures, procedures and controls with disaster recovery and back-up procedures on electronic data, where applicable.

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

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

<table>
<thead>
<tr>
<th>Table 12.2</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
</tr>
<tr>
<td>2. The FSP must be able to retrieve the records and other material documentation relating to clients or financial services.</td>
</tr>
<tr>
<td>3. The records and documentation must be kept safe from destruction.</td>
</tr>
</tbody>
</table>

---

148 Sections 3(2)(a)(b) of the General Code  
149 Section 14(2)(a) of the General Code read with Section 18 of the Act  
150 In addition to Section 3(2)(a)(iii) of the General Code
4. The records must be kept for five (5) years after the termination of the product (to the knowledge of the FSP) or for the same period after a financial service was provided. In respect of the record of advice, the General Code of Conduct further requires that the following details are included:

- Basis on which the advice was given (a brief summary of the information and material the advice was based on)
- Record of all verbal and written communication
- Products that were considered
- Products that were recommended
- If replacement
  - Comparison fees, charges, terms conditions, exclusions, waiting periods, loadings, penalties, excesses, restrictions or where benefits will not be paid.
- Provide copy of advice within 30 days.

5. Record-keeping may be outsourced as long as the records are available for inspection within seven (7) 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.

7. 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 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.

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

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151 Section 3(2)(c) of the General Code
TELEPHONIC RECORDS

9. 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.\(^\text{152}\)

10. Clients must be able to get copies of the telephonic advertisement records within seven (7) days of request.\(^\text{153}\)

12.1.3 Confidentiality of client information

A FSP may not:\(^\text{154}\)

disclose any confidential 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.

The compliance officer must determine and report whether procedures have been implemented to ensure that confidential information is not improperly disclosed.

The FSP must have procedures and internal controls in place that ensure that client information is securely filed and that such information is not available to any unauthorised person.

The Registrar has certain powers in terms of the Act to disclose information relating to representatives, key individuals and FSPs (such as debarment, licence withdrawals, etc.) and such disclosure is not a contravention of the requirements of the General Code.

\(^{152}\) Section 14(2)(a) of the General Code
\(^{153}\) Section 14(2)(b) of the General Code
\(^{154}\) Section 3(3) of the General Code
12.2 RECORD-KEEPING OBLIGATIONS UNDER THE FINANCIAL INTELLIGENCE CENTRE ACT AND OTHER LEGISLATION

12.2.1 Record-keeping

A FSP must have and be able to maintain the operational ability to fulfil the responsibilities imposed by the FAIS Act, including compliance with the FIC Act.\(^{155}\) (We discussed some aspects relating to the FIC Act in Topic 10 above.)

Section 22 of FICA requires accountable institutions that establish a business relationship or conclude a transaction with a client, to keep records of a single transaction or of additional transactions concluded in the course of a business relationship.

It also prescribes full particulars and details of the information that must be kept as records.

- The documents used to identify and verify clients as well as records of all transactions must be retained for a period of at least five (5) years from the date on which the business relationship was terminated.

In terms of Section 24 (1), the record-keeping obligation may be outsourced to a third party provided the accountable institution is given free and easy access to these records. Note that outsourcing this function to a third party does not discharge the accountable institution from the record-keeping responsibility.

Section 24(2) states that the accountable institution will still be held liable for the third party’s failure to comply with this obligation.

Section 24(3) stipulates that if the accountable institution appoints a third party to keep records on its behalf, then particulars of the third party keeping records on behalf of the accountable institution must be provided to the FIC.

- The full particulars and details of the information which must be furnished to the FICA regarding the third party carrying out the record-keeping, obligation is prescribed under Regulation 20.

As in the FAIS Act, records may be kept manually or electronically.

Other record-keeping requirements

\(^{155}\) BN 106 of 2008
In addition to what is discussed above, the following FAIS Act sections refer to record-keeping:

Section 8: Application for authorisation
Section 13: Qualifications of reps and duties of FSPs
Section 19: Accounting and auditing requirements

Section 8 of Board Notice 106 deals with the operational ability of an FSP/key individual and stipulates certain record-keeping requirements.

An FSP must have general administration processing, accounting transactions and risk control measurements in place to ensure accurate, complete and timeous processing of data, information reporting and the assurance of data integrity.

Summary

- The FAIS Act requires stringent record-keeping arrangements.
- The following records need to be kept:
  - Records of known premature cancellations of transactions or financial products by clients of the FSP
  - Records of complaints received and information on whether the complaints have been resolved
  - Records of ongoing compliance with the requirements of Section 8 of the FAIS Act
  - Records of instances of non-compliance with the Act as well as reasons for non-compliance
  - Records of ongoing compliance by representatives as required by Section 13(1) and (2) of the Act
- In addition, the General Code has additional record-keeping requirements. This includes the following:
  - The ability to retrieve records
  - Adequate systems to record verbal and written communications relating to the provision of financial services to clients
  - The records and documentation must be kept safe from destruction
  - The records must be kept for five (5) years after the termination of the product (to the knowledge of the FSP) or for the same period after a financial service was provided
When record-keeping is outsourced but the records must be available for inspection within seven (7) days of a request.

- The FICA requires FSPs to keep records of a single transaction or of additional transactions concluded in the course of a business relationship.

## 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. The FSP, (and by implication it will be part of the management duties of a key individual), must ensure that records are kept:
   a) for a minimum of five (5) years.
   b) for a minimum of three (3) years.
   c) until the transaction or financial service is terminated.
   d) All the above

2. Records that must be kept in terms of the FAIS Act include records of:
   a) known premature cancellations of transactions or financial products by clients of the FSP.
   b) complaints received and information on whether the complaints have been resolved.
   c) ongoing compliance with the requirements of Section 8 of the FAIS Act.
   d) All the above

3. Requirements for record-keeping in terms of the FAIS General Code include the following:
   a) Adequate systems and procedures to record verbal and written communications relating to the provision of financial services to clients
   b) Safekeeping of records from destruction
   c) Retrieval of the records and other material documentation relating to clients or financial services
   d) All the above
4. Section 22 of the FIC Act requires accountable institutions that establish a business relationship or conclude a transaction with a client to keep records of a single transaction or of additional transactions concluded in the course of a business relationship.
   a) True
   b) False

5. In terms of Section 24 (1) of the FIC Act, the record-keeping obligation may not be outsourced to a third party.
   a) True
   b) False
Manage the FSP infrastructure

This topic covers the following criteria:

**KNOWLEDGE CRITERIA:**

<table>
<thead>
<tr>
<th>Description</th>
<th>Task 13</th>
</tr>
</thead>
<tbody>
<tr>
<td>Describe what the operational ability requirements are that the FSP must meet.</td>
<td></td>
</tr>
<tr>
<td>Explain what the requirement regarding financial soundness implies for the FSP.</td>
<td></td>
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<tr>
<td>Explain the requirements in terms of monthly management accounts.</td>
<td></td>
</tr>
<tr>
<td>Explain what it means if an application is granted by the Registrar.</td>
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</tr>
<tr>
<td>Explain what gives rise to a profile change and when should it be submitted.</td>
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<tr>
<td>Explain what the offences are under FAIS.</td>
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<tr>
<td>Explain all processes and procedures required when handling complaints.</td>
<td></td>
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<tr>
<td>Explain the requirements regarding advertising and direct marketing in terms of the Act.</td>
<td></td>
</tr>
<tr>
<td>Explain the importance of contingency planning/processes for the FSP.</td>
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</tr>
</tbody>
</table>

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

- Establish a fixed business address.
- Confirm that the requirements regarding financial soundness are adhered to, and where this is not in place, actively towards achieving it.
- Confirm that there is adequate access to communication facilities including at least a full time telephone or cell phone service, typing and document duplication facilities.
- Confirm that there is adequate storage and filing systems for the safe keeping of records, business communications and correspondence.
- Verify that the FSP has an account with a registered bank, including, where required by the Act, specific account for depositing client monies.
- Establish and maintain compliance and reporting arrangements for the FSP activities.
- Check that the compliance arrangements specify how often compliance with procedures are monitored and reported on.
- Implement and maintain a documented process to maintain the adequacy of your compliance and monitoring arrangements.
- Confirm that the processes are documented to ensure records are kept in training programs attended, including continued educational training, for your key individuals and/or representatives.
• Establish documented processes for the supervision and monitoring of representatives to ensure that they comply with the Act.
• Implement and maintain a documented process to ensure that all representatives are trained, competent and will provide financial services on your behalf efficiently, honestly and fairly.
• Implement and maintain guarantees, professional indemnity or fidelity insurance cover in respect of the clients of the provider or representatives.
• Ensure that written service levels agreements are in place, where activities are outsourced.
• Check that there are processes in place to ensure that providers selected for any outsourced functions are suitable.
• Confirm that where outsourced entities provide advice and/or intermediary services, that they are authorised FSP’s.
• Check that there are processes in place to notify the FSB of any profile changes, and that this is done within the correct timeframes.
• Ensure that there are processes in place to avoid actions that can give rise to civil remedies and/or fines being imposed under FAIS.
• Ensure that there are processes in place to avoid actions that can be regarded as offences under FAIS.
• Where applicable, implement and maintain guarantees, professional indemnity or fidelity insurance cover in respect of the clients of the provider or representatives.
• Ensure that there are policies and processes in place to deal with complaints.
• Ensure that there are processes in place to comply with the advertising and marketing provisions of the general Code of Conduct.
• Record contingency plan for the FSP.
• Create a contingency plan for the FSP with regards to the KI (i.e. sole proprietor.)

INTRODUCTION

Managing the infrastructure of an FSP is part of the key individual’s management and oversight responsibilities. Topic 13 highlights these responsibilities. You will gain a better understanding of the operational ability that FSPs must have and maintain; the financial soundness requirements which must be met; and provisions of the Act and General Code that the key individual must know in order to establish or confirm and verify that suitable systems, controls and processes are in place.

13.1 OPERATIONAL ABILITY REQUIREMENTS OF THE FSP

Applicants must have operational ability before they will be authorised to act as FSPs. Once an FSP is authorised, the key individual must ensure that these abilities are maintained and managed.
The Fit and Proper operational ability requirements for FSPs are listed in Board Notice 106, in Section 8 under Part VIII. These apply to FSPs (sole proprietors included) and not to representatives.

These requirements include the following.

<table>
<thead>
<tr>
<th>An FSP must have:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• a fixed business address.</td>
</tr>
<tr>
<td>• adequate access to communication facilities, at least a full-time telephone or cellphone service, typing and document duplication facilities.</td>
</tr>
<tr>
<td>• adequate storage and filing systems for the safe-keeping of records, business communications and correspondence.</td>
</tr>
<tr>
<td>• an account with a registered bank including, where required by the Act, a separate bank account for client funds.</td>
</tr>
<tr>
<td>• where the FSP is an accountable institution as defined in the FICA, all the necessary policies, procedures and systems to ensure full compliance with FICA and other applicable anti-money laundering or terrorist-financing legislation.</td>
</tr>
</tbody>
</table>

An FSP that utilises any third party to render administrative or system functions in relation to the rendering of financial services on its behalf must have a detailed service level agreement, specifying the agreed services, time standards, roles and responsibilities and any penalties that might be applicable in place.

An FSP must ensure that internal control structures, procedures and controls are in place, which include at very least the following:

a) Segregation of duties and roles and responsibilities where such segregation is appropriate from an operational risk mitigation perspective
b) Application of logical access security
c) Access rights and data security on electronic data, where applicable
d) Physical security of the provider’s assets and records, where applicable
e) Documentation relating to business processes, policies and controls and technical requirements
f) System application testing, where applicable
g) Disaster recovery and back-up procedures on electronic data, where applicable
h) Appropriate training for all key individuals and/or representatives regarding the requirements of the Act
i) Training for all key individuals and/or representatives regarding the giving of advice and/or rendering of intermediary services by the provider; and
j) A business continuity plan, i.e. a contingency plan

An FSP must ensure that the necessary system controls and compliance measures are in place to manage and monitor the relevant system(s) in use.

