Learners please note: This study material is intended to be used in CONJUNCTION with all relevant board notices and statutes. Relying exclusively on this study material will not prepare you sufficiently for the regulatory examination. The assessment questions are intended to assist you in determining the extent to which you have integrated the required knowledge and whilst every effort has been made to provide questions that mirror the examination question, we cannot guarantee that these questions reflect the exact examination questions.
# TABLE OF CONTENTS

1. The FAIS Act as a Regulatory Framework..........................................................................................8
  1.1 The FAIS Act and Subordinate Legislation ....................................................................................8
  1.1.1 Purpose ......................................................................................................................................8
  1.1.2 The Purpose of the FAIS Act .......................................................................................................8
  1.1.3 Overview of the FAIS Act ............................................................................................................8
  1.1.4 The Role-players in the FAIS Act ...............................................................................................9
  1.1.5 The Role-players’ Duties and Power in the FAIS Act ..................................................................10
  1.1.6 The Purpose of the Financial Sector Regulatory Act, 2017 (FSR Act) .................................10
  1.1.7 Authorisation of Financial Services Providers .........................................................................12
  1.1.8 Duties of Authorised Financial Services Providers ................................................................12
  1.1.9 Maintenance of Records ...........................................................................................................13
  1.1.10 Commencement of Short Title .................................................................................................13
  1.2 FAIS Act integration with other FSCA (FSB) Legislation ..............................................................18
    1.2.1 An Authorised Financial Services Provider must – .................................................................18
    1.2.2 Control Measures .....................................................................................................................18
    1.3 Requirements when Interactions between FSP’s Take Place ......................................................19
    1.3.1 The Meaning of “Financial Institution” ....................................................................................19
    1.3.2 Relationships Between Different Industry Players .................................................................21
    1.3.3 Interrelationships Between FSPs and Co-Responsibilities ..................................................21
    1.4 Departments of the Registrar’s Office Dealing with FSP Matters ...........................................22
    1.4.1 FAIS Division of the FSCA (FSB) - Departments ................................................................22
    1.4.2 Profile Changes .......................................................................................................................23
    1.4.3 After Consideration of an Application ......................................................................................24
    1.4.4 Interpretation, Object and Administration of the Financial Sector Regulation Act ...........25
    1.4.5 Co-operation and Collaboration between Financial Sector Regulators and Reserve Bank ..26
    1.4.6 Process for Making Regulatory Instruments .........................................................................27
    1.4.7 Licensing Requirements ..........................................................................................................28
    1.5 Interact with Registrar if and when Required .............................................................................35
    1.5.1 Definitions .................................................................................................................................35
    1.5.2 General Provisions Concerning Registrar .............................................................................35
    1.6 Correct Format of Communication with the Registrar ...............................................................51
    1.7 Processes to Remain Updated with regards to Requirements Affecting the FSP ....................51
    1.7.1 Awareness of the Regulatory Environment .............................................................................51
    1.7.2 Reporting Obligations ..............................................................................................................52
    1.8 Compliance Officers and Compliance Arrangements – Sections 17(2) + 17(4) ....................52
    1.9 Describe the Compliance Arrangements required by the FSP ................................................53
    1.9.1 The Compliance Function .........................................................................................................53
    1.9.2 The Duties of a Compliance Officer .......................................................................................54
    1.10 Compliance Function .................................................................................................................57
    1.10.1 Approval of Compliance Officers .........................................................................................57
    1.10.2 Requirements for the Approval of Compliance Officers ....................................................58
    1.10.3 The Application Process .........................................................................................................59
    1.10.4 Delegation of the Rendering of a Compliance Service ..........................................................60
    1.10.5 Rendering of Compliance Services under Supervision .........................................................61
    1.11 Ensure that the Compliance Officer is approved by the Registrar .......................................62

RES Self-Study Guide : Representatives (from Regulatory Examination Preparation Guide for Representatives)
4.3 4.2.1 4.2 4.1.2 4.1 3.9.8 3.9.2 3.8.7 3.8.6 3.4 3.3 3.2.1 3.2 3.1.2 3.1.1 3.1 3.0 2.21.3 2.22 2.23

3. Operate as the Key Individual in terms of the FAIS Act .................................................................................................................. 116
3.1 The Roles and Responsibilities of Key Individuals as defined in the FAIS Act ..................................................................................... 116
3.1.1 The Role of a Key Individual ....................................................................................................................................................... 117
3.1.2 Management Responsibilities ....................................................................................................................................................... 118
3.2 The Requirements for Approval of a Key Individual by the Registrar ................................................................................................ 119
3.2.1 Requirements for Approval ........................................................................................................................................................... 119
3.3 Controls required to ensure Sufficient Management and Oversight of Financial Services Rendered .................................................... 120
3.4 Individual Acting as a Key Individual .............................................................................................................................................. 123
3.5 Meeting the Good Standing, Honesty and Integrity Requirements for a Key Individual ................................................................ 124
3.6 Meeting the Good Standing, Honesty and Integrity Requirements .................................................................................................. 126
3.6.1 Good Standing, Honesty, Integrity and Good Standing Requirements for Key Individuals ................................................................ 126
3.7 Implications for no longer Meeting Requirements .......................................................................................................................... 127
3.7.1 Changes in the Personal Circumstances of Key Individuals ....................................................................................................... 127
3.8 Competence Requirements for a Key Individual ............................................................................................................................... 128
3.8.1 Experience Requirements for Key Individuals ............................................................................................................................... 128
3.8.2 Experience Required for Product Categories ................................................................................................................................ 129
3.8.3 Experience Requirements for a Category I .................................................................................................................................. 132
3.8.4 Experience Requirements for a Category II ................................................................................................................................ 132
3.8.5 Experience Requirements for Category IIA .................................................................................................................................. 133
3.8.6 Experience Requirements for a Category III .................................................................................................................................. 133
3.8.7 Experience Requirements for Category IV .................................................................................................................................. 133
3.9 On-going Training and Development Requirements for Key Individuals .......................................................................................... 134
3.9.1 Qualifications Requirements for Key Individuals .......................................................................................................................... 135
3.9.2 Qualifying Criteria ............................................................................................................................................................................. 135
3.9.3 Types of Qualifications ..................................................................................................................................................................... 136
3.9.4 Regulatory Examinations ................................................................................................................................................................. 138
3.9.5 Continuous Professional Development ........................................................................................................................................ 139
3.9.6 Class of Business Training .............................................................................................................................................................. 142
3.9.7 Product Specific Training ............................................................................................................................................................... 143
3.9.8 Record Keeping Required .............................................................................................................................................................. 144
3.10 Knowledge Test – Chapter 3 ............................................................................................................................................................... 146

4. Adhere to the General Code of Conduct ............................................................................................................................................. 152
4.1 Processes to Manage Conflict of Interest ......................................................................................................................................... 152
4.1.1 Conflict of Interest ............................................................................................................................................................................ 152
4.1.2 Transparency .................................................................................................................................................................................... 152
4.2 Conflict of Interest ................................................................................................................................................................................ 155
4.2.1 Conflict of Interest Policy ............................................................................................................................................................... 155
4.3 Measure by FSPs to Manage Potential Conflicts of Interest .......................................................................................................... 156
4.4 Apply the Requirements of the General Code of Conduct for FSPs and Representatives ................................................................ 157
4.5 Disclosures that need to be Made before Rendering a Financial Service ............................................................................................ 158
4.6 Disclosures that must be made when Rendering a Financial Service .................................................................................................. 159
4.6.1 Summary ........................................................................................................................................................................................... 159
<table>
<thead>
<tr>
<th>Section Number</th>
<th>Section Title</th>
<th>Page Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.7</td>
<td>Requirements for an FSP when Custody of Financial Products and Funds Occur</td>
<td>160</td>
</tr>
<tr>
<td>4.8</td>
<td>Requirements of the General Code of Conduct for FSPs and Representatives relating to Marketing and Advertising</td>
<td>163</td>
</tr>
<tr>
<td>4.8.1</td>
<td>Advertising</td>
<td>163</td>
</tr>
<tr>
<td>4.8.2</td>
<td>Direct Marketing</td>
<td>164</td>
</tr>
<tr>
<td>4.9</td>
<td>Handling Complaints</td>
<td>169</td>
</tr>
<tr>
<td>4.10</td>
<td>Complaints Procedures and Processes</td>
<td>173</td>
</tr>
<tr>
<td>4.11</td>
<td>Termination of Agreement of Business</td>
<td>173</td>
</tr>
<tr>
<td>4.11.1</td>
<td>Representative Stops to Operate</td>
<td>173</td>
</tr>
<tr>
<td>4.12</td>
<td>Knowledge Test – Chapter 4</td>
<td>175</td>
</tr>
<tr>
<td>5</td>
<td>Comply with Regulated Record Keeping Requirements</td>
<td>182</td>
</tr>
<tr>
<td>5.1</td>
<td>Record Keeping for FICA</td>
<td>182</td>
</tr>
<tr>
<td>5.1.1</td>
<td>Record-keeping</td>
<td>182</td>
</tr>
<tr>
<td>5.1.2</td>
<td>Reporting Duties</td>
<td>183</td>
</tr>
<tr>
<td>5.1.3</td>
<td>Other Applicable Anti-Money Laundering Legislation</td>
<td>188</td>
</tr>
<tr>
<td>5.2</td>
<td>Third Party Outsourcing Agreements</td>
<td>189</td>
</tr>
<tr>
<td>5.3</td>
<td>The Security Requirements for Record Keeping in terms of Confidentiality and Access to Records</td>
<td>190</td>
</tr>
<tr>
<td>5.3.1</td>
<td>Confidentiality of client information</td>
<td>190</td>
</tr>
<tr>
<td>5.4</td>
<td>Knowledge Test – Chapter 5</td>
<td>192</td>
</tr>
<tr>
<td>6</td>
<td>Money Laundering and Terrorist Financing Control Regulations, as it Applies to the FSP</td>
<td>198</td>
</tr>
<tr>
<td>6.1</td>
<td>The Requirements Specific to an FSP Prescribed by the FIC Act</td>
<td>198</td>
</tr>
<tr>
<td>6.1.1</td>
<td>Definition</td>
<td>198</td>
</tr>
<tr>
<td>6.1.2</td>
<td>The Impact of the FICA on FSPs</td>
<td>198</td>
</tr>
<tr>
<td>6.2</td>
<td>Internal rules as Required by the FIC Act are in Place</td>
<td>202</td>
</tr>
<tr>
<td>6.3</td>
<td>Employees Receive Training in Respect of their Obligation to Report Suspicious Transactions</td>
<td>203</td>
</tr>
<tr>
<td>6.3.1</td>
<td>Training and Monitoring of Compliance</td>
<td>203</td>
</tr>
<tr>
<td>6.4</td>
<td>INSETA Annexure</td>
<td>203</td>
</tr>
<tr>
<td>6.5</td>
<td>Knowledge Test – Chapter 6</td>
<td>204</td>
</tr>
<tr>
<td>7</td>
<td>Deal with Complaints that have been Submitted to the Ombud for FSPs</td>
<td>210</td>
</tr>
<tr>
<td>7.1</td>
<td>The Role and Authority of the Ombud for FSPs</td>
<td>210</td>
</tr>
<tr>
<td>7.1.1</td>
<td>Definition</td>
<td>211</td>
</tr>
<tr>
<td>7.1.2</td>
<td>The Power of the Ombud for Financial Services Providers</td>
<td>211</td>
</tr>
<tr>
<td>7.2</td>
<td>Obligations of the FSP in respect of an Investigation Conducted by the Ombud for FSPs</td>
<td>213</td>
</tr>
<tr>
<td>7.3</td>
<td>Processes Ensuring FSP Cooperates in the Case of an Investigation by the Ombud</td>
<td>216</td>
</tr>
<tr>
<td>7.3.1</td>
<td>Case Fees, Costs and Interest</td>
<td>216</td>
</tr>
<tr>
<td>7.4</td>
<td>Knowledge Test – Chapter 7</td>
<td>218</td>
</tr>
<tr>
<td>8</td>
<td>Operate as a representative in terms of the FAIS Act</td>
<td>224</td>
</tr>
<tr>
<td>8.1</td>
<td>Describe the Roles and Responsibilities of Representatives as Defined in the FAIS Act</td>
<td>224</td>
</tr>
<tr>
<td>8.1.1</td>
<td>Definition of a Representative</td>
<td>224</td>
</tr>
<tr>
<td>8.1.2</td>
<td>Roles and Responsibilities of Representatives</td>
<td>225</td>
</tr>
<tr>
<td>8.2</td>
<td>Explain when an Individual is Obliged to be Registered in terms of FAIS</td>
<td>226</td>
</tr>
<tr>
<td>8.2.1</td>
<td>Appointment of Representatives</td>
<td>226</td>
</tr>
<tr>
<td>8.3</td>
<td>Representatives Register</td>
<td>227</td>
</tr>
<tr>
<td>8.3.1</td>
<td>Overview of the Register of Representatives</td>
<td>227</td>
</tr>
<tr>
<td>8.3.2</td>
<td>Information Required for the Register of Representatives</td>
<td>228</td>
</tr>
<tr>
<td>Section</td>
<td>Title</td>
<td></td>
</tr>
<tr>
<td>---------</td>
<td>-------</td>
<td></td>
</tr>
<tr>
<td>8.3.3</td>
<td>Updating the Register of Representatives</td>
<td></td>
</tr>
<tr>
<td>8.4</td>
<td>Processes that enable FSPs to check that a representative meets the fit and proper requirements and can be appointed</td>
<td></td>
</tr>
<tr>
<td>8.4.1</td>
<td>Overview of the Fit and Proper Requirements for Representatives</td>
<td></td>
</tr>
<tr>
<td>8.4.2</td>
<td>What are the Fit and Proper Requirements for Representatives?</td>
<td></td>
</tr>
<tr>
<td>8.4.3</td>
<td>Regulatory Examinations for Representatives</td>
<td></td>
</tr>
<tr>
<td>8.4.4</td>
<td>Continuous Professional Development for Representatives</td>
<td></td>
</tr>
<tr>
<td>8.5</td>
<td>Representatives under Supervision</td>
<td></td>
</tr>
<tr>
<td>8.6</td>
<td>Qualified Individuals in the Role of Supervisor</td>
<td></td>
</tr>
<tr>
<td>8.7</td>
<td>Supervision Requirements</td>
<td></td>
</tr>
<tr>
<td>8.8</td>
<td>Supervisor’s Role</td>
<td></td>
</tr>
<tr>
<td>8.9</td>
<td>Supervisory Functions</td>
<td></td>
</tr>
<tr>
<td>8.10</td>
<td>Disclosure</td>
<td></td>
</tr>
<tr>
<td>8.11</td>
<td>Define the Purpose of Debarment</td>
<td></td>
</tr>
<tr>
<td>8.12</td>
<td>Debarment of Representatives</td>
<td></td>
</tr>
<tr>
<td>8.12.1</td>
<td>Reasons for Debarment and Debarment Procedure</td>
<td></td>
</tr>
<tr>
<td>8.13</td>
<td>Debarment Process</td>
<td></td>
</tr>
<tr>
<td>8.14</td>
<td>Timeframes and Processes to notify the Registrar of a Debarment</td>
<td></td>
</tr>
<tr>
<td>8.14.1</td>
<td>Debarment by the FAIS Registrar</td>
<td></td>
</tr>
<tr>
<td>8.15</td>
<td>Knowledge Test – Chapter 8</td>
<td></td>
</tr>
<tr>
<td>9.1</td>
<td>Q&amp;As – Chapter 1</td>
<td></td>
</tr>
<tr>
<td>9.2</td>
<td>Q&amp;As – Chapter 2</td>
<td></td>
</tr>
<tr>
<td>9.3</td>
<td>Q&amp;As – Chapter 3</td>
<td></td>
</tr>
<tr>
<td>9.4</td>
<td>Q&amp;As – Chapter 4</td>
<td></td>
</tr>
<tr>
<td>9.5</td>
<td>Q&amp;As – Chapter 5</td>
<td></td>
</tr>
<tr>
<td>9.6</td>
<td>Q&amp;As – Chapter 6</td>
<td></td>
</tr>
<tr>
<td>9.7</td>
<td>Q&amp;As – Chapter 7</td>
<td></td>
</tr>
<tr>
<td>9.8</td>
<td>Q&amp;As – Chapter 8</td>
<td></td>
</tr>
</tbody>
</table>
Chapter 1