An FSP must record all financial and system procedures to ensure that the FSP is able to report in terms of applicable accounting requirements.

An FSP must have general administration processing, accounting transactions and risk control measurements in place to ensure accurate, complete and timeous processing of data, information reporting and the assurance of data integrity.

An applicant must, if and to the extent required by the Registrar, maintain in force suitable guarantees or professional indemnity insurance or fidelity insurance cover to cover the risks of losses due to fraud, dishonesty or negligence.

A key individual, in respect of an FSP, must have and be able to maintain the operational ability to fulfill the responsibilities imposed by the Act on FSPs, including oversight of the financial services (regarding the giving of advice and rendering of intermediary services) provided by the representatives of the FSP.

13.2 FINANCIAL SOUNDNESS REQUIREMENTS OF THE FSP

13.2.1 Financial soundness

The fit and proper financial soundness requirements for FSPs are listed in Board Notice 106, under Part IX. These apply to FSPs (sole proprietors included) and not to representatives or key individuals. An FSP must meet certain financial soundness requirements before they will be authorised to act as an FSP.

The financial soundness requirements are as follows:
Table 13.1

1. An FSP must **not be an unrehabilitated insolvent** or under liquidation or in provisional liquidation.

2. A Category I FSP that does not hold client assets or receive premiums or money must **AT ALL TIMES have assets** (excluding goodwill, other intangible assets and investments in and loans to related parties and investments with or loans to persons to whom the FSP renders financial services) that **exceed the FSP’s liabilities** (excluding loans subordinated in favour of other creditors).

3. A Category I FSP that holds client assets or receives premiums or money must **AT ALL TIMES**:
   - **have assets** (excluding goodwill, other intangible assets and investments in and loans to related parties and investments with or loans to persons to whom the FSP renders financial services) that **exceed the FSP’s liabilities** (excluding loans subordinated in favour of all other creditors);
   - **maintain current assets**, which are at least sufficient to meet **current liabilities**; and
   - **maintain liquid assets** equal to or greater than 4/52 weeks of annual expenditure.

   The importance for this type of FSP is to ensure that there are adequate systems and procedures in place so that these requirements are met **AT ALL TIMES**, not only on application for a licence. The risk lies in the fact that the FSP holds or receives clients’ money, hence the more stringent requirement to meet current and liquid asset ratios.

4. A Category II and IV FSP must **AT ALL TIMES**:
   - **have assets** (excluding goodwill, other intangible assets and investments in and loans to related parties and investments with or loans to persons to whom the FSP renders financial services) that **exceed the FSP’s liabilities** (excluding loans subordinated in favour of other creditors);
   - **maintain current assets** which are at least sufficient to **meet current liabilities**; and
   - **maintain liquid assets** equal to or greater than 8/52 weeks of annual expenditure.

5. A Category IIA and III FSP must **AT ALL TIMES**:
   - **have assets** (excluding goodwill, other intangible assets and investments in and loans to related parties and investments with or loans to persons to whom the FSP renders financial services) that **exceed the FSP’s liabilities** (excluding loans
Where an FSP has multiple licences, the most onerous (i.e. the category which requires the highest ratio of assets and the highest amount of liquid assets) financial soundness requirements must be met.

### 13.2.2 Monthly management accounts

Section 19 of the FAIS Act requires FSPs to meet certain accounting and audit requirements.

- One of the requirements is full and proper accounting records, which must be updated monthly.
- Another requirement is the submission of annual financial statements reflecting the financial position of the business for the financial year.

#### Financial statements

As from 1 May 2009, all authorised FSPs should submit their annual financial statements within four months after their financial year-end. This means that FSPs who use accounting officers or auditors must ensure that they submit their documentation timeously to the accounting officer or auditor, and agree on a time-frame for completion of the financial statements with them. It remains the responsibility of the FSP and key individual to ensure that these reports are submitted within the prescribed time period.

The financial statements can either be hand-delivered/posted to the FSB or they can be submitted using the online reporting system.

There are a number of documents that together form the set of financial statements.

- **Section 19 (1) (a) & (b):** Accounting and audit requirements
- **Section 19 (2):** External Auditors’ report
- **Section 19 (3):** Audit report
13.3 MANAGING THE INFRASTRUCTURE: FAIS ACT

The key individual must on behalf of the FSP ensure that the systems, processes and controls are in place to comply with all requirements of the Act, not only the operational provisions outlined in Board Notice 106 of 2008. Sections 7 to 42 of the FAIS Act outline many important requirements.

The table below contains a checklist of the most relevant provisions of the Act that the key individual must take into account.

| Table 13.2 |
| --- | --- | --- |
| **Section of Act** | **Provision** | **Cross Reference** |
| 7. Authorisation of FSPs | • FSP must be licensed.  
• FSP may only conduct business within conditions of licence category and product sub-categories.  
• A person may not act as a representative of an authorised financial service provider unless the person has been appointed as such. | • 1.3 and 1.5  
• 10.1  
• 13.1 |
| 8. Application for authorisation | • Licence issued is subject to initial and ongoing fit and proper status of FSP, business owners and KI. Notify Registrar of any changes within time period.  
• Licence display, references in documentation and proof  
• Licence may be amended.  
• Prohibition from making use of a license where FSP no longer have such authorisation  
• Prohibition from publishing | • Topic 2  
• 5.1 and 5.2  
• 10.1 |
<table>
<thead>
<tr>
<th>Section of Act</th>
<th>Provision</th>
<th>Cross Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>documentation that is misleading or contrary to public interest or contains an incorrect statement of fact</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8A. Compliance with fit and proper requirements after authorisation</td>
<td>• Fit and proper requirements must be complied with on a continued basis.</td>
<td>• 5.1</td>
</tr>
<tr>
<td>9. Suspension and withdrawal of authorisation</td>
<td>• Reasons for suspension or withdrawal</td>
<td>• 10.2</td>
</tr>
<tr>
<td></td>
<td>• Provisional suspension or withdrawal</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Process</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Consequences for FSP</td>
<td></td>
</tr>
<tr>
<td>11. Lapsing of licence</td>
<td>• Reasons for lapse</td>
<td>• 11.1</td>
</tr>
<tr>
<td></td>
<td>• Process to be followed by licensee, KI or other responsible person</td>
<td></td>
</tr>
<tr>
<td>12. Exemption in respect of product suppliers</td>
<td>• Only exempt if applied for and approved by Registrar – conditions</td>
<td>• 10.1</td>
</tr>
<tr>
<td>13. Qualifications of representatives and duties of authorised FSPs</td>
<td>• Reps to be authorised</td>
<td>• Topic 3</td>
</tr>
<tr>
<td></td>
<td>• Only lawfully appointed representatives are able to render financial services.</td>
<td>• Topic 4</td>
</tr>
<tr>
<td></td>
<td>• FSP/KI to ensure reps are competent</td>
<td>• 5.3 and 5.4</td>
</tr>
<tr>
<td></td>
<td>• FSP/KI to ensure reps comply with legislation and codes</td>
<td>• 6.2</td>
</tr>
<tr>
<td></td>
<td>• Representative register to be maintained and submitted as required</td>
<td>• Topic 8</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• 13.1</td>
</tr>
<tr>
<td>14. Debarment of representatives</td>
<td>• Reasons for debarment</td>
<td>• 6.1</td>
</tr>
<tr>
<td>14A Debarment by Registrar</td>
<td>• Process</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Notification to Registrar and update of register</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Debarment by Registrar – reasons and process</td>
<td></td>
</tr>
</tbody>
</table>
| 15. Codes of conduct | • Published by Registrar  
• Binding on FSPs |
|---------------------|--------------------------------------------------|
| 16. Principles of code of conduct | • Authorised FSPs & their representatives obliged by code of conduct  
• Provisions to be contained in the code  
• Topic 8 |
| 17. Compliance officer and compliance arrangements | • Appoint compliance officer when more than one KI or one or more representatives.  
• Compliance officer must meet requirements.  
• Compliance officer must meet fit and proper requirements on ongoing basis.  
• Compliance officer must be approved by Registrar.  
• Approval may be withdrawn – reasons.  
• FSP must establish and maintain procedures to comply.  
• Compliance officer to submit reports  
• Report any irregularities.  
• Process for termination of appointment  
• Topic 9 |
| 18. Maintenance of records | • FSP to maintain specified types of records for period of five years  
• 12.1 |
| 19. Accounting and audit requirements | • Maintain full and proper accounting records.  
• Updated monthly  
• Submit annual financial statements  
• Statements to be audited unless exempt  
• Auditor requirements – approved by Registrar  
• 13.2  
• 8.1  
• Topic 14 |
- Statements to fairly reflect state of affairs of FSP
- Submit within four months of financial year-end.
- Information on separation of FSP and client funds
- Report any irregularities.
- Process for termination of appointment
- Change in financial year-end

20. Office of Ombud for Financial Services Providers
- Objective of Ombud
- Ombud is independent and impartial.

26. Powers of the Board
- Board empowered to make different rules relating to the Ombud including types of complaints and Ombud provisions

27. Receipt of complaints, prescription, jurisdiction and investigation
- Specifies types of complaints the Ombud may consider.
- Three-year prescription period
- When a complaint must be declined
- Process to follow when investigating a complaint

28. Determinations by the Ombud
- Dismissal or upholding in part or whole of a complaint
- Monetary awards and interest
- Appeals
- Writ of execution

31. Penalties
- Penalties may apply if anyone anticipates, influences or interrupts proceedings.
| 34. Undesirable practices | • Principles to determine whether a practice is undesirable  
• Process to be followed | • 7.3 |
|--------------------------|---------------------------------------------------------------------------------|---|
| 35. Regulations | Power to Registrar to:  
• Issue regulations.  
• Prescribe any matters in Act.  
• Prohibit actions.  
• Compliance matters  
• Call for information.  
• Limits of penalties if contravened | • 9.2.1 |
| 36. Offences and penalties | • Contravention or failure to comply with various provisions of the Act and submitting false or misleading information  
• Limits of penalties | • 10.3 |
| 38. Voluntary sequestration, winding-up and closure | • Requirements and processes the FSP must follow  
• Application or special resolution or voluntary closure has no legal force unless Registrar declared arrangements satisfactory. | • 11.2 |
| 38A. Business rescue | • Requirements and process FSP to follow | • 11.2 |
| 38B. Application by Registrar for sequestration or liquidation | • Requirements and process to follow | • 11.2 |
| 38C. Directives | • Registrar authorised to issue directives | • 10.6 |
| 39. Right of appeal | • Any person has right of appeal against a decision by Registrar or Ombud. | • 16.3 |
41. Fees and penalties

- Registrar may set fees payable, e.g. profile changes, annual levy.
- Penalty limits for late submission of required information
- Interest may be imposed.

10.3.4
10.4.1

13.4 MANAGING THE INFRASTRUCTURE: GENERAL CODE

Section 15 of FAIS refers to codes of conduct that the Registrar must publish. These codes of conduct are binding on FSPs. Section 16 of FAIS specifies certain principles that must be contained in the code/s. The General Code of Conduct is the main code to which FSPs must comply. Depending on the licence category, the FSP may be required to comply with additional codes of conduct.

The key individual is responsible on behalf of the FSP to ensure that the FSP has systems, processes and controls in place to comply with the provisions of the General Code of Conduct. The table below contains a checklist of the most relevant provisions of the General Code that the key individual must take into account.

Table 13.3

<table>
<thead>
<tr>
<th>Section of Gen. Code</th>
<th>Provision</th>
<th>Cross Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Specific duties of the provider</td>
<td>Duties when rendering a service include:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Provision of factually correct information in understandable manner to client</td>
<td></td>
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<td></td>
<td>• Timeous disclosures</td>
<td></td>
</tr>
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<td></td>
<td>• Confirmation in writing if information given orally</td>
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<tr>
<td></td>
<td>• Disclosure of earnings or incentives in Rand terms or basis of calculation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Avoidance of conflict of interest</td>
<td></td>
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<tr>
<td></td>
<td>• Disclosures and procedures in event of conflict of interest</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• 8.2.2</td>
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<tr>
<td></td>
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<td>• 8.4.1 – 8.4.2</td>
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<tr>
<td></td>
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<td>• 12.1.2</td>
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<tr>
<td></td>
<td></td>
<td>• 12.1.3</td>
</tr>
<tr>
<td>Section of Gen. Code</td>
<td>Provision</td>
<td>Cross Reference</td>
</tr>
<tr>
<td>----------------------</td>
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</tr>
<tr>
<td><strong>Systems and processes in place regarding record-keeping</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Confidentiality of client information</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Limits on commission earnings and fee-related requirements</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Prohibition on offering financial incentive to representatives in certain circumstances</strong></td>
<td></td>
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</tr>
<tr>
<td><strong>Adopt, maintain and implement conflict of interest management policy, train staff in required, monitor compliance continually, review annually.</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>4. Information on product suppliers</strong></td>
<td></td>
<td>8.2.1</td>
</tr>
<tr>
<td>• Supply within 30 days in writing if given orally.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Disclosures including FSP information, contractual relationships, licence conditions/restrictions, if over 10% ownership and conflict of interest</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>5. Information on providers</strong></td>
<td></td>
<td>8.2.1</td>
</tr>
<tr>
<td>• Supply within 30 days in writing if given orally.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Disclosures including FSP information, contractual relationships, licence conditions/restrictions, confirmation of insurance/guarantees</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>6. Contacting of client</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Act honourably, professionally and with due regard to the convenience of the client.</td>
<td></td>
<td></td>
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<tr>
<td>• State purpose of contact.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
<td>Page</td>
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<tr>
<td>7.</td>
<td>Information about the financial service</td>
<td>8.3</td>
</tr>
<tr>
<td></td>
<td>Disclosures about the financial product or service</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Includes details of benefits, terms, conditions, restrictions, monetary obligations, incentives</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Disclosures to clients regarding provision of complete and accurate information</td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Furnishing of advice</td>
<td>8.6.1</td>
</tr>
<tr>
<td></td>
<td>Suitability: process of seeking information from the client, analysing the information, making appropriate recommendations</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Additional process if replacing a product</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Disclosures if analysis could not be done or client elects to conclude a different transaction</td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>Record of advice</td>
<td>8.6.2</td>
</tr>
<tr>
<td></td>
<td>Content of record of advice</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Written copy to client</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Not needed if transaction not concluded</td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>Custody of financial products and funds</td>
<td>8.1</td>
</tr>
<tr>
<td></td>
<td>Account for receipt of products and funds.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Additional requirements including safeguarding, confirmation of receipt, separation from FSP funds</td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>Control measures</td>
<td>8.8.1</td>
</tr>
<tr>
<td></td>
<td>Employ resources, procedures and appropriate technological systems to eliminate risk of financial loss.</td>
<td></td>
</tr>
</tbody>
</table>
| 12. Specific control objectives | Structure control procedures to ensure that:  
| | • relevant business carried on in an orderly and efficient manner.  
| | • financial and other information used will be reliable.  
| | • all applicable laws are complied with. | • 8.8.1 |
| 13. Insurance | • Maintain required guarantees or professional indemnity or fidelity insurance cover. | • 8.8.3 |
| 14. Advertising and direct marketing | • No fraudulent, untrue or misleading statements  
| | • Requirements if contains illustrations, forecasts or hypothetical data  
| | • Warning statement  
| | • Requirements if advertising by telephone or in public media | • 8.8.4 |
| 15. Direct marketer | • Disclosures about the FSP, contact details, licence conditions/restrictions, product information | • 8.8.5 |
| 16. General | • General provisions and obligations relating to handling of complaints | |
| 17. Basic systems and procedures | • Provisions and obligations relating to handling of complaints  
| | • Includes maintenance of a comprehensive complaints policy | |
| 18. Resolution of complaints | • Internal complaint resolution system  
<p>| | • Requirements relating to complaints resolution system including ensuring adequate | • 8.7 |</p>
<table>
<thead>
<tr>
<th>19. Specific obligations</th>
<th>Content of complaints resolution policy, including access by all staff, summary of Act and Ombud process, acknowledgement of complaint and ensuring complaints receive proper consideration</th>
<th>8.7</th>
</tr>
</thead>
</table>
| 20. Termination of business | Requirements and procedures if:  
- client terminates.  
- FSP ceases to operate.  
- representative ceases to operate. | 8.9.1 – 8.9.3 |
| 21. Waiver of rights | Provider may not request or induce client to waive any right or benefit conferred by the code. | 8.9.3 |

**Summary**

- Managing the infrastructure within the FSP is part of the key individual's responsibilities.
- In order to meet the licensing requirements, FSPs must have the operational ability to render financial services. Once licensed, these requirements must be maintained.
- In order to get an FSP licence, applicants must demonstrate that they meet the financial soundness requirements. These requirements are ongoing during the lifespan of an FSP licence. The General Code stipulates the asset values that must be maintained at all times for the different product categories.
- The FAIS Act is the framework within which an FSP operates. The key individual must ensure that the FSP has operational ability to fulfil all the responsibilities imposed by the Act.
- The General Code of Conduct is binding on FSPs and contains detailed obligations that FSPs must comply with in their day-to-day operations. These therefore form part of the operational ability and key individual’s responsibilities.
Self-Assessment Questions

1. The operational ability requirements for FSPs include:
   a) a fixed business address.
   b) adequate storage and filing systems for the safe-keeping of records, business communications and correspondence.
   c) an account with a registered bank including, where required by the Act, a separate bank account for client funds.
   d) All the above

2. The financial soundness requirements for FSPs include the following:
   a) An FSP must not be an unrehabilitated insolvent or under liquidation or in provisional liquidation.
   b) A Category 1 FSP that holds client assets or receives premiums or money must at the time of the financial audit have assets (excluding goodwill, other intangible assets and investments in related parties) that exceed the FSP’s liabilities (excluding loans validly subordinated in favour of all other creditors).
   c) A Category 1 FSP that holds client assets or receives premiums or money must AT ALL TIMES maintain liquid assets equal to or greater than 8/52 weeks of annual expenditure.
   d) All the above

3. Section 19 of the FAIS Act requires FSPs to meet certain accounting and audit requirements, which include full and proper accounting records which must be updated:
   a) annually.
   b) quarterly.
   c) monthly.
   d) None of the above
Auditing and accounting requirements

This topic covers the following criteria:

<table>
<thead>
<tr>
<th>KNOWLEDGE CRITERIA:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Describe what the auditing and accounting requirements are for an authorised FSP. (Task 14)</td>
</tr>
<tr>
<td>Explain the financial record-keeping requirements the FSP must adhere to. (Task 14)</td>
</tr>
</tbody>
</table>

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

2. Check that the required auditing and accounting requirements as it applies to the FSP, is in place and carried out accurately and timeously.

4. Confirm that the auditing firm / accounting officer is organisationally independent from the FSP (or the group of which it is part of) and able to maintain an objective frame of mind in accomplishing its responsibilities.

5. Confirm that the auditing firm / accounting officer is sufficiently knowledgeable about the industry for the engagement.
INTRODUCTION

Topic 14 introduces you to the auditing and accounting requirements that an FSP must adhere to. We look at the maintenance of accounting records and preparation of financial statements as prescribed by Section 19 of the FAIS Act. There is an onus on the auditor to report irregularities or similar suspicions to the Registrar.

14.1 AUDITING AND ACCOUNTING REQUIREMENTS

Section 19 of the FAIS Act stipulates the accounting and audit requirements that an FSP must adhere to, which are:

Table 14.1

<table>
<thead>
<tr>
<th>Accounting records</th>
<th>Maintain full and proper accounting records on a continuous basis, brought up to date monthly. 156</th>
</tr>
</thead>
</table>
| Financial statements| Prepare annual financial statements which shows: 157  
(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;  
(iv) 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  
(v) a summary of significant accounting policies and explanatory notes on the matters referred to in paragraphs (i) to (iii). |

156 Section 19(1)(a) of the Act  
157 Section 19(1)(b)(i) to (iv) of the Act
Section 19(2) requires that the FSP must have the financial statements audited in accordance with auditing pronouncements as defined in Section 1 of the Auditing Professions Act,\(^{158}\) by an external auditor approved by the Registrar.

<table>
<thead>
<tr>
<th>Audited financial statements</th>
<th>The financial statements must:(^{159})</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(i) fairly represent the state of affairs of the provider’s business;</td>
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<td></td>
<td>(ii) refer to any material matter which has affected or is likely to affect the financial affairs of the provider; and</td>
</tr>
<tr>
<td></td>
<td>(iii) be submitted by the FSP, to the Registrar, within four (4) months after financial year-end, or as allowed by the Registrar.</td>
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</tbody>
</table>

Section 19(3) requires FSPs who hold money and/or assets on behalf of their clients to maintain full and proper accounting records of these, and to submit an audited report together with the financial statements (that is, within four (4) months of financial year-end), in the prescribed format. (We discussed the requirements of the General Code regarding custody of financial products in Topic 8.1.)

<table>
<thead>
<tr>
<th>Audited financial statements</th>
<th>The report must include the following:(^{160})</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1. The amount of money and financial products at year-end held by the provider on behalf of clients</td>
</tr>
<tr>
<td></td>
<td>2. 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</td>
</tr>
<tr>
<td></td>
<td>3. Any other information required by the Registrar</td>
</tr>
</tbody>
</table>

**NOTE**\(^ {161}\): The aim of the Section 19(3) Report is to ensure that clients’ assets and or monies held by a provider are protected from unauthorised use and kept separate from the provider’s business funds and also, to detect any non-compliance with the Act in respect of those monies and assets.

Section 19(4) states that:
- the auditor of an authorised FSP must report to and inform the Registrar in writing of any irregularity or suspected irregularity in the conduct or the affairs of the authorised FSP concerned

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\(^{158}\) Act No 26 of 2005  
\(^{159}\) Section 19(2)(b) of the Act  
\(^{160}\) Section 19(3)(a) to (c) of the Act  
\(^{161}\) Ibid
of which the auditor became aware in performing functions as auditor and which, in the opinion of the auditor, is material.

**Section 19(5) provides that:**
- if the FSP terminates the services of its auditor, the auditor must provide what the auditor believes to be the reasons for the termination.
- if the auditor would have submitted a report in terms of Section 19(4), such report must still be submitted.

The FSB, on its website, provides detail on the type of financial statements to be submitted as follows:

In terms of Section 19, all financial statements must be audited. The Registrar, however, exempted certain providers from the audit requirements. The following financial statements must be submitted:

**Category II, IIA, III and IV FSPs:** Audited financial statements

**Category I FSPs:**
- Companies: Audited financial statements
- Sole proprietors and close corporations that do not receive client funds or premiums: unaudited financial statements
- Sole proprietors and close corporations that do receive client funds or premiums: audited financial statements

### 14.2 FINANCIAL RECORD-KEEPING

**Section 19 (1) of the FAIS Act requires that the FSP keeps the accounting records updated on a monthly basis.** We discussed this above.

Part of the key individual's responsibilities is to ensure that there are adequate processes and procedures in place to facilitate an infrastructure to update the monthly management accounts and to report on it.

It is also important to ensure that the processes and procedures allow the auditing firm/accounting officer to be organisationally independent from the FSP (or the group of which is it part of) and able to maintain an objective frame of mind in accomplishing its responsibilities.

Section 19(4) requires an auditor to inform the Registrar in writing of any irregularities or suspected irregularities in the affairs of the FSP.
For more information on the accounting requirements of the FAIS Act, you can refer to the Guidance Notes on Auditing, issued by the FSB and available on their web site.