Demonstrate an understanding of the FAIS Act as a Regulatory Framework
This topic covers the following critical learning outcomes:

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
<td>Describe the FAIS Act and subordinate legislation.</td>
</tr>
<tr>
<td>1.2</td>
<td>Provide an overview of the financial services and financial products a representative can deal with.</td>
</tr>
<tr>
<td>1.3</td>
<td>Apply knowledge of the financial products within the financial services environment.</td>
</tr>
<tr>
<td>1.4</td>
<td>Describe the role and function of a Compliance Officer.</td>
</tr>
</tbody>
</table>
1. The FAIS Act as a Regulatory Framework

1.1 The FAIS Act and Subordinate Legislation

1.1.1 Purpose

The FAIS Act (Financial Advisory and Intermediary Services Act) is described as a `market conduct regulation'. This means that it sets minimum standards around the manner in which authorised financial services providers are required to conduct their business Activities with clients. The FAIS Act has two very clear purposes:

- The professionalisation of the financial services sector; and
- The protection of consumers.

It regulates the business of all financial services providers who give advice or provide intermediary services to clients, in respect of a wide range of financial products. It became effective in 2002 with the main objective to protect consumers in relation to financial services specifically to the regulated products. The FAIS Act of 2002 was amended through the Financial Services Law General Amendment Act 45 of 2013.

1.1.2 The Purpose of the FAIS Act

The FAIS Act introduced market conduct legislation into 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.

1.1.3 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 commencement date of the FAIS Act is 15 November 2002, except for the following sections:

- Sections 20 to 31 became operational on 8 March 2003 1;
- Section 13(1) became operational on 30 September 2004 2; and
- Section 7 became effective on 30 September 2004 3.

1.1.4 The Role-players in the FAIS Act

The FAIS Act has a number of role-players.

- The FSCA (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 FSCA (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; and
- 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 Proclamation 21 of 2003
2 Proclamation 35 of 2004
3 GN 270/2004
1.1.5 The Role-players’ Duties and Power in the FAIS Act

**Table 1.1**

<table>
<thead>
<tr>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>The FAIS Registrar is responsible for administration and enforcement of the Act, and the Registrar has defined functions, powers and obligations.</td>
</tr>
</tbody>
</table>

- The FAIS Registrar authorises and issues licenses 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.
- 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).

1.1.6 The Purpose of the Financial Sector Regulatory Act, 2017 (FSR Act)

**FSR ACT – Introduction**

The FSR Act was created to establish a system of financial regulation by establishing the Prudential Authority and the Financial Sector Conduct Authority. The powers assigned to these authorities include:

- Preserving and enhancing financial stability in the Republic by conferring powers on the Reserve Bank;
- Establishing the Financial Stability Oversight Committee;
- Regulating and supervising financial product providers and financial services providers;
- Improving market conduct in order to protect financial customers;
- Providing for co-ordination, co-operation, collaboration and consultation among the Reserve Bank, the Prudential Authority, the Financial Sector Conduct Authority, the National Credit Regulator, the Financial Intelligence Centre and other organs of state in relation to financial
stability and the functions of these entities;

- Establishing the Financial System Council of Regulators and the Financial Sector Inter-Ministerial Council;
- Providing for making regulatory instruments, including prudential standards, conduct standards and joint standards;
- Making provision for the licensing of financial institutions;
- Making comprehensive provision for powers to gather information and to conduct supervisory on-site inspections and investigations;
- Making provision in relation to significant owners of financial institutions and the supervision of financial conglomerates in relation to eligible financial institutions that are part of financial conglomerates;
- Providing for powers to enforce financial sector laws, including by the imposition of administrative penalties;
- Providing for the protection and promotion of rights in the financial sector as set out in the Constitution;
- Establishing the Ombud Council and conferring powers on it in relation to ombud schemes;
- Providing for coverage of financial product and financial service providers by appropriate ombud schemes;
- Establishing the Financial Services Tribunal as an independent tribunal and conferring on it powers to reconsider decisions by financial sector regulators, the Ombud Council and certain market infrastructures;
- Establishing the Financial Sector Information Register and making provision for its operation;
- Providing for information sharing arrangements;
- Creating offences;
- Providing for regulation-making powers of the Minister;
- Amending and repealing certain financial sector laws;
- Making transitional and savings provisions; and
- Providing for matters connected therewith.
1.1.7 Authorisation of Financial Services Providers

**FAIS ACT Section 7**

1. With effect from a date determined by the Minister by notice in the Gazette, a person may not act or offer to act as a
   a) financial services provider, unless such person has been issued with a license under Section 8; or
   b) a representative, unless such person has been appointed as a representative of an authorised financial services provider under Section 13.

2. Subject to Section 40, a transaction concluded on or after the date contemplated in Subsection (1) between a product supplier and any client by virtue of any financial service rendered to the client by a person not authorised as a financial services provider, or by any other person acting on behalf of such unauthorized person, is not unenforceable between the product supplier and the client merely by reason of such lack of authorisation.

3. An authorised financial services provider 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 license for the rendering of such financial services and the conditions and restrictions of that license authorises the rendering of those financial services, or is a representative as contemplated in this Act.

This means that an individual may ONLY act or offer to act as a financial services provider if they have been issued with a license under Section 8 of the Act or as a representative if they have been appointed as a representative of an authorised financial services provider under Section 13 of the Act.

If an unauthorised individual (FSP or representative) concludes a transaction between a product supplier and any client, the transaction is not unenforceable between the product supplier and the client simply because of the lack of authorisation.

An authorised FSP or representative can only conduct financial services related business with a person who has been issued with a license for the rendering of financial services limited to the conditions and restrictions of that specific license.

1.1.8 Duties of Authorised Financial Services Providers

**Compliance officers and compliance arrangements.**

**FAIS ACT Section 17.1**

- Any authorised financial services provider with more than one key individual or one or more representatives must, subject to Section 35(1) (c) and subsections (1) (b) and (2)(a)(i), appoint one or more compliance officers to oversee the financial services provider’s compliance function and to monitor compliance with this Act by the provider and such representative or representatives, particularly in accordance with the procedures contemplated in Subsection (3), and to take responsibility for liaison with the registrar.
• Such person must comply with the fit and proper requirements.

(bA) The provisions of Section 8A apply with the necessary changes to a compliance officer.

• The provisions of Section 19(4), (5) and (6), relating to an auditor of an authorised financial services provider, apply with the necessary changes to a compliance officer.

An authorised financial services provider who has more than one key individual or representative must appoint one or more compliance officers to:

• Oversee the compliance function
• Monitor compliance with this Act, particularly Subsection (3)
• Take responsibility for communicating with the registrar.
• The compliance officer must comply with the fit and proper requirements.

1.1.9 Maintenance of Records

An authorised FSP must maintain records for a minimum of five years (except to the extent exempted by the registrar) and these include:

• Premature cancellations of transactions or financial products by clients;
• Complaints received indicating whether the complaint was resolved;
• The continued compliance with the requirements;
• Cases of non-compliance with this Act, with the reasons for such non-compliance; and
• The continued compliance by representatives.

1.1.10 Commencement of Short Title

FAIS ACT Section 46

This Act is called the Financial Advisory and Intermediary Services Act, 2002, and comes into operation on a date fixed by the President by proclamation in the Gazette.

GENERAL EXPLANATORY NOTE: Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

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4 FAIS Act – Section 18
### SCHEDULE

**LAWS AMENDED OR REPEALED**

*(Section 45)*

<table>
<thead>
<tr>
<th>Item Number</th>
<th>Short Title</th>
<th>Extent of Amendment or Repeal</th>
</tr>
</thead>
</table>
| I Act No. 97 of 1990 | FSCA (FSB) Act, 1990 | The amendment of Section 1 by the addition of the following subparagraph to paragraph (a) of the definition of “financial institution”:

“(xii) any ‘authorised financial services provider’ or 'representative’ as defined in Section 1(1) of the Financial Advisory and Intermediary Services Act, 2001;” |

| II (a) Act No. 1 of 1985 | Stock Exchanges Control Act, 1985 | 1. The amendment of Section 4 by the -

(a) Substitution for Subsection (1) of the following Subsection:

“(1) No member may, as a regular feature of the business of the member, undertake the management of investments on behalf of another person, and for such management receive any remuneration in whatever form, unless the member is authorised to do so in terms of the rules.”; and

(b) deletion of subsections (1A), (2), (3), (4), (5), (6) and (7)(c).

2. The amendment of Section 12 by the substitution for paragraph (d) of Subsection (1) of the following paragraph:

“(d) that -

(i) a member carries on a business contemplated in Section 4(1) in accordance with the provisions of the rules; and (ii) a member may not effect a transaction with a person whom the member reasonably believes requires authorisation as a financial services provider or the status of a representative in terms of the Financial Advisory and Intermediary Services Act, 2001, without having taken reasonable measures to ascertain that such person has the required authorisation or status.”. |

3. The amendment of Section 39 by the deletion of subsections (2), (2A) and (2B).

4. The amendment of Section 45 -

(a) by the deletion of subparagraph (iii) of paragraph (a) of Subsection (1);

(b) by the deletion of the word “or” at the end of subparagraph (ii) of paragraph (b) of Subsection (1), and of subparagraph (iii) of the said paragraph (b);

(c) by the substitution for the words following on subparagraph (iii) of paragraph (b) of Subsection (1) of the following
words:

“but who is carrying on the business of a stock exchange or of a
member, [or of a person requiring approval in terms of
Section 4] as the case may be; and”.