### Summary

- FSPs must ensure that the principles relating to accounting and auditing are adhered to.
- Accounting records must be updated monthly, as required by Section 19 of the FAIS Act.
- Financial statements must be prepared to reflect:
  - the financial position of the entity at its financial year-end.
  - results of operations, receipt and payment of cash and cash equivalent balances.
  - additional GAAP requirements.
  - summary of significant accounting policies and explanatory notes.
- The auditor of an FSP must:
  - report to and inform the Registrar in writing of any irregularity or suspected irregularity in the conduct or the affairs of the authorised FSP concerned of which the auditor became aware in performing functions as auditor and which, in the opinion of the auditor, is material.

### 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. Section 19 of the FAIS Act stipulates the accounting and audit requirements which an FSP must adhere to.
   a) True
   b) False
2. The financial statements must:
   a) fairly represent the state of affairs of the provider’s business.
   b) refer to any material matter which has affected or is likely to affect the financial affairs of the provider.
   c) be submitted by the FSP, to the Registrar, within four (4) months after financial year-end, or as allowed by the Registrar.
   d) All the above

3. Section 19(3) requires FSPs who hold money and/or assets on behalf of their clients to:
   a) maintain full and proper accounting records of these.
   b) submit an audited report together with the financial statements (that is, within six (6) months of financial year-end), in the prescribed format.
   c) submit an audited report in the prescribed format before the following financial year-end.

4. The aim of the Section 19(3) Report is to ensure that clients’ assets and/or monies held by a provider are:
   a) protected from unauthorised use.
   b) kept included in the provider’s business funds.
   c) invested according to the provider’s instructions.
   d) All the above
The impact of FICA on the FSP

This topic covers the following criteria:

<table>
<thead>
<tr>
<th>KNOWLEDGE CRITERIA:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Explain what FICA governs and requires. (Task 15)</td>
</tr>
<tr>
<td>Describe how the FSP is impacted by FICA. (Task 15)</td>
</tr>
<tr>
<td>Explain what actions should be taken by the FSP in regard to FICA. (Task 15)</td>
</tr>
</tbody>
</table>

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

- Verify that there are written internal rules in place as required by the Financial Intelligence Centre Act (Act no. 38 of 2001) and that all staff are familiar with this.
- Check that there are processes in place to ensure that employees receive training in respect of, and are aware of, their obligation to report suspicious transactions.
INTRODUCTION

The Financial Intelligence Centre Act imposes certain responsibilities on FSPs that are ‘accountable institutions’. Supervisory bodies, such as the FSB are empowered through the Act to enforce compliance with money laundering legislation. This topic will take you through the impact of FICA on the FSP and the reporting and record-keeping duties required by the FIC Act. It does not include a comprehensive analysis of the Act.

We also look briefly at other applicable anti-money laundering legislation.

15.1 THE SCOPE OF THE FINANCIAL INTELLIGENCE CENTRE ACT

One of the objectives of the FICA is to introduce control measures to assist the detection and investigation of money laundering activities. The primary purpose of the FICA is to combat money laundering.

Money laundering refers to any act that obscures the illicit nature or the existence, location or application of proceeds of crime.

Simply put, money laundering is the processing of proceeds of criminal activities to disguise their origin.

Money laundering happens throughout the financial services sector and it is important that:

- financial advisers and intermediaries know with whom they are doing business;
- the paper trail of transactions through the financial system can be identified and preserved; and
- possible money laundering transactions are identified and reported.

The FICA introduced the following control measures. Institutions must:

- be able to establish and verify the identity of their clients;
- keep certain records;
- report certain information; and
- implement measures that will assist them in complying with the FICA, such as training of staff.
The FICA does not empower the Financial Intelligence Centre (FIC) to supervise the accountable institutions. 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.

The supervisory functions are performed by all supervisory bodies listed under Schedule 2.

Each supervisory body is responsible for enforcing compliance with money laundering legislations by the accountable institutions under its regulation or supervision. Therefore, the FSB is responsible for enforcing compliance by authorised FSPs.

The FICA provides for:

- the establishment and operation of the FIC (Financial Intelligence Centre) and MLAC (Money Laundering Advisory Council);
- creation of money laundering control obligations for specific persons and institutions; and
- regulation of access to information.

15.2 THE IMPACT OF THE FICA ON FSPs

Please note that we only discuss the most pertinent aspects of the FIC Act and not the full ambit of the Act. You need to ensure that you are familiar with the general concepts addressed by the FIC Act.

The FICA creates four (4) money laundering control obligations for all accountable institutions as follows:

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

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.
**Accountable institutions**

The FIC Act requires “accountable institutions” to verify client details and report suspicious transactions.

For our purposes, the following institutions are included in Schedule 1 of the Act:

**FINANCIAL INTELLIGENCE CENTRE ACT, 2001**  
**SCHEDULE 1: LIST OF ACCOUNTABLE INSTITUTIONS**

1. A practitioner who practises as defined in Section 1 of the Attorneys Act, 1979 (Act 53 of 1979)
2. 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, 1988 (Act 57 of 1988)
7. A mutual bank as defined in the Mutual Banks Act, 1993 (Act 124 of 1993)
9. A person who carries on a business in respect of which a gambling licence is required to be issued by a provincial licensing authority
10. A person who carries on the business of dealing in foreign exchange
11. A person who carries on the business of lending money against the security of securities
12. 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)

13. A person who issues, sells or redeems travellers’ cheques, money orders or similar instruments


15. [deleted by amendment Notice No. 1104 dated 26 November 2010]

16. The Ithala Development Finance Corporation Limited

17. [deleted by amendment Notice No. 1104 dated 26 November 2010]

18. [deleted by amendment Notice No. 1104 dated 26 November 2010]

19. A person who carries on the business of a money remitter

Reporting institutions

The FIC Act also requires ‘reporting institutions’ to verify client details and report suspicious transactions.

According to Schedule 3 of the Act, the following are seen as reporting institutions:

- A person who carries on the business of dealing in motor vehicles
- A person who carries on the business of dealing in Kruger rands.

It is therefore imperative that FSPs have adequate staff training in place and have proper systems and procedures which assist them in complying with the FAIS Act requirement to comply with the FICA. Banks and insurance companies, for instance, are regarded as accountable institutions in terms of the FICA.

The key individual must also ensure that there are adequate systems in place to provide for the FICA exemptions.

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 (4) money laundering control obligations in more detail:

Table 15.1

<table>
<thead>
<tr>
<th>1. IDENTIFICATION OF NEW CLIENTS</th>
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<tr>
<td><strong>Section 21(1)</strong> of the FICA requires accountable institutions:</td>
</tr>
<tr>
<td>- to identify new clients and</td>
</tr>
<tr>
<td>- verify their particulars</td>
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<tr>
<td>- before any transaction may be concluded or any business relationship is established with them unless they qualify for Exemption 2.</td>
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</tbody>
</table>

(Exemption 2 stipulates that an accountable institution may accept a mandate from a prospective client and proceed to establish a business relationship or conclude a single transaction with that client.)

<table>
<thead>
<tr>
<th>2. VERIFICATION OF NEW CLIENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>- The Money Laundering Control Regulations prescribe the identification and verification requirements for clients of accountable institutions, ranging from SA citizens and residents, foreign nationals, corporations, South African companies, close foreign companies, partnerships and trusts.</td>
</tr>
<tr>
<td>- The information obtained from legal persons such as companies, close corporations, and trusts must be verified by comparing it against the registration documents of these legal entities.</td>
</tr>
<tr>
<td>- 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.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3. IDENTIFICATION AND VERIFICATION OF EXISTING CLIENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>- <strong>Section 21(2)</strong> of the FICA requires a similar process for existing clients as for new clients.</td>
</tr>
<tr>
<td>- It also states that if an accountable institution had established a business relationship with a client before the FICA took effect, it may not conclude further transactions in the course of that business relationship, unless prescribed steps are taken to ensure the identities of the clients are established and verified. A period of time was granted for compliance with this requirement.</td>
</tr>
</tbody>
</table>
ADDITIONAL MEASURES WHEN A PERSON REPRESENTS OR ACTS ON AUTHORITY OF ANOTHER

- Regulation 17 states that if a person wants to establish a business relationship or to 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 from that person information 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.

VERIFICATION IN THE ABSENCE OF CONTACT PERSON (NON-FACE-TO-FACE CLIENTS)

- Regulation 18 stipulates that if the accountable institution obtained identification and verification information from a natural or legal person without contact in person 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.

- 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.

15.3 RECORD-KEEPING AND REPORTING OBLIGATIONS UNDER THE FICA AND OTHER LEGISLATION

15.3.1 Record-keeping

Section 22 of the FICA requires accountable institutions:

- who establish a business relationship
- or conclude a transaction with a client
- to keep records of a single transaction or of additional transactions concluded in the course of a business relationship.

It also prescribes full particulars and details of the information that must be kept as records.

The documents used to identify and verify clients as well as records of all transactions must be retained for a period of at least five (5) years from the date on which the business relationship was terminated.
In terms of **Section 24(1)**:

- the record-keeping obligation may be outsourced to a third party provided the accountable institution is given free and easy access to these records. Note that outsourcing this function to a third party does not discharge the accountable institution from the record-keeping responsibility.

**Section 24(2)** states that:

- the accountable institution will still be held liable for the third party’s failure to comply with this obligation.

**Section 24(3)** stipulates that:

- if the accountable institution appoints a third party to keep records on its behalf, then
- particulars of the third party keeping records on behalf of the accountable institution must be provided to the FIC.

The full particulars and details of the information which must be furnished to the FIC regarding the third party carrying out the record-keeping obligation are prescribed under Regulation 20.

As in the FAIS Act, records may be kept manually or electronically.

### 15.3.2 Reporting duties

**Section 28 Cash transactions above prescribed limit**

An accounting institution and a reporting institution must, within the prescribed period, report to the Centre the prescribed particulars concerning a transaction concluded with a client if in terms of the transaction an amount of cash in excess of the prescribed amount –

a) is paid by the accountable institution or reporting institution to the client (including persons acting on behalf of the client) or
b) is received by the accountable institution from a client.

A report under the section must be made as soon as possible to the FIC, but no later than two (2) days after the fact of a cash transaction or series of cash transactions that has exceeded the prescribed limit was determined.
Section 28a: Property associated with terrorist and related activities

An accountable institution which has in its possession or under its control property owned or controlled by or on behalf of any entity which has committed or attempted to commit or facilitated the commission of a specified offence as defined in the Protection of Constitutional Democracy against Terrorism and Related Activities Act (POCDATARA) 2004, must within the prescribed period report that fact and the prescribed particulars to the FIC.

A report under the section must be sent to the Centre as soon as possible, but not later than five (5) days after it was established that the accountable institution has property associated with terrorist and related activities in its possession or under its control.

Section 29: Suspicious and unusual transactions

Any person who knows or suspects that:

• the business has received or is about to receive the proceeds of unlawful activities;
• a transaction or series of transactions to which the business is a party
  - facilitated or is likely to facilitate the transfer of the proceeds of unlawful activities;
  - has no apparent business or lawful purpose;
  - is conducted for the purpose of avoiding giving rise to a reporting duty under this Act; or
  - 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
• 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.

A person who has reported a suspicious transaction may not disclose that fact to anyone.
The duty to report suspicious and unusual transactions is imposed on all persons who carry on business, are in charge of or manage a business, or are employed by the business.

Failure to file such a report amounts to an offence that carries a penalty.

**Regulation 22 of the FICA** deals with the reporting format. It states that suspicious transaction reporting can be Internet based or by a method developed by the FIC.

Full particulars of the information to be contained in the Suspicious Transaction Reports (STR) are prescribed under Regulation 23.

A report under the Section must be sent to the FIC as soon as possible, but no later than five (5) days after the suspicious transaction was determined.

**Prescribed threshold and aggregation of amounts**

Regulation 22B of the Regulations sets the prescribed amount for cash threshold reporting. The prescribed limit in terms of Section 28 of the FIC Act is R24 999.99 (twenty-four thousand nine hundred and ninety-nine Rands and ninety-nine cents) or the equivalent foreign denomination value calculated at the time that the transaction is concluded. This means that all cash transactions exceeding R24 999.99 (being R25 000 or more) must be reported to the Centre in terms of Section 28 of the FIC Act.

Accountable and reporting institutions must report aggregates of smaller amounts which when combined add up to the prescribed amount, in cases where it appears to the accountable or reporting institution concerned that the transactions involving those smaller amounts are linked in such a way that they should be considered fractions of one transaction. Accordingly, the threshold amount can be a single cash transaction to the value of R25 000 or more, or an aggregation of smaller amounts with a combined value of R25 000 or more. While the aggregation period is not specified, the Centre requests that a period of at least 24 hours be applied when considering aggregation.

Accountable and reporting institutions should bear in mind that Section 29(1)(iii) of the FIC Act requires the reporting of a suspicion that a transaction or series of transactions is conducted to avoid giving rise to another reporting duty in terms of the FIC Act. It is therefore possible that an aggregate transaction would simultaneously give rise to an obligation to file a Cash Transaction Report in
terms of Section 28 of the FIC Act and report a suspicious or unusual transaction in terms of Section 29 of the FIC Act.

Furthermore, note that the obligation to file a Cash Transaction report in terms of Section 28 of the FIC Act could mean that more than one accountable and/or reporting institution may be obliged to file a report regarding the same transaction, as illustrated in the example below.

**Example: Motor vehicle dealers**

The client of a motor vehicle dealer (MVD), XYZ Motors, elects to pay in cash after purchasing a motor vehicle from XYZ Motors for the amount of R28 500. The MVD has a strict no-cash policy and requests the client to pay the cash into XYZ Motors’ bank account at ABC Bank.

ABC Bank receives the cash amount of R28 500. ABC Bank is an accountable institution as listed in Schedule 1 to the FIC Act and has a reporting obligation in terms of Section 28 of the FIC Act to report this transaction.

XYZ Motors receives and peruses its bank statement or receives a bank deposit slip from the client which reflects the transaction that exceeded the prescribed threshold. XYZ Motors is a reporting institution as listed in Schedule 3 to the FIC Act. XYZ Motors “acquired knowledge” of the cash that went into its bank account and now has an obligation to report in terms of Section 28 of the FIC Act.

As a result, this transaction will have to be reported to the Centre in terms of Section 28 by both the motor vehicle dealer and the bank.

In an FSB FAIS Newsletter, the FSB suggested the following measures to promote compliance with the FICA requirements. 162

**Formulation and implementation of internal rules**

Section 42 of the FICA requires accountable institutions to formulate and implement internal rules concerning:

a) client identification and verification;

b) record-keeping;

c) steps taken to determine and report suspicious transactions; and

d) such other matters as may be prescribed from time to time.

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Internal rules must be made available to every employee involved in transactions to which FICA apply, and on request, a copy thereof must be made available to the FIC and relevant supervisory bodies.

Sections 25 and 27 of the Money Laundering & Terrorist Financing Control Regulations provide further information on this duty of the accountable institution.

The internal rules of an accountable institution concerning the establishment and verification of identities must:

• provide for the necessary processes and working methods which will ensure the proper identification and verification of identities;
• provide for steps to be taken by the relevant staff members aimed at the verification of the required particulars;
• provide for the responsibility of management in respect of compliance with the Act and regulations;
• allocate responsibilities and accountability to ensure that staff duties regarding identification and verification of identities are complied with;
• provide for disciplinary steps against the relevant staff members for non-compliance with the Act and regulations; and
• take into account any guidance notes concerning the verification of identities which may apply.

The internal rules concerning the reporting of suspicious and unusual transactions must:

• provide for the necessary processes and working methods, which will cause suspicious and unusual transactions to be reported without undue delay;
• provide for the necessary processes and working methods to enable staff to recognise potentially suspicious and unusual transactions;
• provide for the responsibility of the management of the institution in respect of compliance with the Act, the regulations and internal rules;
• allocate responsibilities and accountability to ensure that staff duties concerning the reporting of suspicious and unusual transactions are complied with;
• provide for disciplinary steps against the relevant staff members for non-compliance with the Act, the regulations and internal rules;
• take into account any guidance notes concerning the reporting of unusual and suspicious transactions which may apply.
Training of employees

The FICA requires accountable institutions to provide training to its employees to enable them to comply with the provisions of FICA and internal rules applicable to them.\(^{163}\)

Note that FICA does not prescribe the format of training required. Both formal training and FICA awareness campaigns are recognised. These methods are both designed to raise the level of awareness of employees regarding their obligations.

As in the FAIS Act, record of training attended must be kept as proof.

Appointment of a compliance officer

Section 43(b) of the FICA requires accountable institutions to appoint a person with a responsibility to ensure compliance by:

- the accountable institution with its obligations under FICA.
- employees of the accountable institution with the provisions of FICA as well as internal rules applicable to them.

Penalties

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, among others, the following:

- 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

\(^{163}\) Section 43(1)
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).

15.3.3 Other applicable anti-money laundering legislation
Other applicable legislation which applies and with which an FSP must comply with in terms of money laundering control measures, includes:

<table>
<thead>
<tr>
<th>Table 15.2</th>
<th>Prevention of Organised Crime Act(^{164}) (POCA)</th>
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**Objectives of POCA:**

- To criminalise racketeering and create offences relating to activities of criminal gangs
- To criminalise money laundering and create 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
- 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:\(^{165}\)

- Receiving or keeping property derived from racketeering (swindling/committing fraud), and uses or invests any part of that property in 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.

\(^{164}\) Act No 121 of 1998

\(^{165}\) Section 2 of the Act
Protection of Constitutional Democracy against Terrorist and Related Activities Act\textsuperscript{166}

The following are offences under the Act:

- Offence of terrorism and offences associated or connected with terrorist activities
- Offences associated or connected with terrorist activities
- Offences associated or connected with financing of specified offences
- Offences relating to harbouring or concealment of persons committing specified offences
- Duty to report presence of person suspected of intending to commit or having committed an offence and failure to so report
- Offences relating to hoaxes
- Threat, attempt, conspiracy and inducing another person to commit an offence

Summary

- The FIC Act requires certain supervisory oversight, regarding FICA compliance, by the FAIS Registrar
- The FIC Act introduced certain (money laundering) control measures. Institutions must:
  - establish and verify the identity of their clients;
  - keep certain records;
  - report certain information; and
  - implement measures that will assist compliance with the FICA.
- The FICA does not empower the Financial Intelligence Centre (FIC) to supervise the accountable institutions.
- The four (4) money laundering controls are:
  1. identification of new clients;
  2. verification of clients;
  3. identification; and
  4. verification of existing clients.
- FSPs (accountable institutions) are required to keep records of a single transaction or of additional transactions concluded in the course of a business relationship.
- Identification and verification documentation as well as records of transactions must be kept for five (5) years from the date on which the business relationship was terminated.

\textsuperscript{166} Act No 33 of 2004
The duty to report suspicious and unusual transactions is imposed on all persons who carry on business, are in charge of or manage a business, or are employed by the business.

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. Consider the following statements carefully and then choose the statement that is TRUE.
   a) One of the objectives of the FIC Act is to introduce control measures to assist the detection and investigation of credit-granting activities.
   b) The FAIS 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".
   c) The FIC Act empowers the Financial Intelligence Centre to supervise the accountable institutions.
   d) In terms of the FIC Act, accountable institutions are required to obtain statements from customers suspected to be laundering money.

2. You are an employee of a reporting institution. During the course of your work, you have just become aware of the fact that one of your clients deposited two cash amounts of R20 000.00 into your company account. In terms of your duties, a report will have to be made to the FIC regarding these transactions. Identify the correct option in terms of the report to be made:
   a) A suspicious transaction report needs to be sent within five (5) days.
   b) A suspicious transaction report needs to be sent within 15 days.
   c) A cash transaction report needs to be sent within 15 days.
   d) Both a cash transaction report and a suspicious transaction report need to be sent within the relevant periods for reporting.
3. Section 21(1) of the FICA requires accountable institutions to:
   a) identify new clients.
   b) verify the particulars of new clients.
   c) verify the marital status of clients.
   d) a) and b)

4. Section 21 (2) states that if an accountable institution had established a business relationship with a client before the FICA took effect, it may not conclude further transactions in the course of that business relationship, unless prescribed steps are taken to ensure the identities of the clients are established and verified. A period of time was granted for compliance with this requirement.
   a) True
   b) False

5. Section 22 of the FICA requires accountable institutions that establish a business relationship or conclude a transaction with a client, to keep records of a single transaction or of additional transactions concluded in the course of a business relationship.
   a) True
   b) False

6. A report on a suspicious or unusual transaction must be sent to the Financial Intelligence Centre within:
   a) 15 days after a suspicious transaction was determined.
   b) 7 days after a suspicious transaction was determined.
   c) 5 days after a suspicious transaction was determined.
   d) 3 days after a suspicious transaction was determined.

7. Money laundering is a crime under:
   a) POCDATARA.
   d) The Financial Intelligence Centre Act.

8. Accountable institutions, which are also licensed FSPs, submit reports on compliance with FICA to:
   b) The Financial Intelligence Centre.
   c) The Financial Intelligence Centre Registrar.
   d) The Registrar for Financial Services Providers.
9. Which of the following is NOT an accountable institution?
   a) An estate agent
   b) An attorney
   c) A short-term insurance broker
   d) A long-term insurance broker

10. Bankwithus Ltd is a registered bank and an accountable institution in terms of FICA. A new client, a registered close corporation, wants to make a deposit and open a current account. Which documentation must be obtained from the client?
   i. The registration documents of the close corporation
   ii. A copy of the most recent financial statements of the close corporation
   iii. Identification and verification documents of the members of the close corporation.
   iv. Documents confirming the authority of those acting on behalf of the close corporation
   a) ii, iii and iv
   b) i, iii and iv
   c) i, ii and iv
   d) i, ii and iii

10. When a suspicious transaction report is sent to the Financial Intelligence Centre, the accountable institution:
   a) may not continue with the reported transaction until the FIC has completed its investigation.
   b) may continue with the reported transaction, unless specifically told not to do so by the FIC.
   c) must obtain the consent of the FIC to continue with the reported transaction.
   d) must immediately stop the reported transaction.
The role and power of the Ombud for Financial Services Providers

This topic covers the following criteria:

**KNOWLEDGE CRITERIA:**

| Explain what the role and powers of the Ombud are. (Task 16) |
| Discuss the obligations of the FSP/key individual in respect of an investigation conducted by the FSB and Ombud for Financial Services Providers (FAIS Ombud). (Task 16) |

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

- Check that there are processes in place to ensure that the business cooperates in the case of an investigation by the Ombud.
INTRODUCTION

Topic 16 is the last part of this study material and introduces you to the role and power of the Ombud for Financial Services Providers (FAIS Ombud). The Ombud for Financial Services Providers (FAIS Ombud) can also act as the Statutory Ombud. We look at the function of the Ombud, the power he has and the obligations of an FSP when the Ombud investigates a complaint.

16.1 THE ROLE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS (FAIS OMBUD)

The FAIS Act\(^{167}\) makes provision for the appointment of an Ombud for financial services.

The function of the Ombud for Financial Services Providers (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 provide a fair, unbiased, reasonable, economical and expeditious relief to the ordinary person in the street at no charge.\(^{168}\)

The Ombud for Financial Services Providers is a body created through law. There are other voluntary ombudsmen created by the financial services industry who also deal with financial disputes, such as the Ombudsman for Banking Services.

Since 1 April 2005, the Ombud for Financial Services Providers 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 Ombud for Financial Services Providers can deal with complaints where there is uncertainty over jurisdiction and where the other voluntary ombudsmen do not have jurisdiction.

\(^{167}\) Sections 20 to 32 of the FAIS Act
\(^{168}\) Section 20(3) of the Act
The following fundamental principles apply to the role of the Ombud for Financial Services Providers:

- The Ombud for Financial Services Providers 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.