5. The amendment of Section 47 by the deletion of paragraph
(b) of Subsection (1).

6. The amendment of Section 48 by the substitution for
paragraph (a) of Subsection (1) of the following paragraph:

“(a) contravenes a provision of Section 3(1) or (2), 4(1) [or (2)] or
14;”.

7. The substitution of the following heading and Subsection for
the heading and Subsection (1) of Section 50: “Powers of
court to declare member, officer or employee of member
disqualified.

50. (1) If a court -

(a) convicts a member or an officer or employee of a member
[or a person approved in terms of Section 4] under this Act
or of an offence of which any dishonest act or omission is an
element; or

(b) finds, in proceedings to which a member or an officer or
employee of a member [a person approved in terms of
Section 4 or such person’s officer or employee] is a party or
in which [his] such member’s, officer’s or employee’s
conduct is called in question, that [he] such member,
officer or employee has been guilty of dishonest conduct,
the court may (in addition, in a case referred to in
paragraph (a), to any sentence it may impose) declare that
member, officer or employee of a member [person or such
person’s officer or employee] to be disqualified, for an
indefinite period or for a period specified by the court, from
carrying on the business of a member or from being an
officer or employee of a member, [or from carrying on the
business referred to in Section 4] as the case may be.”

<table>
<thead>
<tr>
<th>II (b) Act No. 55 of 1989</th>
<th>Financial Markets Control Act, 1989</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The amendment of Section 5 –</td>
</tr>
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<td></td>
<td>(a) by the substitution for Subsection (1) of the following Subsection:</td>
</tr>
<tr>
<td></td>
<td>“(1) No member may, as a regular feature of the business of the member, under take the management of investments on behalf of another person, and for such management receive any remuneration in whatever form, unless the member is authorised to do so in terms of the rules.”; and</td>
</tr>
<tr>
<td></td>
<td>(b) by the deletion of subsections (1A), (2), (3), (4), (5), (6) and (7)(c).</td>
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</tbody>
</table>
| 2. | The amendment of Section 17 -  
(a) by the substitution in Subsection (1) for paragraph (dC) of the following paragraph:  
“(dC) that a member carries on a business contemplated in Section 5(1) in accordance with the provisions of the rules;”; and  
(b) by the substitution in Subsection (1) for paragraph (IB) of the following paragraph:  
“(IB) that no member may effect a transaction with a person who the member reasonably believes requires authorisation as a financial services provider or the status of a representative in terms of the Financial Advisory and Intermediary Services Act, 2001, without having taken reasonable measures to ascertain that such person has the required authorisation or status;”. |
| 3. | The amendment of Section 21A by the deletion of subsections (2), (2A) and (2B). |
| 4. | The amendment of Section 26 -  
(a) by the deletion in Subsection (1) of subparagraph (iii) of paragraph (a);  
(b) by the deletion of the word “or” at the end of subparagraph (ii) of paragraph (b) of Subsection (1), and of subparagraph (iii) of the said paragraph (b); and  
(c) by the substitution for the words following on subparagraph (iii) of paragraph (b) of Subsection (1) of the following words:  
“but who is carrying on the business of a financial exchange or of a member [or of a person requiring approval in terms of Section 5]; and”. |
| 5. | The amendment of Section 28 by the deletion of paragraph (c). |
| 6. | The amendment of Section 29 -  
(a) by the substitution for paragraph (b) of Subsection (1) of the following paragraph:  
“(b) direct a financial exchange or a member thereof or a recognized clearing house [or a person approved in terms of Section 5] to take any other steps, or to refrain from performing or continuing any act, in order to terminate or to obviate any undesirable practice or state of affairs brought to light by the inspection.”; and  
(b) by the substitution for Subsection (2) of the following Subsection:  
“(2) A financial exchange or a member thereof or a recognized clearing house [or a person approved in terms of Section 5]
shall upon receipt of a request in writing by the Registrar to that effect immediately discontinue the publication or the issue of any advertisement, brochure, prospectus or similar document relating to financial instruments specified in the request which is not a correct statement of fact or is objectionable, or effect such adjustments thereto as the Registrar deems fit”.

7. The substitution of the following section for Section 30:

“Evidence

30. A record purporting to have been made or kept in the ordinary course of the carrying on of the business of a financial exchange or the business of a member, or of a recognized clearing house [or the business of a person approved in terms of Section 5] or a copy of or an extract from such record certified to be correct by the public prosecutor, shall on its mere production by the public prosecutor in any criminal proceedings under this Act, any other law or the common law against the person who carries or carried on the business in question or any other person, be admissible in evidence and be prima facie proof of the facts contained in such record, copy or extract.”.

8. The substitution of the following heading and Subsection for the heading and Subsection (1) of Section 31:

“Power of court to declare member or officer or employee of member disqualified

31. (1) If a court -

(a) convict[s] a member or officer or employee of a member [or a person approved in terms of Section 5] of an offence under this Act or of an offence of which any dishonest act or omission is an element; or

(b) finds, in proceedings to which a member or officer or employee of a member [or a person approved in terms of Section 5 or such person’s officer or employee] is a party or in which such member’s officer’s or employee’s [or person’s] conduct is called in question, that such member, officer or employee [or person] has been guilty of dishonest conduct, the court may [in addition, in a case referred to in paragraph (a) to any sentence it may impose] declare that member, officer or employee of a member [or person or such person’s officer or employee] to be disqualified, for an indefinite period or for a period specified by the court, from carrying on the business of a member or from being an officer or employee of a member [or from carrying on the business referred to in Section 5], as the case may be.”
II (c) Act No. 140 of 1992 | Drugs and Drug Trafficking Act, 1992
---|---
1. The amendment of Section 10, by the substitution in Subsection (3) for paragraphs (a) and (b) of the following paragraphs:
   “(a) any stock-broker as defined in Section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985) [or any person contemplated in paragraph (d), (e) or (f) of Section 4(1) of that Act]; or
   (b) any financial instrument trader as defined in Section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989) [or any person contemplated in paragraph (f), (g), or (h) of Section 5(1) of that Act].”

1.2 FAIS Act integration with other FSCA (FSB) Legislation

1.2.1 An Authorised Financial Services Provider must –

An authorised FSP must be satisfied that the representatives, and the key individuals of the representatives, are, when rendering a financial service, competent to act, and comply with all the fit and proper requirements as well as any other requirements included in Subsection (1)(b)(ii) of the Act.

The FSP must also be satisfied that the KIs and representatives comply with all applicable code of conduct and laws on conduct of business. ⁵

1.2.2 Control Measures

A provider must at all times have and effectively employ the resources, procedures and appropriate technological systems that can reasonably be expected to eliminate the risk that clients, product suppliers and other providers or representatives will suffer, including financial loss through theft, fraud, other dishonest acts, poor administration, negligence, professional misconduct or culpable omissions.

A Financial Services Provider, excluding a representative, must structure the internal control procedures concerned to provide reasonable 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.

Board Notice 123 of 2009 specifies conditions for which providers must hold professional indemnity and fidelity insurance. This schedule applies to providers only and not to representatives.

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⁵ FAIS Act – Section 13(2)
Category I or IV provider who does not receive or hold client’s financial products or funds on date of commencement, must from a date 12 months after that date, must have in place:

- Sufficient guarantees of a minimum amount of R1 million; or
- Suitable professional indemnity cover of a minimum amount of R1 million.

Category I or IV provider who receives or hold client’s financial products or funds on date of commencement, must from a date 12 months after that date, maintain in force:

- Sufficient guarantees of a minimum amount of R1 million; or
- Suitable professional indemnity and fidelity insurance cover of a minimum amount of R1 million.

Category II and IIA provider who does not receive or hold client’s financial products or funds on date of commencement, must from a date six months after that date, must have in place:

- Sufficient guarantees of a minimum amount of R1 million; or
- Suitable professional indemnity cover of a minimum amount of R1 million.

Category II, IIA and III provider who receives or hold client’s financial products or funds on date of commencement, must from a date six months after that date, maintain in force:

- Sufficient guarantees of a minimum amount of R5 million; or
- Suitable professional indemnity and fidelity insurance cover of a minimum amount of R5 million, respectively.

1.3 Requirements when Interactions between FSP’s Take Place

1.3.1 The Meaning of “Financial Institution”

**Definition of financial institution:**

According to the definition in the FSCA (FSB) Act, 1990 a financial institution is:

- 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;

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6 FSCA (FSB) Act, 1990
any ‘external authorised user’, ‘external central securities depository’, ‘external clearing house’, ‘external clearing member’, ‘external exchange’ , ‘external participant’ or ‘external trade repository’, or any person referred to in paragraphs (a) to (h) and (j) of the definition of ‘regulated person’, as defined in the Financial Markets Act, 2012 (Act No. 19 of 2012);

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’ contemplated in the Short-term Insurance Act, 1998 (Act No. 53 of 1998), and the Long-term Insurance Act, 1998 (Act No. 52 of 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;

xii) any authorised financial services provider’ or ‘representative’ as defined in Section 1(1) of the Financial Advisory and Intermediary Services Act, 2001;

any “credit rating agency” as defined in Section 1 of the Credit Rating Services Act, 2012;

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, 2008 (Act No. 71 of 2008), the Close Corporations Act, 1984 (Act No. 69 of 1984), and the Trust Property Control Act, 1988 (Act No. 57 of 1988); and

any person that performs an activity regulated under a law referred to in paragraph (a) or (b).
1.3.2 Relationships Between Different Industry Players

Industry players include FSPs, key individuals, representatives as well as regulatory bodies such as the FSCA (FSB) and the FIC.

1.3.3 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.

The key individual must ensure that the FSP has procedures that, if the provider does any financial services-related business with any other FSP, that such other provider is properly authorised.

Any contravention of or failure to comply with Section 7(3) of the FAIS Act, is an offence and 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 license for the provision of such financial services. The conditions and restrictions of the license authorises the provision of those financial services.
General Code of Conduct – Section 2

General duty of a provider:

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

1.4 Departments of the Registrar’s Office Dealing with FSP Matters

1.4.1 FAIS Division of the FSCA (FSB) - Departments

During the course of the lifespan of an FSP license, communication with various divisions of the FAIS Regulator and the FSP will occur. This chapter 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.

<table>
<thead>
<tr>
<th>Registration Department</th>
<th>Supervision Department</th>
<th>Enforcement Department</th>
</tr>
</thead>
<tbody>
<tr>
<td>New license applications</td>
<td>Implementation of a risk based approach to supervision of financial service providers</td>
<td>Dealing with complaints against FSPs that can not be referred to the FAIS Ombud</td>
</tr>
<tr>
<td>Profile changes</td>
<td>analysis of financial statements and compliance reports</td>
<td>Investigations into the affairs of FSPs</td>
</tr>
<tr>
<td>Updating the central representative register</td>
<td>Conducting onsite visits to FSPs and compliance officers</td>
<td>Regulatory action (suspension and withdrawal of licenses)</td>
</tr>
<tr>
<td>Approval of mandates and application forms for discretionary FSPs and Administrative FSPs</td>
<td>Liaison with industry relating to changes in subordinate legislation</td>
<td>Updating departments on the central representative register</td>
</tr>
<tr>
<td>Lapsing of licenses</td>
<td></td>
<td>Reinstatement of representatives on the central register</td>
</tr>
<tr>
<td>Queries on license status</td>
<td></td>
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<tr>
<td>Collection of levies together with FSB Finance department</td>
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</tbody>
</table>
1.4.2 Profile Changes

Whenever there are changes in the information relating to the FSP that was 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 FSCA (FSB).

Interaction and communication between the FSP (key individual) and the FAIS Regulator is required during the lifespan of an FSP license. The diagram below indicates the possible interactions and required documentation.