16.2 THE POWER OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

The Ombud for Financial Services Providers 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 wilfully committed misconduct whilst rendering a financial service.

The FAIS Act requires that when adjudicating a complaint, the Ombud for Financial Services Providers 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 he would have been had it not been for the misconduct of the representative; or
- it could be to simply correct 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: 169

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169 Section 27(3)(a)(i) & 4(a)(iii) of BN 81 of 2003
- 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. ¹⁷⁰

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

Official receipt of a complaint by the Ombud suspends the running of prescription in terms of the Prescription Act, for a period after the receipt of the complaint until the compliant has either been withdrawn, or determined by the Ombud.

16.3 OBLIGATIONS OF THE FSP REGARDING INVESTIGATIONS BY THE FSB AND OMBUD FOR FINANCIAL SERVICES PROVIDERS

The management and oversight duties include the management of processes to ensure that the business cooperates in the case of an investigation by the Ombud or the FSB.

FSPs must try to resolve complaints and disputes with clients first and if there is no agreement or settlement, the client can approach the Ombud. The FSP

¹⁷⁰ Section 4(c) of BN 81 of 2003
must provide adequate contact details of the Ombud to clients, (Refer to the discussion in 8.7 above, relating to complaints handling.)

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 FSOS Act, the Ombud can 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**

1. The complainant completes a complaint form and submits it to the office of the Ombud for Financial Services Providers. The Ombud may 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.¹⁷¹
3. All parties must be provided particulars to enable them to respond to the complaint.¹⁷²
4. All parties must be afforded opportunity to submit a response to the complaint.¹⁷³
5. The Ombud may implement any procedure, including mediation that he deems appropriate and may allow any party the right of legal representation in considering the complaint.¹⁷⁴
6. The Ombud may require the respondent (FSP/representative) to discuss the complaint and provide any relevant information that the Ombud may require.

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¹⁷¹ Section 27(4)(a) of the Act
¹⁷² Section 27(4)(b) of the Act
¹⁷³ Section 27(4)(c) of the Act
¹⁷⁴ Section 27(5)(a) of the Act
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 contemplated 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 and which is still open for acceptance by the complainant.

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.  

   **Note**: If the Ombud refuses leave to appeal, the applicant must be advised in writing of such refusal. The applicant may within one month of such refusal apply to the chairperson of the board of appeal for leave to appeal against the determination, and advises the Ombud in writing accordingly.

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 that 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

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175 Section 27(5)(b) of the Act
176 Section 27(5)(c) of the Act.
177 Ibid
178 Section 7(b)(ii) of BN 81 of 2003
179 Section 28(1)(b) of the Act
180 Section 12(a) of BN 81 of 2003
181 Section 28(5) of the Act
period of two (2) weeks after the date of the determination or final decision of the board, as the case may be.\textsuperscript{182}

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.

If a person does something in relation to the FAIS Ombud or in relation to an investigation by the Ombud, which could be regarded as contempt of court by a court, the person is guilty of an offence and liable on conviction to a penalty which could have been imposed by a court.

A person who anticipates a determination of the Ombud and does something to influence the determination or who wilfully interrupts any proceedings of the Ombud, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.

**Case fees, costs and interest**

In terms of the FAIS Act, read with Rule 9(a) of the Rules of Proceedings of the Office of the Ombud for Financial Services Providers, the FAIS Ombud may charge a case fee of up to R1 000 once a matter has been accepted for investigation. This fee was discontinued when the Office of the Ombud announced that the case fee will no longer be charged with effect from 10 September 2012.

When making a final determination in terms of Section 28 of the Act, the Ombud may grant costs against the respondent or, in the circumstances contemplated by Section 28(2)(b)(iii), against the complainant, in either case in favour of the other party to the complaint or in favour of the Office. Any costs awarded by the Ombud must be quantified by the Ombud with due regard to the nature of the complaint, the time spent on the complaint, the expense and inconvenience caused to a party, the conduct of a party in resolving the complaint and any other factor deemed by the Ombud to be appropriate.

Any award of interest and costs forms part of the relevant final determination of the Ombud.

\textsuperscript{182} Section 28(6) of the Act
Summary

- The Ombud for Financial Services Providers (FAIS Ombud) and the Statutory Ombud are one and the same entity.
- The main objective of the Ombud for Financial Services Providers (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, acted negligently, causing the client to suffer, or the client will potentially suffer some form of prejudice or damage.
- The FAIS Act requires that when adjudicating a complaint, the Ombud for Financial Services Providers (FAIS Ombud) must consider the contractual or other legal relationship between the parties and ultimately do what is equitable in the circumstances.
- There are certain procedures for a client to lodge a complaint with the Ombud for Financial Services Providers (FAIS Ombud) and the FSP must assist the client with the required information.
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. The function of the Ombud for Financial Services Providers (FAIS Ombud) is to resolve disputes relating to the rendering of financial services by providers:
   a) where they have failed to comply with the FAIS Act.
   b) where as a result of either wilful or negligent conduct by the provider the client has suffered.
   c) where as a result of either wilful or negligent conduct by the provider the client will potentially suffer prejudice or damage.
   d) All the above

2. The Ombud for Financial Services Providers (FAIS Ombud) is mandated to investigate and adjudicate complaints by clients against FSPs and representatives.
   a) True
   b) False

3. When investigating a complaint:
   a) the Ombud may implement any procedure including mediation which he deems appropriate and may allow any party the right of legal representation in considering the complaint.
   b) the Ombud may not dismiss the complaint, even if he is of the view that the offer made by the FSP is fair.
   c) if the complainant is unhappy with the Ombud's determination, he may appeal to the FSB provided, the Ombud gives permission.
   d) All the above

4. 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 dismissing the complaint or upholding the complaint, wholly or partially.
   a) True
   b) False
TOPIC 1 SELF-ASSESSMENT ANSWERS

1. The FAIS Act regulates the business of all financial service providers and intermediaries who:
   a) give advice or provide intermediary services to clients.
   b) give advice and grant credit.
   c) are registered as credit providers.
   d) only give advice to clients.

2. FSPs may:
   a) only be registered for one licence.
   b) have various licences but for the same product categories.
   c) only apply for one licence.
   d) have various licences in respect of different product categories.

3. The classification of the categories and sub-categories are important for the following reasons:
   a) FSP licences are issued for specific product categories.
   b) Compliance officers are approved for certain product categories and sub-categories.
   c) a) and b)
   d) a)

4. Section 16 of the FAIS Act requires that the Codes must have (at least) provisions relating to:
   a) adequate record-keeping.
   b) the power of the Registrar.
   c) the control or prohibition of incentives given or accepted by a provider.
   d) a) and c)

5. To provide a financial service means to:
   a) only give advice.
   b) only provide an intermediary service.
   c) give advice and/or provide an intermediary service.
   c) adhere to the General Code.
6. “Advice” as defined by the FAIS Act includes:
   e) giving factual information about products.
   f) making a recommendation on a financial product.
   g) providing guidance of a financial nature to a client.
   h) b) and c)

7. Advice excludes the following:
   a) Procedures to do a financial transaction
   b) Describing a financial product
   c) Factual information about products
   d) All of the above

8. To provide an intermediary service means to:
   a) do something for a client, which may result in him buying an insurance policy.
   b) do something with a view to collecting premiums from a client.
   c) give advice.
   d) a) and b)
   e) b) and c)

9. Financial products are grouped in the various product categories and sub-categories. The following are examples of financial products in the FAIS Act:
   a) Credit life insurance
   b) Money market funds managed by a fund manager
   c) Shares in a company such as Old Mutual
   d) Savings and 32-day notice deposit accounts
   e) All of the above

10. The following are examples of subcategories in Category I:
    a) Long-term Insurance Category B1
    b) Participatory interests in one or more collective investment schemes
    c) Securities and Instruments: Shares
    d) Short-term deposits
    e) All of the above
1. Which of the following statements describe a key individual best?
   a) In a sole proprietorship, it is not allowed for the key individual to also act as a representative.
   b) A person must be a senior manager or director to qualify for appointment as a key individual.
   c) A key individual is a person within a company who takes full responsibility for the management and the supervision of the company in relation to the FAIS Act requirements.
   d) A key individual may be any person with some experience regarding financial services.

2. Once a key individual is approved by the FSB:
   a) it is not necessary to ensure that he continue to meet the honesty and integrity requirements at all times.
   b) it is necessary to ensure that he continue to meet the honesty and integrity requirements at all times.
   c) it means that he can automatically be a representative in all product categories.
   d) the key individual keeps the appointment for life but needs to reapply when he changes employment.

3. Part of the FAIS Act fit and proper requirements are that a key individual must meet the honesty and integrity requirements.

InsCo is an insurance company, which needs to appoint a new key individual. Jody and Peter are potential candidates and you need to make sure that they meet the honesty and integrity requirements.

Consider the following scenario, read each statement carefully and then choose the statement that is TRUE.

   a) Peter was found not guilty on a charge of fraud last year; everything else is fine, so he meets the honesty and integrity requirements.
   Peter meets the honesty and integrity requirements.

   b) Jody qualified as a chartered accountant seven (7) years ago. Three (3) months ago her membership of SAICA (the professional body which all chartered accountants must belong to) was terminated because they found her guilty of fraudulent activities. Jody declared that this is not serious because she
wants to make a career change and doesn’t want to practice as a CA anymore; therefore termination of her membership is not relevant to her appointment as a key individual. Jody meets the honesty and integrity requirements.

c) Jody meets the requirements because she was not found guilty in any court of any acts of fraud, dishonesty or the like within the last five (5) years, although the FSP she worked for, before applying to InsCo, had its licence withdrawn by the FSB four (4) months ago because of mismanagement. Jody meets the honesty and integrity requirements.

4. When submitting documentation with the application to be approved as a key individual by the FSB, the following is required:

a) Reference letters from previous employers must be submitted.

b) A detailed CV must be attached, indicating the experience the applicant has gained within the last two (2) years.

c) A detailed CV must be attached, indicating the experience the applicant has gained within the last five (5) years.

d) a) and b)

e) a) and c)

5. Key individuals must meet the following fit and proper requirements:

a) All key individuals must have the required qualifications.

b) All key individuals must complete the relevant regulatory examinations for the categories and subcategories.

c) All key individuals must have the minimum experience requirements.

d) All of the above

6. The following applies to changes in the personal circumstances of key individuals:

a) Any change in the personal circumstances of a key individual after approval by the Registrar, that affects his honesty and integrity, must be declared to the FSP and FSB.

b) Once a key individual has been approved by the Registrar, it does not matter if his personal circumstances change and affect the honesty and integrity requirements.

c) If a key individual is found guilty of any of the prohibited actions within two (2) years after approval, it must be reported to the FSP and FSB.

d) All of the above
7. The competency requirements for key individuals include the following:
   a) Ongoing compliance with continuous professional development (CPD) requirements
   b) Minimum experience requirements
   c) Completion of relevant regulatory examinations
   d) a) and b)
   e) All of the above

8. With regard to management and oversight experience of key individuals:
   a) It must already exist when the key individual applies for approval.
   b) It can be gained while working under supervision of another key individual.
   c) It must be obtained within five (5) years of approval.
   d) It must be obtained within two (2) years of approval.

9. The qualifying criteria serve two purposes:
   a) They are used to determine the fit and proper status of key individuals.
   b) They are used to evaluate the content of the qualifications against.
   c) They are used to set the standards for the regulatory examinations.
   d) They are used to determine the experience of key individuals.
   e) a) and b)
   f) b) and c)
   g) d) and e)

10. Key individuals must meet the following management experience before they will be approved:
    a) One (1) year of practical experience in the management and oversight of a business.
    b) Product-specific experience as it relates to the subcategories that the key individual is responsible for.
    c) Five years’ practical experience in the management and oversight of a business.
    d) b) and c)
TOPIC 3 SELF-ASSESSMENT ANSWERS

1. In terms of the definition of a representative, which of the following fall within the definition?
   a) A person who renders a financial service to a client on behalf of an FSP
   b) A person who provides a clerical, technical, administrative, legal, accounting or related service with no judgement
   c) A person who provides a clerical, technical, administrative, legal, accounting or related service WHICH IS just factual information about products
   d) A person who renders a financial service to a client on behalf of an FSP but with no contractual or mandate agreements in place with the FSP

2. Once a person exercises judgement, and provides a recommendation, opinion or guidance in respect of a financial service to a client, that person is:
   a) a key individual.
   b) a representative.
   c) a compliance officer.
   d) All of the above

3. Read the statements carefully and choose the CORRECT statement.
   a) Representatives are appointed by the FSP, either through employment or through a mandate-type agreement and act on behalf of the FSP.
   b) Representatives carry the responsibility for their actions, not FSPs.
   c) The representative register needs to be updated twice a year or when a representative joins or leaves the FSPs employment.
   d) All of the above

4. The following applies to the regulatory examinations for representatives:
   a) The first level regulatory examination is not compulsory for representatives.
   b) Representatives must first obtain the required qualifications before completing the first level regulatory examination.
c) The second level regulatory examination applies to key individuals only.

d) The first level regulatory examination is compulsory for representatives.

5. Which of the following applies to the representative register?
a) Profile changes must be done and the updated register must be sent to the FSB within 15 days of any change.
b) The representative register contains personal information of representatives as well as their status with regard to meeting the fit and proper requirements.
c) The representative register only applies to newly-appointed representatives.
d) only a) and b)

6. A representative, must at date of appointment by an FSP, have:
a) the minimum experience requirements, unless the representative works under supervision.
b) the required entry level qualification.
c) completed all regulatory examinations, unless working under supervision.
d) All of the above

7. The main differentiating factor between the general experience requirements applicable to all representatives and the specific experience requirements, lies in the:
a) nature of the products in the different categories.
b) length of experience gained in the preceding five-year (5-year) period.
c) length of service of the representative.
d) only a) and b)

8. The general experience requirements which apply to all representatives in all the product categories:
a) must be experience gained in unbroken periods, not more than ten (10) years prior to the application.
b) may be experience gained within or outside the borders of South Africa.
c) may not be experience gained simultaneously in multiple subcategories.
d) All the above
9. The qualifying criteria serve two (2) purposes. They are used to:
   a) see if people meet the honesty and integrity requirements.
   b) set the standards for the regulatory examinations.
   c) evaluate the content of the qualifications.
   d) Only b) and c)

10. Changes on the representative register may include:
    a) change of address.
    b) services under supervision.
    c) qualifications.
    d) All of the above.

TOPIC 4 SELF-ASSESSMENT ANSWERS

1. In terms of the exemption granted for services under supervision, representatives will not have to comply with the:
   a) honesty and integrity requirements while working under supervision in certain categories.
   b) experience, qualifications and regulatory examinations.
   c) experience, qualifications and regulatory examinations whilst working under supervision in certain categories.
   d) All of the above

2. Representatives can only work under supervision if the licensed FSP can:
   a) satisfy the Registrar that it has the required financial reserves to facilitate services under supervision.
   b) satisfy the Registrar that it has the required operational ability to facilitate services under supervision.
   c) afford to appoint at least five (5) supervisors.
   d) All of the above

3. The duties of a supervisor include the following:
   a) Sign-off on advice given to clients
   b) Doing appropriate post-transaction sampling
   c) Observing selected meetings between the supervisee and customers
   d) All of the above
4. The duties of a supervisee include the following:
   a) **Disclose to clients that he is acting under supervision.**
   b) Do appropriate post-transaction sampling.
   c) 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 interest of the client.
   d) All of the above.

5. Supervisors in Categories II, IIA and II must do the following:
   a) Review and approve discretionary financial services provided by representatives (Categories II and IIA), in writing before a transaction is concluded or executed.
   b) Conduct sample checks on a daily basis to ensure that the supervisee did not deviate from the relevant mandate and/or investment team meetings.
   c) Conduct sample checks on a weekly basis to ensure that the supervisee did not deviate from the relevant mandate and/or investment team meetings.
   d) **Only a) and c).**

**TOPIC 5 SELF-ASSESSMENT ANSWERS**

1. When the FAIS Registrar considers the application for an FSP licence, he may:
   a) refer to the documentation submitted by the applicant only.
   b) consider additional information obtained from external sources without giving the applicant an opportunity to comment on the information.
   c) **consider additional information obtained from external sources provided the applicant was given opportunity to comment on the information.**
   d) Only a) and c)

2. The Registrar may impose conditions and/or restrictions on the FSP licence having regard to:
   a) all facts and information available to the Registrar pertaining to the applicant and any key individual of the applicant.
   b) the category of financial services which the applicant could appropriately render or wishes to render.
c) the category or subcategory of financial products in respect of which the applicant could appropriately render or wishes to render financial services.

d) All the above

3. The Registrar may:
   a) withdraw a licence on application by the licensee or on own initiative.
   b) not withdraw or amend conditions.
   c) pursuant to an evaluation of a new key individual, impose new conditions.
   d) Only a) and c).

4. In order to meet the requirements for displaying a licence, the FSP must:
   a) display copies of the licence in a prominent and durable manner.
   b) display copies of the licence in every head office only.
   c) ensure that all business documentation, advertisements and other promotional material refers to the licence.
   d) ensure that all business documentation, advertisements and other promotional material reflect the FSP licence number.

5. Section 13 imposes certain duties and responsibilities on FSPs:
   a) If a representative was debarred, he can never operate as a representative again.
   b) FSPs must take reasonable steps to ensure that representatives comply with applicable Codes of Conduct and with other applicable laws on conduct of business.
   c) Nobody may provide financial services to clients for or on behalf of unauthorised FSPs who are not exempted from the FAIS Act.
   d) Only b) and c).

6. The representative register must provide a record of all the representatives:
   a) of an FSP (and where applicable, key individuals of the representatives).
   b) of an FSP, but without personal information.
   c) and compliance officers of an FSP.
7. If a representative is no longer fit and proper, he must be:
   a) placed under supervision and left on the register.
   b) left on the register but with a note that he is not fit and proper.
   c) removed from the representative register.
   d) All the above

TOPIC 6 SELF-ASSESSMENT ANSWERS

1. Debarment means to remove:
   a) a representative, under certain circumstances, from rendering financial services to clients.
   b) an FSP, under certain circumstances, from rendering financial services to clients.
   c) a Compliance Officer, under certain circumstances, from providing compliance service to clients.
   d) All the above

2. When debarring a person, the FSP must:
   a) ensure that unconcluded business of the representative is properly concluded.
   b) take immediate steps to ensure that the debarment does not prejudice the interests of the clients of the representative.
   c) Get the permission from the FAIS Registrar in writing.
   d) a) and b)

3. May an FSP use information obtained from external sources to debar a person?
   a) Yes
   b) No
   c) Sometimes
   d) Only if the debarred person agreed

4. May the FAIS Registrar debar a person?
   a) No
   b) Sometimes
   c) Yes
   d) Only if the debarred person agreed

5. There should be documented processes in place to record:
   a) the CPD hours and related activities of representatives.
b) compliance by representatives and key individuals with the applicable fit and proper requirements.

c) the categories and products which representatives and key individuals are authorised to provide intermediary services for.

d) All of the above

TOPIC 7 SELF-ASSESSMENT ANSWERS

1. The FAIS Supervision Department is responsible for:
   a) application forms.
   b) compliance reports.
   c) submissions on changes in legislation.
   d) complaints handling.
   e) b) and c)

2. The FAIS Registration Department is responsible for:
   a) compliance reports.
   b) debarments.
   c) upload of the representative register.
   d) application forms.
   e) c) and d)

3. When deciding whether a business practice is an undesirable business practice, the Registrar must consider whether the business practice must have, or is likely to have, a direct or indirect effect resulting in:
   a) harming the relations between FSPs.
   b) unreasonable prejudice to clients.
   c) deceiving any client.
   d) All the above

4. When the Registrar informs the FSP to rectify or reinstate loss or damage, the FSP must do it:
   a) within 60 days after the direction was issued.
   b) within 90 days after the direction was issued.
   c) within 60 days after the business was closed.
   d) immediately.
5. If the FSP does not adhere to the Registrar's directive regarding an undesirable business practice, a fine of not more than:
   a) R10 000 000 or imprisonment of not more than ten (10) years, or both may be imposed.
   b) R1 000 000 or imprisonment of not more than ten (10) years, in the alternative, may be imposed.
   c) R1 000 000 or imprisonment of not more than ten (10) years, or both may be imposed.
   d) None of the above.

TOPIC 8 SELF-ASSESSMENT ANSWERS

1. Which of the following requirements are NOT applicable to custody of client funds and premiums?
   a) The bank account must be designated to receive funds and premiums from clients.
   b) The account may contain other funds of the FSP.
   c) The FSP is responsible for bank charges except deposit or withdrawal charges.
   d) The FSP must have a separate bank account at a bank.

2. Which of the following disclosure requirements must be adhered to?
   a) A representative need not disclose that he is rendering services under supervision.
   b) Representatives need not disclose detail about the legal relationships between the FSP, product supplier and representative.
   c) There must be adequate disclosures on the product supplier. The disclosure must include the name, physical location, postal and telephone contact details of the product supplier.
   d) All the above

3. Which of the following requirements are NOT applicable when an FSP receives money from a client without a bank being involved?
   a) The FSP must pay the money into the bank account within a month of receipt.
   b) The FSP must pay the money into the bank account within one (1) business day of receipt.
c) The FSP must issue a written confirmation when the money is received.

d) When title documents are lodged with an FSP on behalf of a client, the FSP must issue a written confirmation when the documents are received.

4. What needs to be disclosed to clients in terms of commissions received by representatives?
   a) Any fees or commission that the provider may earn as a result of the rendering of the financial service must be disclosed.
   b) Where the maximum commission amount or rate is prescribed by law, it must state that the amount is not determinable.
   c) The forex intermediary must disclose to a client only cash-related incentives offered or other indirect consideration payable to the forex intermediary because of the intermediating on the client's investments.
   d) Remuneration, also known as valuable consideration, which is payable to a provider must be disclosed but not the identity of the product supplier who is paying it.

5. Where a financial product is being replaced by another financial product held by the client:
   a) only disclosure of the potential financial implications must be made.
   b) only disclosure of the actual financial implications must be made.
   c) only disclosure of the costs and consequences of the replacement must be made.
   d) disclosure must be made of the actual and potential financial implications.

6. The General Code states that:
   a) where a provider advertises a financial service by means of a public radio service, the advertisement need not include a reference to the fact that the provider is an authorised or licensed FSP.
   b) the FSP should ensure that they use resources, procedures and appropriate technological systems that can be expected to reasonably eliminate the risk of clients, other providers and representatives suffering financial loss through theft, fraud, other dishonest acts, poor administration, negligence, professional misconduct or blameworthy oversights.
c) the FAIS Registrar may not prescribe the guarantee or professional indemnity amounts that providers need to have in place.

d) All the above

7. When a provider (including a representative) renders a financial service, the provider must disclose to the client:
   a) the existence of any circumstance which gives rise to an actual or potential conflict of interest in relation to the service.
   b) his experience and qualifications.
   c) the existence of any personal interest in the relevant service.
   d) a) and c)

8. The two main requirements of giving advice are:
   a) ensuring the client trusts you.
   b) establishing suitability.
   c) keeping a record of advice.
   d) b) and c)

9. The advertising principles in the General Code include the following:
   a) Performance data must include references to their source and date.
   b) Illustrations, forecasts or hypothetical data must show dependence on performance of underlying assets or variable market forces, where applicable.
   c) A warning statement about risks involved in buying or selling a financial product, must clearly be identified as a warning statement.
   d) All of the above

10. When a client wants to terminate an agreement, a provider:
    a) may, after referring it to the compliance officer, allow a request from a client for voluntary termination of an agreement.
    b) must request reasons from a client for voluntary termination of an agreement.
    c) must, with immediate effect, allow a request from a client for voluntary termination of an agreement.
    d) is under no obligation to consider such a request.
TOPIC 9 SELF-ASSESSMENT ANSWERS

1. Compliance officers are appointed:
   a) by the FSP and approved by the FSB.
   b) and approved by the FSB.
   c) and approved by the FSP.
   d) None of the above

2. The duties of a compliance officer include:
   a) monitoring compliance with the FAIS Act.
   b) appointing key individuals.
   c) overseeing the compliance function.
   d) a) and c)

3. The compliance report requires the following information:
   a) Information about how the FSP manages conflicts of interests
   b) Information about the FSPs adherence to the risk management requirements in the General Code
   c) Information about the advertising practices of the FSP
   d) All the above

4. The primary goal of internal audit is to:
   a) ensure compliance with the FAIS Act.
   b) ensure compliance with all legislation.
   c) only evaluate the company’s risk management, internal control and corporate governance processes.
   d) evaluate the company’s risk management, internal control and corporate governance processes and ensure that they are adequate and are functioning correctly.