![Diagram showing interactions and documentation]

### Table 1.2: Summary of Profile Change Forms

<table>
<thead>
<tr>
<th>Form #</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>License categories</td>
</tr>
<tr>
<td>FSP 3</td>
<td>Directors, officers and applicable shareholders</td>
</tr>
<tr>
<td>FSP 4A</td>
<td>Fitness and propriety of an applicant not a natural person</td>
</tr>
<tr>
<td>FSP 4B</td>
<td>Fitness and propriety of an applicant’s directors, members, trustees and partners</td>
</tr>
<tr>
<td>FSP 4C</td>
<td>Fitness and propriety of an applicant who is a natural person</td>
</tr>
<tr>
<td>FSP 4D</td>
<td>Fitness and propriety of a key individual</td>
</tr>
</tbody>
</table>
1.4.3 After Consideration of an Application

The Registrar must, after consideration of an application:

FAIS ACT Sections 8.3 & 8.10

8 (3)

(a) grant the application if the registrar -
   (i) is satisfied that the applicant and its key individual or key individuals comply with the
       requirements of this Act; and
   (ii) approve the key individual or key individuals of the applicant, in the case of a partnership, trust
        or corporate or unincorporated body; or

[Para. (a) substituted by s. 182 of Act 45/2013 w.e.f. 28 February 2014]

(a) refuse the application if the registrar -
   (i) is not satisfied that the applicant and its key individual or key individuals comply with the
       requirements of this Act; or
   (ii) does not approve the key individual or key individuals of the applicant in the case of a
        partnership, trust or corporate or unincorporated body.

(10) (a) Where a provider is a corporate or unincorporated body, a trust or a partnership, the
   provider must -
   (i) at all times be satisfied that every director, member, trustee or partner of the provider, who is
       not a key individual in the provider's business, complies with the requirements in respect of
       personal character qualities of honesty, integrity and good standing and good standing as
       contemplated in paragraph (a) of Subsection (1A);
   (ii) within 15 days of the appointment of a new director, member, trustee or partner, inform the
        registrar of the appointment and furnish the registrar with such information on the matter as the
The registrar may reasonably require; and

(a) If the registrar is satisfied that a director, member, trustee or partner does not comply with the requirements as contemplated in paragraph (a) of Subsection (1A), the registrar may suspend or withdraw the license of the provider as contemplated in Section 9.

The registrar must consider an application and either:

- Grant the application if she is satisfied that the applicant and its key individual/s comply with the requirements of this Act; or
- Refuse the application if she is not satisfied that the applicant and its key individual/s comply with the requirements of this Act.

Where a provider is a corporate or unincorporated body, a trust or a partnership, the provider must ensure that every director, member, trustee or partner of the provider complies with the requirements in respect of personal character qualities of honesty, integrity and good standing.

When the provider appoints a new director, member, trustee or partner, they must inform the registrar of the appointment within 15 days and provide the registrar with relevant information.

Note that this does not apply to key individual in the provider's business.

If the registrar believes that a director, member, trustee or partner does not comply with the requirements in the legislation, the registrar can suspend or withdraw the license of the provider.

1.4.4 Interpretation, Object and Administration of the Financial Sector Regulation Act

Extracts from the FSR Act

Eligible Financial Institution means the following:

- A financial institution licensed or required to be licensed as a bank in terms of the Banks Act; and
- A financial institution licensed or required to be licensed as a long-term insurer in terms of the Long-term Insurance Act or a short-term insurer in terms of the Short-term Insurance Act.

As defined by the FSR a License includes a written license, registration, approval, recognition, permission, consent or any other authorisation in terms of a financial sector law, however it is described in that law, to provide a financial product, financial service or a market infrastructure.

A Supervised entity is:

- A licensed financial institution; and
- A person with whom a licensed financial institution has entered into an outsourcing arrangement.
Winding-up and similar steps in respect of systemically important financial institutions

The following steps may NOT be taken in relation to a systemically important financial institution or a systemically important financial institution within a financial conglomerate without the concurrence of the Reserve Bank:

- Suspending, varying, amending or cancelling a license issued to that financial institution; and
- The Executive Committee has the authority to grant, vary, suspend and revoke licenses in terms of a financial sector law.

1.4.5 Co-operation and Collaboration between Financial Sector Regulators and Reserve Bank

Extracts from the FSR Act

The financial sector regulators and the Reserve Bank must co-operate and collaborate when performing their functions in terms of financial sector laws, the National Credit Act, and the Financial Intelligence Centre Act, and must for this purpose:

(i) Generally, assist and support each other in pursuing their objectives in terms of financial sector laws, the National Credit Act and the Financial Intelligence Centre Act;

(ii) Inform each other about, and share information about matters of common interest;

(iii) Strive to adopt consistent regulatory strategies, including addressing regulatory and supervisory challenges;

(iv) Co-ordinate, to the extent appropriate, actions in terms of financial sector laws, the National Credit Act and the Financial Intelligence Centre Act, including in relation to:

- standards and other regulatory instruments, including similar instruments provided for in terms of the National Credit Act and the Financial Intelligence Centre Act;
- licensing;
- supervisory on-site inspections and investigations;
- actions to enforce financial sector laws, the National Credit Act and the Financial Intelligence Centre Act;
- information sharing;
- recovery and resolution; and
- reporting by financial institutions, including statutory reporting and data collection measures

(i) Minimise the duplication of effort and expense, including by establishing and using, where appropriate, common or shared databases and other facilities;

(ii) Agree on attendance at relevant international forums; and

(iii) Develop, to the extent that is appropriate, consistent policy positions, including for the purpose of presentation and negotiation at relevant South African and international forums.
The financial sector regulators and the Reserve Bank must, at least annually as part of their annual reports, or on request, report to the Minister, the Cabinet member responsible for administering the National Credit Act and the National Assembly on measures taken to co-operate and collaborate with each other.

**Memorandum of Understanding**

The financial sector regulators and the Reserve Bank, must, as soon as practicable but not later than six months after the date on which this Chapter comes into effect, enter into one or more memoranda of understanding to give effect to their obligations in terms of Section 76.

A delegation of a power or duty by a financial sector regulator to another financial sector regulator must be effected by a memorandum of understanding entered into in terms of this section.

The validity of any action taken by a financial sector regulator, the Reserve Bank or the Governor in terms of a financial sector law, the National Credit Act and the Financial Intelligence Centre Act is not affected by a failure to comply with this section or a memorandum of understanding in terms of this section.

The financial sector regulators and the Reserve Bank must review the memoranda of understanding at least once every three years and amend them as appropriate.

The financial sector regulators and the Reserve Bank must provide a copy of each memorandum of understanding entered into in terms of this section, and each amendment of such a memorandum of understanding to the Minister and the Cabinet member responsible for administering the National Credit Act.

The financial sector regulators and the Reserve Bank must each publish each memorandum of understanding in terms of this section and each amendment thereof.

1.4.6 Process for Making Regulatory Instruments

A regulatory instrument must not be made unless the maker is a financial sector regulator.

The maker must, when complying with Subsection (1)(a), provide a copy of the documents referred to in that paragraph if the regulatory instrument would impose requirements on providers of securities services, the market infrastructure that has the function of licensing those providers in terms of a financial sector law.
1.4.7 Licensing Requirements

Licensing requirements are reflected in both the FSR Act and the FAIS Act. It is important to understand the distinction between these two pieces of statute. The FSR Act provides the broad principles of licensing requirements that financial services providers will need to adhere to in the context of the market in which they operate and the product and services that they provide.

Therefore, the FRS Act will provide the general principles of licensing. Each financial services sector will provide the specifics of licensing. For example, in the case of financial services providers selling Category I products, the specific licensing conditions will be set by the FAIS Act and the FSCA (FSB). In the context of the medical schemes Act for those financial services providers selling health service benefits.

<table>
<thead>
<tr>
<th>Extract from FSR Act Chapter 8 Parts 1 &amp; 2</th>
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<tbody>
<tr>
<td><strong>Part 1</strong></td>
</tr>
<tr>
<td>License requirement in respect of providers of financial products and financial services, and market infrastructures</td>
</tr>
<tr>
<td>1. A person may not provide, as a business or part of a business, a financial product, financial service or market infrastructure except:</td>
</tr>
<tr>
<td>a) in accordance with a license in terms of a specific financial sector law, the National Credit Act or the National Payment System Act, or</td>
</tr>
<tr>
<td>b) if no specific financial sector law provides for such a license, in accordance with a license in terms of this Act.</td>
</tr>
<tr>
<td>2. A person may not provide, as a business or part of a business, a financial product designated in terms of Section 2, or a financial service designated in terms of Section 3, except in accordance with a license in terms of this Chapter;</td>
</tr>
<tr>
<td>3. Subsections (1) and (2) only apply to a contractor if a responsible authority specifically, in a standard, requires that contractor to be licensed;</td>
</tr>
<tr>
<td>4. A person may not describe or hold itself out as being licensed in terms of a financial sector law, including being licensed to provide particular financial products, financial services or market infrastructure, unless that person is so licensed;</td>
</tr>
<tr>
<td>5. A person may not permit another person to identify the first person as licensed in terms of a financial sector law, including licensed in terms of a financial sector law to provide particular financial products, financial services or market infrastructure, unless the first person is so licensed;</td>
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<tr>
<td>6. For the purposes of subsections (4) and (5), a person whose license has been varied, suspended or revoked is not licensed; and</td>
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<tr>
<td>7. Except to the extent expressly provided by this Act, this Act does not affect the provisions of the specific financial sector laws with respect to licensing in relation to financial products, financial services and market infrastructures.</td>
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Part 2

Licenses required in terms of Section 111(1)(b) or (2) or Section 162

Interpretation

In this Part -

• Application means an application for a license required in terms of Section 111(1)(b) or (2) or Section 162;
• License means a license required in terms of Section 111(1)(b) or (2) or Section 162; and
• Licensee means a person licensed in terms of Section 111(1)(b) or (2) or Section 162.

Power to grant licenses

The responsible authority may, on application, grant a license.

The application must -

(a) be in writing and in a form approved or accepted by the responsible authority; and
(b) include or be accompanied by the information and documents -

i) required in the form; or
ii) required by the responsible authority.

Request for further information or documents by responsible authority

1. The responsible authority may, by notice in writing, require an applicant for a license to -

(a) give the responsible authority additional information or documents specified by the responsible authority; and
(b) verify any information given by the applicant in connection with the application in a manner specified by the responsible authority.

2. The responsible authority need not deal further with the application until the applicant has complied with the notice.

Relevant matters for application for license

The matters to be taken into account in relation to an application for a license include -

(a) the objective of the responsible authority as set out in Section 33 or 57;
(b) the financial and other resources of and available to the applicant;
(c) fit and proper person requirements applicable to the applicant and to any key person or significant owner of the applicant;
(d) the governance and risk management arrangements of the applicant; and  
(e) whether the applicant made a statement that is false or misleading, including by omission, in or in relation to the application.

Determination of applications

1. The responsible authority to which an application for a license has been made must determine the application by-
   (a) granting the application and issuing a license to the applicant; or
   (b) refusing the application and notifying the applicant accordingly.
2. The responsible authority may not grant a license to an applicant unless satisfied that-
   (a) the applicant has or has available to it sufficient resources and capacity to ensure that it will comply with the requirements of financial sector laws in relation to the license; and
   (b) issuing the license to the applicant will not be contrary to the interests of financial customers, the financial sector or the public interest.
3. (a) The responsible authority must determine an application as contemplated in Subsection (1) and notify the applicant within three months after the application is made.
   (b) The responsible authority may, by notice to the applicant, extend the period of three months in paragraph (a) for one or more further periods but the total period may not be more than nine months.
   (c) In working out when the period mentioned in paragraph (a) or (b) expires, any period between the responsible authority giving the applicant a notice in terms of Section 114 and the requirements in the notice being satisfied is not to be counted.

Reporting obligations of licensee

1. A licensee must promptly report any of the following to the responsible authority that issued the license.
   (a) The fact that the licensee has contravened or is contravening, in a material way-
      i. a financial sector law;
      ii. a regulator’s directive or a directive in terms of Section 202;
      iii. an enforceable undertaking;
      iv. an order of a court made in terms of a financial sector law; or
      v. a decision of the Tribunal;
   (b) the fact that the licensee has become aware that information given in connection with the application for the license was false or misleading.
2. Subsection (1) also applies in relation to events and circumstances that occur while a license is suspended.
3. Information that is reported in terms of this section is not admissible in evidence in any criminal proceedings, except in criminal proceedings for perjury.
Licenses not transferable
A license is not transferable from the licensee to another person.

Variation of licenses
(1) The responsible authority that issued a license may, by notice to the licensee, vary the license if to do so will assist in achieving the objective of the responsible authority as set out in Section 33 or 57.

(2) A variation of a license may include-
(a) removing or varying a condition of the license, or adding a condition, and
(b) changing the categories of financial products, financial services or financial customers to which the license relates.

(3) A variation of a license takes effect on a date of the notice in terms of Subsection (1) or, if a later date is specified in the notice, the later date.

Suspension of licenses
1. The responsible authority that issued a license may, by notice to the licensee, suspend the license, for the period specified in the notice, if-
(a) the licensee applies for suspension of the license;
(b) a condition of the license has been contravened or not been complied with in a material way;
(c) the licensee has contravened in a material way;
   i. a financial sector law;
   ii. a prudential standard or a joint standard;
   iii. a regulator’s directive or a directive in terms of Section 202;
   iv. an enforceable undertaking;
   v. an order of a court made in terms of a financial sector law, or
   vi. a decision of the Tribunal;
(d) the licensee has in a foreign country contravened in a material way a law of that country that corresponds to a financial sector law;
(e) information provided in or in relation to an application in relation to the license was false or misleading (including by omission) in a material way;
(f) the suspension is necessary to prevent-
   i. a serious contravention of a financial sector law, or
   ii. financial customers of the licensee suffering material prejudice or
(g) fees in respect of the license.

   A levy or an administrative penalty payable by the licensee, including any interest, are unpaid and have been unpaid for at least 30 days.

2. The responsible authority may refuse to suspend a license in terms of Subsection
(1)(a) if the suspension-
(a) would not be in the best interests of financial customers; or
(b) would frustrate the objects of a financial sector law applicable to the license.
3. The responsible authority that suspended a license may at any time revoke the suspension.
4. The suspension of a license takes effect on the date of the notice in terms of Subsection (1) or, if a later date is specified in the notice, the later date.
5. The suspension of a license does not affect an obligation of the licensee that it has in terms of a financial sector law.

Revocation of licenses
1. The responsible authority that issued a license may, by notice to the licensee, revoke the license
(a) if the licensee applies for revocation of the license;
(b) on any of the bases on which it may suspend the license; as set out in Section 120(1)(b) to (g);
(c) if the licensee has ceased to conduct the licensed business.
2. The responsible authority may refuse to revoke a license in terms of Subsection (1)(a) if the revocation-
(a) would not be in the best interests of financial customers; or
(b) would frustrate the objects of a financial sector law applicable to the license.
(3) Revocation of a license takes effect on the date of the notice in terms of Subsection (1) or, if a later date is specified in the notice, the later date.

Continuation of licensed activity despite suspension or revocation of license
1. The responsible authority that suspended or revoked a license may, by notice to the licensee, on conditions specified in the license—allow the licensee to carry out the licensed activity to the extent, and for the period, specified in the notice to facilitate the orderly suspension or termination of the activity.
2. Conditions in terms of Subsection (1) must be aimed at-
(a) ensuring that financial customers of the licensee are treated fairly; or
(b) the orderly suspension or termination of the licensed activity.
(3) Carrying out the licensed activity in accordance with the requirements of a notice in terms of Subsection (1) is not a contravention of Section 111 or 162.
Procedure for varying, suspending and revoking licenses

1. (a) Before the responsible authority suspends or revokes a license, it must -
   i. give the licensee notice of the proposed action and a statement of the reasons for it; and
   ii. invite the licensee to make submissions on the matter and give it a reasonable period to do so.
(b) The period referred to in paragraph (a)(ii) must be at least one month.
(c) The responsible authority need not comply with paragraph (a) if the licensee has applied for the proposed action to be taken.

2. In deciding whether to vary, suspend or revoke a license the responsible authority must take into account all submissions made within the period specified in the notice in terms of Subsection (1)(a)(ii).

3. If the delay involved in complying, or complying fully, with Subsection (1)(a) in respect of a proposed action is likely to prejudice financial customers, prejudicially affect financial stability or defeat the object of the action the responsible authority may take the action without having complied, or complied fully, with that Subsection.

4. (a) If the responsible authority takes action without having complied, or complied fully, with Subsection (1)(a) for the reason set out in Subsection (3), the responsible authority must give the licensee a written statement of the reasons why that Subsection was not complied with.
(b) The licensee may make submissions to the responsible authority within one month after being provided with the statement.
(c) The responsible authority must consider the submission, and notify the licensee as soon as practicable, whether the responsible authority proposes to amend or revoke the variation, suspension or revocation.

Applications for licenses

(1) The responsible authority may, in writing, determine procedures and requirements for applications.

(2) Requirements determined in terms of Subsection (1) may include requirements with respect to-
   (a) the institutional form of an applicant;
   (b) an applicant’s business activities;
   (c) an applicant’s financial capacity;
   (d) fit and proper person requirements; and
   (e) an applicant’s operational, management, governance and risk management arrangements.

(3) An application to the responsible authority for the purposes of this Part must be made in accordance with the relevant procedures in terms of Subsection (1).

(4) The responsible authority must publish requirements determined in terms of Subsection (1).
Provisions relating to all licenses under financial sector laws

Application

This Part applies in relation to licenses in terms of all financial sector laws.

Concurrence of financial sector regulators on licensing matters

(1) The responsible authority may not take any of the actions specified in Subsection (2) unless -

(a) the other financial sector regulator has concurred, and

(b) if the action relates to or affects a systemically important financial institution, the Reserve Bank has also concurred.

(2) The actions are -

(a) issuing a license;

(b) varying, suspending or revoking a license, however these are described in the relevant financial sector law; and

(c) granting an exemption in terms of Section 281.

Compulsory disclosure of licenses

(1) A licensed financial institution must comply with the applicable requirements of a prudential standard, a conduct standard and a joint standard in relation to the identification of relevant licenses under financial sector laws in business documentation, including advertisements and other promotional material.

(2) A licensed financial institution must make its license or a copy of its license available at no cost to any person on request.

Publication

(1) Each license must be published by the responsible authority that issues it.

(2) Each variation, suspension and revocation of a license must be published by the responsible authority that takes the action.

Part 3

Enforceable undertakings

(1) A person may give a written undertaking to the responsible authority concerning that person’s future conduct in relation to a matter regulated by a financial sector law, and that undertaking, upon its acceptance by the responsible authority, becomes enforceable by the responsible authority as contemplated in this Act.

(2) A written undertaking referred to in Subsection (1) may include an undertaking to provide specified redress to financial customers.
1.5 Interact with Registrar if and when Required

1.5.1 Definitions

Memorandum of Understanding (MOU) - is a formal agreement between two or more parties. Companies and organizations can use MOUs to establish official partnerships. MOUs are not legally binding, but they carry a degree of seriousness and mutual respect, stronger than a gentlemen’s agreement.

Organs of State - The Republic of South Africa is a parliamentary republic with three-tier system of government and an independent judiciary, operating in a parliamentary system. Legislative authority is held by the Parliament of South Africa.

As outlined, the FAIS Division of the FSCA (FSB) consists of the following departments:

- Registration Department;
- Supervision Department;
- Compliance Department; and
- Enforcement Department.

1.5.2 General Provisions Concerning Registrar

FAIS Act Section 3

1) 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.

2) Whenever the performance of any act contemplated in Subsection (1) is sought by a person under this Act or any other law, application therefore must, subject to any other specific provision of this Act, be made in writing to the registrar and the application must -

   a) be made in the form and manner determined by or in terms of this Act, or any other law, or as otherwise required by the registrar;

   (b) be accompanied by –

      i) the fees payable in terms of this Act; and

      ii) the information or documents required by the registrar.

3) The registrar must in connection with the application of any provision of this Act to or in respect of any financial product or financial service, consult with any regulatory or supervisory authority in the Republic, including the Registrar of Medical Schemes, referred to in Section 42, who is by law empowered to perform a regulatory or supervisory function in respect of such product or service.

All decisions taken by the registrar (notice given, approval or exemption granted, determination made, requirement or condition determined or imposed) is only valid if it is presented in written or
printed form and gazetted, or where communicated electronically, has been transmitted correctly in a legible form.

The compliance officer appointed by the FSP is the official communication channel between the FSP and the Registrar.

**FSR Act**

“Regulators directive” means a directive issued by a financial sector regulator in terms of Section 143, 144 or 159.

“Regulatory instrument” means each of the following:

(a) A prudential standard;
(b) A conduct standard;
(c) A joint standard;
(d) An Ombud Council rule;
(e) A determination of fees in terms of Section 237(1)(a);
(f) An instrument identified as a regulatory instrument in a financial sector law; and
(g) An instrument amending or revoking an instrument referred to in paragraphs (a) to (f).

In the FSR Act, financial product refers to:

(a) A participatory interest in a collective investment scheme
(b) A long-term policy as defined in Section 1(1) of the Long-term Insurance Act

**Financial services**

3. (1) In this Act “financial service” means -

(a) any of the following activities conducted in the Republic in relation to a financial product, a foreign financial product, a financial instrument, or a foreign financial instrument:

(i) Offering, promoting, marketing or distributing;
(ii) Providing advice, recommendations or guidance;
(iii) Operating or managing; and
(iv) providing administration services;
(b) dealing or making a market in the Republic in a financial product, a foreign financial product, a financial instrument or a foreign financial instrument;
(c) a payment service;
(d) securities services;
(e) an intermediary service as defined in Section 1(1) of the Financial Advisory and Intermediary Services Act;
(f) a service related to the buying and selling of foreign exchange;
(g) a service related to the provision of credit including a debt collection service, but excluding
the services of:

(i) a debt counsellor registered in terms of Section 44 of the National Credit Act who provides the services of a debt counsellor as contemplated in that Act;

(ii) a payment distribution agent as defined in Section 1 of the National Credit Act; or

(iii) an alternative dispute resolution agent, as defined in Section 1 of the National Credit Act;

(h) a service provided to a financial institution through an outsourcing arrangement;

(i) any other service provided by a financial institution, being a service regulated by a specific financial sector law; and

(j) a service designated by the Regulations for this section as a financial service.

(2) A service provided by a market infrastructure is not a financial service unless designated by Regulations in terms of Subsection (3).

(3) If doing so will further the object of this Act set out in Section 7, the Regulations may designate as a financial service:

(a) any service that is not regulated in terms of a specific financial sector law if the Service, that is provided in the Republic, relates to –

(i) a financial product, a foreign financial product, a financial instrument or a foreign financial instrument;

(ii) an arrangement that is in substance an arrangement for lending, making a financial investment or managing financial risk, all as contemplated in Section 2(2) to (4); or

(iii) the provision of a benchmark or index; or

(b) a service provided by a market infrastructure.

(4) For the purposes of Subsection (1)(b) of the definition of “financial service” in Subsection (1) –

“dealing” means any of the following, whether done as a principal or as an agent:

(a) In relation to securities or participatory interests in a collective investment scheme, underwriting the securities or interests; and

(b) The buying or selling of the securities or interests for own account or on behalf of another person as a business, a part of a business or incidental to conducting a business;

“making a market” in a financial instrument takes place when:

(a) A person, through a facility, at a place or otherwise, states the prices at which the person offers to acquire or dispose of financial instruments, whether or not on the person’s own account; and

(b) Other persons reasonably expect that they can enter into transactions for those instruments at those prices.

(5) Regulations designating a financial service in terms of Subsection (3) may specify the financial sector regulator that is the responsible authority for the designated financial service.
Monitoring of risks by Reserve Bank

12. The Reserve Bank must:
   (a) Monitor and keep under review -
      (i) the strengths and weaknesses of the financial system; and
      (ii) any risks to financial stability, and the nature and extent of those risks, including risks that systemic events will occur and any other risks contemplated in matters raised by members of the Financial Stability Oversight Committee or reported to the Reserve Bank by a financial sector regulator,
   (b) Take steps to mitigate risks to financial stability, including advising the financial sector regulators, and any other organ of state, of the steps to take to mitigate those risks, and
   (c) Regularly assess the observance of principles in the Republic developed by international standard setting bodies for market infrastructures, and report its findings to the financial sector regulators and the Minister, having regard to the circumstances and the context within the Republic.

Part 2:
Responsibilities of financial sector regulators

17. If the Governor has in terms of Section 14(4) determined that a systemic event has occurred or is imminent, each financial sector regulator must -
   (a) provide the Reserve Bank with any information in the possession of the financial sector regulator, which may be relevant for the Bank to manage the systemic event or the effects of the systemic event; and
   (b) consult the Reserve Bank before exercising any of their powers in a way that may compromise steps taken or proposed in terms of Section 15 to manage the systemic event or the effects of the systemic event.

Directives to financial sector regulators

18. (1) The Governor may direct a financial sector regulator, in writing, to provide the Reserve Bank with information specified in the directive that the Reserve Bank or the Governor needs for exercising their powers in terms of Section 14 or 15, that is in the possession of the financial sector regulator or obtainable by it.
   (2) (a) If the Governor has in terms of Section 14(4) determined that a systemic event has occurred or is imminent, the Governor may, in writing, direct a financial sector regulator to assist the Reserve Bank in complying with Section 15 by acting in accordance with the directive when exercising its powers.
      (b) A directive in terms of paragraph (a) may include directions aimed at –
         (i) supporting the restructuring, resolution or winding-up of any financial institution;
         (ii) preventing or reducing the spread of risk, weakness or disruption through the financial system; or
         (iii) increasing the resilience of financial institutions to risk, weakness or disruption.
(3) The Prudential Authority, Financial Sector Conduct Authority and the Financial Intelligence Centre must comply with a directive issued to it in terms of Subsection (1) or (2).