TOPIC 10 SELF-ASSESSMENT ANSWERS

1. Which of the following statements is TRUE?
   a) The FAIS Act requires that a certified copy of the FSP’s licence must be displayed in a prominent and durable manner at the head office/s of the FSP.
   b) An FSP may request additional product categories to be added to its licence.
c) Standard conditions are specifically applicable to insurance FSP licences.
d) FSPs may not have more than one licence.

2. Before suspension of a FAIS licence, the Registrar must inform:
a) the FSP of the intended period of suspension.
b) the FSP of any terms attached to the suspension.
c) the Advisory Committee.
d) a) and b)
e) a) and c)
f) Only c)

3. Urgent suspension or withdrawal of a licence may only happen:
a) after the Registrar has obtained a court order.
b) after the Registrar has consulted with all the parties.
c) if there are reasonable grounds that the public or clients may be substantially prejudiced.
d) None of the above

4. The FAIS offences include, failure to:
a) get a licence to operate as an FSP.
b) have the licence available when proof is requested.
c) debar a representative as described in Section 14(1).
d) All the above

TOPIC 11 SELF-ASSESSMENT ANSWERS

1. A natural person may lapse a FAIS Licence:
a) only if the licensee is finally sequestrated.
b) only with permission from the FAIS Registrar.
c) if the licensee is finally sequestrated.
d) if the licensee dies.
e) if the licensee becomes permanently unable to carry on business because of physical or mental illness.
f) c), d), and e)

2. A licence of ANY FSP may lapse:
a) if the licensee is finally liquidated or dissolved.
b) if the business of the licensee has become dormant.
c) in any other case where the licensee voluntarily and finally surrenders the licence to the Registrar.
d) All the above
3. Which of the following statements is TRUE?
   a) Suspension or withdrawal of a licence is initiated by the Registrar following actions or omissions by the FSP.
   b) Lapsing of a licence is initiated by the FSB following an event that gave reason for the lapse.
   c) There are provisions in the Act for the reinstatement of a lapsed licence.
   d) There are severe implications in terms of other legislation when a FAIS licence lapses.

4. Which of the following statements is FALSE?
   a) The Registrar may allow reinstatement of a suspended licence under certain conditions.
   b) There are no implications in terms of other legislation when an FSP’s license lapses, except that such FSP will also lose its accreditation as an accredited medical schemes FSP (if relevant).
   c) The Registrar must be advised in writing by the licensee, of the lapsing of a licence and the reasons therefore and the Registrar may not publish any detail about the lapsing.
   d) The Registrar must be advised in writing by the licensee, of the lapsing of a licence and the reasons therefore and the Registrar may publish the lapsing of a licence by notice in the Gazette.

5. Before sequestration, winding-up or closure of an FSP business will become effective and legal under the following condition/s:
   a) The FSP must lodge the necessary documentation with the FAIS Registrar.
   b) The FSP must get the ‘approval’ of the Registrar.
   c) The court must agree to adequate distribution of assets.
   d) a) and b)

TOPIC 12 SELF-ASSESSMENT ANSWERS

1. The FSP, (and by implication it will be part of the management duties of a key individual), must ensure that records are kept:
   a) for a minimum of five (5) years.
   b) for a minimum of three (3) years.
   c) until the transaction or financial service is terminated.
   d) All the above
2. Records that must be kept in terms of the FAIS Act include records of:
   a) known premature cancellations of transactions or financial products by clients of the FSP.
   b) complaints received and information on whether the complaints have been resolved.
   c) ongoing compliance with the requirements of Section 8 of the FAIS Act.
   d) All the above

3. Requirements for record-keeping in terms of the FAIS General Code include the following:
   a) Adequate systems and procedures to record verbal and written communications relating to the provision of financial services to clients
   b) Safekeeping of records from destruction
   c) Retrieval of the records and other material documentation relating to clients or financial services
   d) All the above

4. Section 22 of the FIC Act requires accountable institutions that establish a business relationship or conclude a transaction with a client, to keep records of a single transaction or of additional transactions concluded in the course of a business relationship.
   a) True
   b) False

5. In terms of Section 24 (1) of the FIC Act, the record-keeping obligation may not be outsourced to a third party.
   a) True
   b) False

TOPIC 13 SELF-ASSESSMENT ANSWERS

1. The operational ability requirements for FSPs include:
   a) a fixed business address.
   b) adequate storage and filing systems for the safe-keeping of records, business communications and correspondence.
   c) an account with a registered bank including, where required by the Act, a separate bank account for client funds.
   d) All the above
2. The financial soundness requirements for FSPs include the following:
   a) A FSP must not be an unrehabilitated insolvent or under liquidation or in provisional liquidation.
   b) A Category 1 FSP that holds client assets or receives premiums or money must at the time of the financial audit have assets (excluding goodwill, other intangible assets and investments in related parties) that exceed the FSP's liabilities (excluding loans validly subordinated in favour of all other creditors).
   c) A Category 1 FSP that holds client assets or receive premiums or money must AT ALL TIMES maintain liquid assets equal to or greater than 8/52 weeks of annual expenditure.
   d) All the above

3. Section 19 of the FAIS Act requires FSPs to meet certain accounting and audit requirements which includes, full and proper accounting records, which must be updated:
   a) annually.
   b) quarterly.
   c) monthly.
   d) None of the above

TOPIC 14 SELF-ASSESSMENT ANSWERS

1. Section 19 of the FAIS Act stipulates the accounting and audit requirements which an FSP must adhere to.
   a) True
   b) False

2. The financial statements must:
   a) fairly represent the state of affairs of the provider’s business.
   b) refer to any material matter which has affected or is likely to affect the financial affairs of the provider.
   c) be submitted by the FSP, to the Registrar, within four (4) months after financial year-end, or as allowed by the Registrar.
   d) All the above

3. Section 19(3) requires FSPs who hold money and/or assets on behalf of their clients to:
   a) maintain full and proper accounting records of these.
   b) submit an audited report together with the financial statements (that is, within six (6) months of financial year-end), in the prescribed format.
c) submit an audited report in the prescribed format before the following financial year-end.

4. The aim of the Section 19(3) Report is to ensure that clients’ assets and/or monies held by a provider are:
   a) protected from unauthorised use.
   b) kept included in the provider’s business funds.
   c) invested according to the provider's instructions.
   d) All the above

TOPIC 15 SELF-ASSESSMENT ANSWERS

1. Consider the following statements carefully and then choose the statement that is TRUE.
   a) One of the objectives of the FIC Act is to introduce control measures to assist the detection and investigation of credit-granting activities.
   b) The FAIS compliance report requires information relating to an FSPs 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".
   c) The FIC Act empowers the Financial Intelligence Centre to supervise the accountable institutions.
   d) In terms of the FIC Act, accountable institutions are required to obtain statements from customers suspected to be laundering money.

2. You are an employee of a reporting institution. During the course of your work, you have just become aware of the fact that one of your clients deposited two cash amounts of R20 000.00 into your company account. In terms of your duties, a report will have to be made to the FIC regarding these transactions. Identify the correct option in terms of the report to be made:
   a) A suspicious transaction report needs to be sent within five (5) days.
   b) A suspicious transaction report needs to be sent within 15 days.
   c) A cash transaction report needs to be sent within 15 days.
   d) Both a cash transaction report and a suspicious transaction report need to be sent within the relevant periods for reporting.
3. Section 21(1) of the FICA requires accountable institutions to:
   a) identify new clients.
   b) verify the particulars of new clients.
   c) verify the marital status of clients.
   d) a) and b)

4. Section 21 (2) states that if an accountable institution had established a business relationship with a client before the FICA took effect, it may not conclude further transactions in the course of that business relationship, unless prescribed steps are taken to ensure the identities of the clients are established and verified. A period of time was granted for compliance with this requirement.
   a) True
   b) False

5. Section 22 of the FICA requires accountable institutions that establish a business relationship or conclude a transaction with a client, to keep records of a single transaction or of additional transactions concluded in the course of a business relationship.
   a) True
   b) False

6. A report on a suspicious or unusual transaction must be sent to the Financial Intelligence Centre within:
   a) 15 days after a suspicious transaction was determined.
   b) 7 days after a suspicious transaction was determined.
   c) 5 days after a suspicious transaction was determined.
   d) 3 working days after a suspicious transaction was determined.

7. Money laundering is a crime under:
   a) POCDATARA.
   d) The Financial Intelligence Centre Act.

8. Accountable institutions, which are also licensed FSP’s, submit reports on compliance with FICA to:
   b) The Financial Intelligence Centre.
   c) The Financial Intelligence Centre Registrar.
   d) The Registrar for Financial Services Providers.
9. Which of the following is NOT an accountable institution?
   a) An estate agent  
   b) An attorney  
   c) A short-term insurance broker  
   d) A long-term insurance broker

10. Bankwithus Ltd is a registered bank and an accountable institution in terms of FICA. A new client, a registered close corporation, wants to make a deposit and open a current account. Which documentation must be obtained from the client? i. The registration documents of the close corporation. ii. A copy of the most recent financial statements of the close corporation. iii. Identification and verification documents of the members of the close corporation. iv. Documents confirming the authority of those acting on behalf of the close corporation.
   a) ii, iii and iv  
   b) i, iii and iv  
   c) i, ii and iv  
   d) i, ii and iii

11. When a suspicious transaction report is sent to the Financial Intelligence Centre, the accountable institution:
   a) may not continue with the reported transaction until the FIC has completed its investigation.  
   b) may continue with the reported transaction, unless specifically told not to do so by the FIC.
   c) must obtain the consent of the FIC to continue with the reported transaction.
   d) must immediately stop the reported transaction.

TOPIC 16 SELF-ASSESSMENT ANSWERS

1. The function of the Ombud for Financial Services Providers (FAIS Ombud) is to resolve disputes relating to the rendering of financial services by providers:
   a) where they have failed to comply with the FAIS Act.  
   b) where as a result of either wilful or negligent conduct by the provider the client has suffered.  
   c) where as a result of either wilful or negligent conduct by the provider the client will potentially suffer prejudice or damage.  
   d) All the above
2. The Ombud for Financial Services Providers (FAIS Ombud) is mandated to investigate and adjudicate complaints by clients against FSPs and representatives.
   a) True
   b) False

3. When investigating a complaint:
   a) The Ombud may implement any procedure including mediation which he deems appropriate and may allow any party the right of legal representation in considering the complaint.
   b) The Ombud may not dismiss the complaint, even if he is of the view that the offer made by the FSP is fair.
   c) If the complainant is unhappy with the Ombud’s determination he may appeal to the FSB, provided the Ombud gives permission.
   d) All the above

4. 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 dismissing the complaint or upholding the complaint, wholly or partially.
   a) True
   b) False
Annexures

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 key individuals. This table indicates the legislation covered under each knowledge/skill criteria.