(4) The National Credit Regulator must comply with a directive issued to it in terms of Subsection (1) or (2), provided that the Minister has consulted the Minister responsible for consumer credit matters on the directive.

Other Organs of State
An organ of state that has a regulatory or supervisory function in relation to financial institutions must, to the extent practicable, consult the financial sector regulators and the Reserve Bank in relation to the performance of that function.

Exercise of powers by other organs of state
19. (1) If the Governor has in terms of Section 14(4) determined that a systemic event has occurred or is imminent, an organ of state exercising powers in respect of a part of the financial system may not, without the approval of the Minister, acting in consultation with the Cabinet member responsible for that organ of state, exercise its powers in a way that is inconsistent with a decision or steps taken by the Governor or the Reserve Bank in terms of this Part, in order to manage that systemic event or the effects of that systemic event.

(2) Any unresolved issues between the Minister and that Cabinet member must be referred to Cabinet.

(3) Subsection (1) does not apply to the financial sector regulators.

Roles of other organs of state in relation to financial stability
28. An organ of state, other than a financial sector regulator must -

(a) in performing its functions have regard to the implications of its activities on financial stability; and

(b) provide such assistance and information to the Reserve Bank and the Financial Stability Oversight Committee so as to maintain and restore financial stability as the Bank or the Committee may reasonably request.

Other organs of state
78. (1) An organ of state that has a regulatory or supervisory function in relation to financial institutions must, to the extent practicable consult the financial sector regulators and the Reserve Bank in relation to the performance of that function.

(2) A financial sector regulator or the Reserve Bank may, in writing, request an organ of state referred to in Subsection (1) to provide information about any action that the organ of state has taken or proposes to take in relation to a financial institution specified in the request.

(3) The organ of state must comply with a request in terms of Subsection (2), but this Subsection does not require or permit an organ of state to do something that contravenes a law.
Part 3
Financial Stability Oversight Committee

Establishment of Financial Stability Oversight Committee

20. (1) A committee called the Financial Stability Oversight Committee is hereby established.

(2) The primary objectives of the Financial Stability Oversight Committee are to -

(a) support the Reserve Bank when the Reserve Bank performs its functions in relation to financial stability; and

(b) facilitate co-operation and collaboration between, and co-ordination of action among, the financial sector regulators and the Reserve Bank in respect of matters relating to financial stability.

Functions of Financial Stability Oversight Committee

21. The Financial Stability Oversight Committee has the following functions;

(a) To serve as a forum for representatives of the Reserve Bank and of each of the financial sector regulators to be informed and to exchange views, about the activities of the Reserve Bank and the financial sector regulators regarding financial stability;

(b) To make recommendations to the Governor on the designation of systemically important financial institutions;

(c) To advise the Minister and the Reserve Bank on -

(i) Steps to be taken to promote, protect or maintain, or to manage or prevent risks to, financial stability; and

(ii) matters relating to crisis management and prevention;

(d) To make recommendations to other organs of state regarding steps that are appropriate for them to take to assist in promoting, protecting or maintaining, or managing or preventing risks to financial stability; and

(e) Any other function conferred on it in terms of applicable legislation.

Membership

22. (1) The Financial Stability Oversight Committee consists of the following members:

(a) the Governor;

(b) the Deputy Governor responsible for financial stability matters;

(c) the Chief Executive Officer;

(d) the Commissioner;

(e) the Chief Executive Officer of the National Credit Regulator;

(f) the Director-General

(g) the Director of the Financial Intelligence Centre; and

(h) a maximum of three additional persons appointed by the Governor.
(2) A member of the Financial Stability Oversight Committee referred to in terms of Subsection (1)(h) holds office for the period and on the terms, determined by the Governor.

Meetings and procedure
24. (1) The Financial Stability Oversight Committee must meet at least every six months.
(2) The Governor -
(a) may convene a meeting of the Financial Stability Oversight Committee at any time; and
(b) must convene a meeting if requested to do so by the Chief Executive Officer, the Commissioner or the Chief Executive Officer of the National Credit Regulator.

Part 4
Financial Sector Contingency Forum

(3) The Financial Sector Contingency Forum is composed of at least eight members, including -
(a) a Deputy Governor designated by the Governor, which Deputy Governor is the Chairperson;
(b) representatives of each of the financial sector regulators;
(c) representatives of other organs of state as the Chairperson may determine; and
(d) representatives of financial sector industry bodies and any other relevant person, as the Chairperson may determine.
(4) The Financial Sector Contingency Forum must meet at least every six months.
(5) The Financial Sector Contingency Forum must be convened and must function in accordance with procedures determined by the Governor.

Part 5
Roles of financial sector regulators and other organs of state in maintaining financial stability
Co-operation among Reserve Bank and financial sector regulators in relation to financial stability

26. (1) The financial sector regulators must -
(a) co-operate and collaborate with the Reserve Bank, and with each other, to maintain, protect and enhance financial stability;
(b) provide such assistance and information to the Reserve Bank and the Financial Stability Oversight Committee to maintain or restore financial stability as the Reserve Bank or the Financial Stability Oversight Committee may reasonably request;
(c) promptly report to the Reserve Bank any matter of which the financial sector regulator becomes aware that poses or may pose a risk to financial stability; and
(d) gather information from or about, financial institutions that concerns financial stability.

(2) The Reserve Bank must, when exercising its powers in terms of this Chapter, take into account -
(a) any views expressed, and any information reported by the financial sector regulators, and
(b) any recommendations of the Financial Stability Oversight Committee.

Memoranda of understanding relating to financial stability

27. (1) The financial sector regulators and the Reserve Bank must, not later than six months after this Chapter takes effect, enter into one or more memoranda of understanding with respect to how they will co-operate and collaborate with, and provide assistance to each other and otherwise perform their roles and comply with their duties relating to financial stability.

(2) The financial sector regulators and the Reserve Bank must review and update the memoranda of understanding as appropriate but at least once every three years.

(3) A copy of a memorandum of understanding must, without delay after being entered into or updated, be provided to the Minister and the Cabinet member responsible for consumer credit matters.

(4) The validity of any action taken by a financial sector regulator in terms of a financial sector law the National Credit Act or the Financial Intelligence Centre Act is not affected by a failure to comply with this section or a memorandum of understanding contemplated in this section.

Memoranda of Understanding

77. (1) The financial sector regulators and the Reserve Bank must, as soon as practicable but not later than six months after the date on which this Chapter comes into effect, enter into one or more memoranda of understanding to give effect to their obligations in terms of Section 76.

(2) A delegation of a power or duty by a financial sector regulator to another financial sector regulator must be effected by a memorandum of understanding entered into in terms of this section.

(3) The validity of any action taken by a financial sector regulator, the Reserve Bank or the Governor in terms of a financial sector law, the National Credit Act and the Financial Intelligence Centre Act is not affected by a failure to comply with this section or a memorandum of understanding in terms of this section.

(4) The financial sector regulators and the Reserve Bank must review the memoranda of understanding at least once every three years and amend them as appropriate.

(5) The financial sector regulators and the Reserve Bank must provide a copy of each memorandum of understanding entered into in terms of this section, and each amendment of such a memorandum of understanding, to the Minister and the Cabinet member responsible for administering the National Credit Act.

(6) The financial sector regulators and the Reserve Bank must each publish each memorandum of understanding in terms of this section and each amendment thereof.
Prudential standards and regulator's directives in respect of systemically important financial institutions

30. (1) To mitigate the risks that systemic events may occur, the Reserve Bank may, after consulting the Prudential Authority, direct the Prudential Authority to impose, either through prudential standards or regulator’s directives, requirements applicable to one or more specific systemically important financial institutions or to such institutions generally in relation to any of the following matters:

(a) Solvency measures and capital requirements, which may include requirements in relation to counter-cyclical capital buffers;
(b) leverage ratios;
(c) liquidity;
(d) organisational structures;
(e) risk management arrangements, including guarantee arrangements;
(f) sectoral and geographical exposures;
(g) required statistical returns;
(h) recovery and resolution planning; and
(i) any other matter in respect of which a prudential standard or regulator’s directive may be made that is prescribed by Regulations made for this section on the recommendation of the Governor.

(2) The Prudential Authority may make prudential standards or issue regulator’s directives as contemplated in Subsection (1).

(3) The Prudential Authority must notify the Reserve Bank and the Financial Stability Oversight Committee of any steps taken to enforce a prudential standard made or a regulator’s directive issued in terms of Subsection (2), and the effect of those steps.

Functions

34. (1) In order to achieve its objective, the Prudential Authority must -

(b) co-operate with and assist the Reserve Bank, the Financial Stability Oversight Committee, the Financial Sector Conduct Authority, the National Credit Regulator and the Financial Intelligence Centre, as required in terms of this Act;

(3) The Prudential Authority may do anything else reasonably necessary to achieve its objective, including -

(a) co-operating with its counterparts in other jurisdictions; and
(b) participating in relevant international regulatory, supervisory, financial stability and standard setting bodies.

(4) Then performing its functions, the Prudential Authority must -

(b) to the extent practicable, have regard to international regulatory and supervisory standards set by bodies referred to in Subsection (3)(b), and circumstances in the Republic.
Regulatory strategy

47. (1) The Prudential Committee must within six months after the date on which this Chapter takes effect, adopt a regulatory strategy for the Prudential Authority to give general guidance to the Prudential Authority in the achievement of its objective and the performance of its regulatory and supervisory functions.

(2) A regulatory strategy must –

(a) state -

(i) the regulatory and supervisory priorities for the Prudential Authority for the next three years; and

(ii) the intended key outcomes of the strategy;

(b) set guiding principles for the Prudential Authority on;

(i) how it should perform its regulatory and supervisory functions;

(ii) the matters to which it should have regard in performing those functions;

(iii) its approach to administrative actions; and

(iv) how it should give effect to the requirements applicable to it with respect to;

(aa) transparency;

(bb) openness to consultation; and

(cc) accountability; and

(c) be aimed at giving effect to Section 34(4).

(3) The Prudential Committee must review the regulatory strategy at least annually, and may amend it at any time.

(4) (a) Before the Prudential Committee adopts a regulatory strategy or an amendment to a regulatory strategy, it must -

(i) provide a copy of the draft of the strategy or amendment to the Minister, the Financial Sector Conduct Authority and the National Credit Regulator; and

(ii) invite comments from the Minister, the Financial Sector Conduct Authority and the National Credit Regulator, on the draft, to be made within a period specified by the Prudential Committee.

(b) The period referred to in paragraph (a)(ii) must be at least one month.

(5) In deciding whether to adopt a regulatory strategy or an amendment of a regulatory strategy, the Prudential Authority must have regard to all comments made on the draft.

(6) The Prudential Committee must seek to minimize, to the extent that is practicable and appropriate, inconsistencies between the Prudential Authority’s regulatory strategy and the Financial Sector Conduct Authority’s regulatory strategy.

(7) The Chief Executive Officer must -

(a) provide a copy of the Prudential Authority’s regulatory strategy, and each amendment, as adopted, to the Minister, the Financial Sector Conduct Authority and the National Credit Regulator and
[b] publish the regulatory strategy and each amendment.

Delegations

48. (4) Any power or duty of the Prudential Authority may be delegated to the Financial Sector Conduct Authority by a Section 77 memorandum of understanding in accordance with a framework and system of delegation developed by the financial sector regulators to ensure that any delegation does not constrain the Prudential Authority or the Financial Sector Conduct Authority from achieving their respective objectives as set out in sections 33 and 57.

Functions

58. (1) In order to achieve its objective, the Financial Sector Conduct Authority must -
(d) promote, to the extent consistent with achieving the objective of the Financial Sector Conduct Authority, sustainable competition in the provision of financial products and financial services, including through co-operating and collaborating with the Competition Commission;
(g) administer the collection of levies and the distribution of amounts received in respect of levies.
(4) The Financial Sector Conduct Authority may do anything else reasonably necessary to achieve its objective, including -
(a) co-operating with its counterparts in other jurisdictions; and
(b) participating in relevant international regulatory, supervisory, financial stability and standard setting bodies.
(5) Then performing its functions, the Financial Sector Conduct Authority must -
(a) take into account the National Credit Act and regulatory requirements for financial institutions that are authorised and regulated under that Act;
(b) take into account the need for a primarily pre-emptive, outcomes focused and risk-based approach, and prioritise the use of its resources in accordance with the significance of risks to the achievement of its objective; and
(c) to the extent practicable, have regard to international regulatory and supervisory standards set by bodies referred to in Subsection (4)(b), and circumstances prevalent in the Republic.

Regulatory strategy

70. (1) The Executive Committee must, within six months after the date on which this Chapter takes effect, adopt a regulatory strategy for the Financial Sector Conduct Authority to give general guidance in the achievement of its objective and the performance of its regulatory and supervisory functions.
(2) A regulatory strategy must -
(a) state -
(i) the regulatory and supervisory priorities for the Financial Sector Conduct Authority for the next three years; and
(ii) the intended key outcomes of the strategy;
(b) set guiding principles for the Financial Sector Conduct Authority on;

(i) how it should perform its regulatory and supervisory functions;

(ii) the matters which it should have regard to in performing those functions;

(iii) its approach to administrative actions; and

(iv) how it should give effect to the requirements applicable to it with respect to -

(aa) transparency;

(bb) openness to consultation; and

(cc) accountability;

(c) be aimed at giving effect to Section 58.

(3) The Executive Committee must review its regulatory strategy at least annually and may amend it at any time.

(4) (a) Before the Executive Committee adopts a regulatory strategy or an amendment to a regulatory strategy, it must -

(i) provide a copy of the draft of the strategy or amendment to the Minister, the Prudential Authority and the National Credit Regulator, and

(ii) invite comments from the Minister, the Prudential Authority and the National Credit Regulator, on the draft, to be made within a period specified by the Executive Committee.

(b) The period referred to in paragraph (a)(ii) must be at least one month.

(5) In deciding whether to adopt a regulatory strategy or an amendment of a regulatory strategy, the Executive Committee must have regard to all comments made on the draft.

(6) If the Minister agrees the Financial Sector Conduct Authority’s adopted regulatory strategy may be incorporated into its corporate plan in terms of Section 52(b) of the Public Finance Management Act.

(7) The Executive Committee must seek to minimize, to the extent that is practicable and appropriate, inconsistencies between the Financial Sector Conduct Authority’s regulatory strategy and the Prudential Authority’s regulatory strategy.

(8) The Commissioner must -

(a) provide a copy of the Financial Sector Conduct Authority’s regulatory strategy, and each amendment, as adopted, to the Minister, the Prudential Authority and the National Credit Regulator; and

(b) publish the regulatory strategy and each amendment.


CO-OPERATION AND COLLABORATION

Part 1

Co-operation and collaboration between financial sector regulators and Reserve Bank

76. (1) The financial sector regulators and the Reserve Bank must co-operate and collaborate when performing their functions in terms of financial sector laws, the National Credit Act, and the Financial Intelligence Centre Act, and must for this purpose -

(a) generally, assist and support each other in pursuing their objectives in terms of financial sector laws, the National Credit Act and the Financial Intelligence Centre Act;

(b) inform each other about, and share information about, matters of common interest;

(c) strive to adopt consistent regulatory strategies, including addressing regulatory and supervisory challenges;

(d) co-ordinate, to the extent appropriate, actions in terms of financial sector laws, the National Credit Act and the Financial Intelligence Centre Act, including in relation to -

(i) standards and other regulatory instruments, including similar instruments provided for in terms of the National Credit Act and the Financial Intelligence Centre Act;

(ii) licensing;

(iii) supervisory on, site inspections and investigations;

(iv) actions to enforce financial sector laws, the National Credit Act and the Financial Intelligence Centre Act;

(v) information sharing;

(vi) recovery and resolution; and

(vii) reporting by financial institutions including statutory reporting and data collection measures.

(e) minimise the duplication of effort and expense, including by establishing and using, where appropriate, common or shared databases and other facilities;

(f) agree on attendance at relevant international forums; and

(g) develop, to the extent that is appropriate, consistent policy positions, including for the purpose of presentation and negotiation at relevant South African and international forums.

(2) The financial sector regulators and the Reserve Bank must, at least annually as part of their annual reports, or on request, report to the Minister, the Cabinet member responsible for administering the National Credit Act and the National Assembly on measures taken to co-operate and collaborate with each other.

Part 2

Financial System Council of Regulators

79. (1) The Financial System Council of Regulators is hereby established.

(2) The objective of the Financial System Council of Regulators is to facilitate co-operation and collaboration, and, where appropriate, consistency of action, between the institutions represented on the Financial System Council of Regulators by providing a forum for senior
representatives of those institutions to discuss and inform themselves about, matters of common interest.

(3) The Financial System Council of Regulators must be composed of the following members -

(a) The Director-General;
(b) the Director-General of the Department of Trade and Industry;
(c) the Director-General of the Department of Health;
(d) the Chief Executive Officer;
(e) the Commissioner;
(f) the Chief Executive Officer of the National Credit Regulator;
(g) the Registrar of Medical Schemes;
(h) the Director of the Financial Intelligence Centre;
(i) the Commissioner of the National Consumer Commission;
(j) the Commissioner of the Competition Commission;
(k) the Deputy Governor responsible for financial stability matters; and
(l) the head, however described, of any organ of state or other organisation that the Minister may determine.

Meetings

80. (1) Meetings of the Financial System Council of Regulators must be held at least twice a year, or more frequently as determined by the Director-General.

(2) The Director-General, or an alternate nominated by the Director-General, chairs the meetings of the Financial System Council of Regulators.

(3) The Director-General must convene a meeting at the request of a member of the Financial System Council of Regulators.

(4) A member of the Financial System Council of Regulators may, with the concurrence of the Director-General, nominate a senior official of the member’s institution to act as an alternate for the member.

(5) Meetings of the Financial System Council of Regulators must be conducted in accordance with procedures determined by it.

Working groups and subcommittees

81. (1) The Financial System Council of Regulators must establish working groups or subcommittees in respect of the following matters -

(a) enforcement and financial crime;
(b) financial stability and resolution;
(c) policy and legislation;
(d) standard-setting;
(e) financial sector outcomes;
(f) financial inclusion;
(g) transformation of the financial sector; and
(h) any other matter that the Director-General may determine after consulting the other members of the Financial System Council of Regulators.

(2) The Financial System Council of Regulators must determine the membership, terms of reference and procedure of a working group or subcommittee.

Support for Financial System Council of Regulators

82. (1) The Financial Sector Conduct Authority must provide administrative support and other resources for the Financial System Council of Regulators and its working groups and subcommittees.

(2) The Financial Sector Conduct Authority must ensure that minutes of each meeting of the Financial System Council of Regulators and of each meeting of a working group or subcommittee, are kept in a manner determined by the Financial Sector Conduct Authority.

Independent evaluation of effectiveness of co-operation and collaboration

86. (1) (a) The Inter-Ministerial Council must, as soon as practicable following the expiration of the six-month period described in Section 77(1), commission an independent evaluation of the establishment of co-operative and collaborative mechanisms between the financial sector regulators, the Reserve Bank, the Financial Intelligence Centre, the Council for Medical Schemes and the Competition Commission.

(b) The Inter-Ministerial Council must, every two years after the initial independent evaluation referred to in paragraph (a), commission an independent evaluation of the effectiveness of co-operative and collaborative mechanisms between the financial sector regulators, the Reserve Bank, the Financial Intelligence Centre, the Council for Medical Schemes and the Competition Commission.

ADMINISTRATIVE ACTIONS

Part 1

Administrative action committees

Establishment and membership

87. (1) A financial sector regulator may establish an administrative action committee to consider and make recommendations to the financial sector regulator on matters that are referred to it by that financial sector regulator.

(2) The members of an administrative action committee -

(a) must include -

(i) a retired judge; or

(ii) an advocate or attorney with at least 10 years relevant legal experience; and
(b) may include persons who are not members of the Prudential Committee or the Executive Committee or staff members of the financial sector regulator.

(3) A person referred to in Subsection (2)(a) must be appointed as chairperson of an administrative action committee.

(4) A disqualified person may not be appointed to, or remain a member of, an administrative action committee.

Terms of membership

88. (1) A person appointed as a member of a financial sector regulator’s administrative action committee who is not a member of the Prudential Committee, the Executive Committee or a staff member of a financial sector regulator holds office for a period not exceeding five years and on the terms, including terms regarding remuneration, determined by the financial sector regulator.

(2) A member of an administrative action committee whose term expires may be reappointed.

(3) The financial sector regulator that established an administrative action committee may, subject to due process, remove a member of the administrative action committee from office if the member;

(a) is unable to perform the functions of the office effectively;

(b) has failed in a material way to discharge any of the responsibilities of the Office; or

(c) has acted in a way that is inconsistent with continuing to hold the office.

(4) Without limiting Subsection (3)(b), a member must be taken to have failed in a material way to discharge the responsibilities of office if he or she is absent from two consecutive meetings of the administrative action committee without the leave of the administrative action committee.

Meetings

89. (1) A meeting of an administrative action committee;

(a) is convened by the chairperson of the committee; and

(b) is chaired by the chairperson or; in the chairperson’s absence; by another member designated by the chairperson or the remaining members.

(2) An administrative action committee determines its procedures, subject to any directions of the financial sector regulator that established the administrative action committee.

(3) The financial sector regulator must ensure that written minutes of each meeting of its administrative action committee are kept in a manner determined by the financial sector regulator.
1.6 Correct Format of Communication with the Registrar

The correct channels of communication must be used when communicating with the Registrar. Generally, this is through the use of a standardised form.

All forms can be found here [https://www.fsca.co.za](https://www.fsca.co.za).

www.fsca.co.za/ regulated entities / .../ B- INDEX PAGE . doc, and they include:

<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>License categories</td>
</tr>
<tr>
<td>FSP 3</td>
<td>Directors, officers and applicable shareholders</td>
</tr>
<tr>
<td>FSP 4A</td>
<td>Fitness and proprietary of an applicant not a natural person</td>
</tr>
<tr>
<td>FSP 4B</td>
<td>Fitness and proprietary of an applicant’s directors, members, trustees and partners</td>
</tr>
<tr>
<td>FSP 4C</td>
<td>Fitness and proprietary of an applicants who is a natural person</td>
</tr>
<tr>
<td>FSP 4D</td>
<td>Fitness and proprietary of a key individual</td>
</tr>
<tr>
<td>FSP 5</td>
<td>Representatives</td>
</tr>
<tr>
<td>FSP 6</td>
<td>Compliance officer of FSP (phase 2 approval)</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 10</td>
<td>Nominee company of discretionary or administrative FSP</td>
</tr>
<tr>
<td>FSP 11</td>
<td>Clearing firm or foreign forex service provider</td>
</tr>
<tr>
<td>FSP 12</td>
<td>Application for approval compliance officer (phase 1 approval)</td>
</tr>
<tr>
<td>FSP 13</td>
<td>Application for exemption</td>
</tr>
</tbody>
</table>

1.7 Processes to Remain Updated with regards to Requirements Affecting the FSP

1.7.1 Awareness of the Regulatory Environment

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 FSCA (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.

1.7.2 Reporting Obligations

Key reporting obligations include:

- Profile changes;
- Debarment;
- Compliance reports; 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.

Section 12 of the General Code of clearly states that all financial and other information used or provided by the provider must be reliable and that all applicable laws must be complied with.

1.8 Compliance Officers and Compliance Arrangements – Sections 17(2) + 17(4)

(a) (i) A compliance officer must be approved by the registrar in accordance with the criteria and guidelines determined by the registrar.

(ii) The registrar may 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.

(b) The registrar may at any time withdraw the approval if satisfied on the basis of available facts and information 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) does not comply or no longer complies with the criteria and guidelines contemplated in paragraph (a).

(c) The provisions of Section 9(2) and (6) regarding a decision to withdraw an authorisation (excluding such provisions relating to periods and terms) apply with the necessary changes to a withdrawal of an approval contemplated in paragraph (b).

(d) The registrar may make known any withdrawal of approval under this Subsection and the
reasons therefor by notice on the official web site or by means of any other appropriate public media.

(4) (a) A compliance officer or, in the absence of such officer, the authorised financial services provider concerned, must submit reports to the registrar in the manner and regarding the matters, as from time to time determined by the registrar by notice on the official web site for different categories of compliance officers.

(b) An authorised financial services provider must ensure that the reports referred to in paragraph (a) are submitted in accordance with the provisions of that paragraph.

The registrar is responsible for approving a compliance officer. This approval is based on set criteria and guidelines determined by the registrar and the registrar has the power to amend the criteria and guidelines. In this instance the compliance office is required to comply with the amended criteria and guidelines.

Based on facts and information made available to the registrar, she may also withdraw approval if she is satisfied that the compliance officer has contravened the Act, does not meet the fit and proper requirements or does not comply with the set criteria and guidelines.

The registrar may post a withdrawal of approval on the official website or in any other approved public media.

The registrar may ask for specific reports by posting a notice on the official website. A compliance officer (or authorised FSP) is required to submit these reports to the registrar in the required manner and timeframes. It is the responsibility of the authorised FSP to ensure that this is done.

1.9 Describe the Compliance Arrangements required by the FSP

1.9.1 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).7

Compliance officers are responsible for the compliance functions in relation to the particular categories and subcategories in terms of the FSP license, 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.

7 Section 5(1) of FAIS Regulations
The legislation 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, the FSP does not have 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.

1.9.2 The Duties of a Compliance Officer

Note: This section must be studied in conjunction with the following Board Notices:
- 127 of 2010 – Section 4(3)

The Compliance Officer must:
- oversee the provider’s compliance function and monitor compliance with the Act;
- and take responsibility for liaison with the Registrar;
- supervise the compliance function;
- make recommendations to the provider as regards any aspect of the required compliance or monitoring functions (Regulations Ch IV paragraph 5);
- 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.

8 Part IV, Section 5(2) of the FAIS Regulations 2003, GG 25092
9 Section 17(1)(a) of the FAIS Act
10 Section 17(1)(a) of the FAIS Act (Regulations Ch IV paragraph 5)
11 Ibid
12 Section 17(4) of the FAIS Act
13 BN 127 OF 2010
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:

- identify and improve weak/vulnerable areas in business.
- ensure that the compliance controls in business are effective and implemented.
- 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.  

The monitoring duties of the compliance officer must be performed within the scope and application of the product 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. The compliance officer must in effect only ensure that the requirements of the Act are met

- 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.  

It is important to note that the compliance officer must notify the registrar of their own termination of services as a compliance officer.

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.

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14 Section 17(3) of the FAIS Act  
15 Section 17(3) read with S19(4) of the Act.
| **FAIS Act 17** specifies the following duties of an authorized FSP and specifically compliance officers |
| **DUTIES OF AUTHORISED FINANCIAL SERVICES PROVIDERS** |
| **17. Compliance officers and compliance arrangements** |

(1) **(a)** Any authorised financial services provider with more than one key individual or one or more representatives must, subject to Section 35(1) (c) and subsections (1) (b) and (2)[a] (i), appoint one or more compliance officers to oversee the provider’s compliance function and to monitor compliance with this Act by the provider and such representative or representatives, particularly in accordance with the procedures contemplated in Subsection (3), and to take responsibility for liaison with the registrar;

**(b)** Such person must comply with the fit and proper requirements.

[Para. (b) substituted by s. 57 of Act 22/2008 and by s. 190 of Act 45/2013 w.e.f. 28 February 2014]

**(bA)** The provisions of Section 8A apply with the necessary changes to a compliance officer;

**(c)** The provisions of Section 19(4), (5) and (6), relating to an auditor of an authorised financial services provider, apply with the necessary changes to a compliance officer.

(2) **(a) (i)** A compliance officer must be approved by the registrar in accordance with the criteria and guidelines determined by the registrar;

**(i)** The registrar may 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;

**(ii)** does not comply or no longer complies with the criteria and guidelines contemplated in paragraph (a).

**(b)** The registrar may at any time withdraw the approval if satisfied on the basis of available facts and information 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)** does not comply or no longer complies with the criteria and guidelines contemplated in paragraph (a).

**(c)** The provisions of Section 9(2) and (6) regarding a decision to withdraw an authorisation (excluding such provisions relating to periods and terms) apply with the necessary changes to a withdrawal of an approval contemplated in paragraph (b).

**(d)** The registrar may make known any withdrawal of approval under this Subsection and the reasons therefor by notice on the official web site or by means of any other appropriate public media.

(3) An authorised financial services provider must establish and maintain procedures to be followed by the provider and any representative concerned, in order to ensure compliance with this Act.
1.10 Compliance Function

1.10.1 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.14

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.

The FAIS Act 17 requires the following in respect of compliance officers and compliance arrangements:

- 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); 18
- Compliance officers must be approved by the Registrar; 19
- The FSP must establish and maintain procedures for compliance with the Act; and 20
- Compliance officers or FSPs must take responsibility for liaison and submit compliance reports to the Registrar. 21

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 license/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.

16 Section 17 of the FAIS Act
17 IBID
18 Section 17(1)(a) of the Act
19 Chapter IV of the Financial Advisory and Intermediary Services Regulations, 2003, Section 17(2)(a) of the Act
20 Section 17(3) of the Act
21 Section 17(4) of the Act
1.10.2 Requirements for the Approval of Compliance Officers

Note: This section must be studied in conjunction with the following Board Notices:

- 127 of 2010 – Sections 4(a) & 4(4)

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 license/s.

On 9 September 2010, the FSCA (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, integrity and good standing;
- “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 –

- a natural person appointed to render compliance services, including a natural person appointed by a compliance practice; or
- 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.

1.10.3 The Application Process

In line with BN127 of 2010 (approval process for compliance officers), 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).

1.10.3.1 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, integrity and good standing;
- 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.

1.10.3.2 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.

1.10.4 Delegation of the Rendering of a Compliance Service

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.

1.10.5 Rendering of Compliance Services under Supervision

Note: This section must be studied in conjunction with the following Board Notices:

- 126 of 2010

BN 126 of 2010, 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 Board Notice 126 also makes provision for direct and ongoing supervision. The timeframes are the same as those applicable to representatives, and are 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.
1.11 Ensure that the Compliance Officer is approved by the Registrar

Compliance officers must be approved by the Registrar and it is the responsibility of the key individual to ensure that the Compliance Officer is approved by the Registrar in terms of the specific FSP license/s.

1.12 Compliance Function/Compliance Practice Resources

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.

1.13 Compliance Officer avoiding Conflicts of Interest

1.13.1 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 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.

1.14 Sign off of 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 license 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.

SECTION 1: GENERAL

Information on conditions and restrictions regarding the FSP license.

- 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

Information about the group structure – provide organogram/s

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)

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

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 obtain without written consent, unless required in terms of legislation.

Insurance cover
• Information about the insurance cover of the FSP.

Disclosure requirements
• Information on procedures to ensure disclosure documentation regarding product suppliers and the provision of advice complies with the General Code.

Direct marketing
• Whether the FSP acts as such.

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

Custody of financial products and funds
• Information about the FSP’s adherence to the requirements for custody of financial products and funds;
• Information about the FSP’s adherence to the risk management requirements in the General Code;
• Information about the advertising practices of the FSP;
• Information about the complaints-handling procedures of the FSP.

Maintenance of records
• Information about the record-keeping procedures and policies of the FSP;
• Information about the FSP’s procedures to comply with the requirements of the General Code in respect of termination of agreements or business;
• Information about the procedures to avoid waiver of rights by clients.
SECTION 6 OF THE COMPLIANCE REPORT FOREX FSPs
Information about the duties/obligations of the Forex FSP.

SECTION 7 OF THE COMPLIANCE REPORT HEALTH SERVICE BENEFITS
Information about the accreditation in terms of the Medical Schemes Act 22.

SECTION 3: REPRESENTATIVES
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
- Information about compliance with anti-money-laundering requirements as per FICA 23

SECTION 5: COMPLIANCE FUNCTION
Compliance function
- Questions around the establishment of the compliance function in the FSP business
- Monitoring
- Questions regarding monitoring activities - the type of monitoring and monitoring methodology/sample

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.

22 Act 131 of 1998
23 Financial Intelligence Centre Act No 38 of 200
Compliance report for Category I Provider, without a Compliance Officer

The compliance report 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.

1.15 Replacing the Compliance Officer if he/she does not have the required Approval of the Registrar

1.15.1 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:

- has contravened or failed to comply with any provision of this Act;
- does not meet or no longer meets the fit and proper requirements; or
- 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.
1.16 Knowledge Test – Chapter 1

Test your knowledge

1. Which of the following would qualify as a representative of an FSP in terms of the FAIS Act?

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<tbody>
<tr>
<td>a.</td>
<td>An accountant whose job does not lead clients to buying a financial product</td>
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<tr>
<td>b.</td>
<td>A clerk who does not have to use judgement in performing his job functions</td>
</tr>
<tr>
<td>c.</td>
<td>An admin manager who handles general admin queries only</td>
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<tr>
<td>d.</td>
<td>A contractor who renders financial services</td>
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2. Choose a statement that best describes the importance of remaining up to date with regard to the regulatory environment that will affect the FSP:

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<tr>
<td>a)</td>
<td>1 and 3 only</td>
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<tr>
<td>b)</td>
<td>2 and 3 only</td>
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<tr>
<td>c)</td>
<td>3 and 4 only</td>
</tr>
<tr>
<td>d)</td>
<td>1 and 4 only</td>
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3. Interpret the following statement and choose the description that best suits the statement “The FAIS Act follows a functional approach and not an institutional approach”

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<tbody>
<tr>
<td>a.</td>
<td>A functional approach means that the Act regulates certain functions across institutions (insurance companies, brokerages and banks)</td>
</tr>
<tr>
<td>b.</td>
<td>A functional approach focuses on specific institutions</td>
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<tr>
<td>c.</td>
<td>The function of providing financial services across various institutions is governed by the FAIS Act</td>
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<tr>
<td>1. B and C</td>
<td></td>
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<tr>
<td>2. A and C</td>
<td></td>
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</table>
4. Apply your knowledge of the FAIS Act and choose the items that best explain the purpose of the Act.
   a. To regulate the rendering of certain financial advisory and intermediary services to clients
   b. To repeal or amend certain laws
   c. To provide for matters incidental thereto. The regulation of advisory and intermediary services protects consumers and ensures that they are able to make informed decisions
   d. To institute effective money laundering control measures
   e. a, b and c

5. “The purpose of the FSR Act is to establish a system of financial regulation by establishing the Prudential Authority and the Financial Sector Conduct Authority. It confers powers on these entities to preserve and enhance financial stability in the Republic by conferring powers on the Reserve Bank.”
   Review the above statement choosing the statement that best describes its purpose.
   a. The aim of the Act is to establish regulatory bodies that will govern the various sectors of the Financial Services Environment under the ambit of the Reserve Bank
   b. The Reserve bank has established regulatory bodies that will govern the various sectors of the Financial Services Environment under the ambit of the FSR
   c. The aim of the Act is to establish regulatory bodies that will govern the various sectors of the Financial Services Environment under the ambit of the FSR
   d. The Reserve bank has established regulatory bodies that will govern the various sectors of the Financial Services Environment under the ambit of the Reserve Bank
   e. The Reserve bank has established regulatory bodies that will govern the various sectors of the Financial Services Environment under the ambit of the FIC

6. Financial services include:
   a. Instructions on the development of products
   b. The rendering of advice and/or intermediary services
   c. The processing of policy applications
   d. Overseeing of the compliance processes

7. Financial products are categorized into categories and sub-categories under the FAIS Act. Which of the following is CORRECT?
   1. Category I – All persons authorised to render financial services set out in the application, other than those mentioned in the other Categories
   2. Category II – All persons authorized as Discretionary FSP’s
   3. Category IIA – All persons authorized as Hedge Funds FSP’s
   4. Category III – All persons authorized as Assistance Business FSP’s
   5. Category IV – all persons authorized as Administrative FSP’s
   a. 1, 2 and 3
   b. 1, 3 and 4
   c. 3, 4 and 5
   d. 1, 2 and 5
   e. All of these
8. Mason acts for a Provider and needs to make certain disclosures to Joan. Which one of the statements below may Mason NOT disclose?

| a. Name, physical address, postal and telephone contact details |
| b. Details of complaints procedures which a client could follow if ever necessary |
| c. Critical Comparisons between different Financial Products, Providers or Representatives |
| d. The Provider must convey the remuneration, including the commission received from the Product Supplier |

9. Anne is employed at a dealership as an assistant to the Business Manager. Anne only uploads finance applications and prepares the paperwork for the Business Manager. Paperwork includes completing the warranty documents. Based on the scenario advise if Anne should be registered on the Representative register.

| a. No, Anne is only doing administrative work and does not provide advice or sells any Financial products |
| b. Yes, Anne should be registered in case she does have to stand in for the Business Manager |
| c. Yes, Anne is preparing the warranty documents and that constitutes intermediary services and therefore she must be registered |
| d. None of the above |

10. Apply your knowledge of Financial Services Categories and advise which category the following description falls into:

   "In relation to a financial services provider, means all persons, other than persons referred to in Categories II, IIA, III and IV, who are authorized to render the financial services (other than financial services mentioned in Categories II, IIA, III and IV) as set out in the relevant application."

| a. Category I |
| b. Category IIA |
| c. Category III |
| d. Category IV |

11. Analyse the following sub categories and identify which sub categories falls under Category 1 Financial Services.

| a. Long-term Insurance Subcategory A |
| b. Long-term Insurance Subcategory B1 |
| c. Retail Pension Benefits |
| d. Pension Fund Benefits |

| a. A and C |
| b. B and D |
| c. All of these |
12. Analyse disclosure requirements and choose the one most suitable for Clients that must obtain adequate information on financial products.

   1. The provider must within one month, provide, where applicable, information of the name, class or type of the financial product concerned
   
   2. Nature and extent of the benefits as well as the way they are derived or calculated and the manner in which they will accrue or be paid
   
   3. Where the financial product is marketed or positioned as an investment, or having an investment component a brief summary of the manner in which the value of an investment is determined, including a brief summary of any underlying assets or other financial instruments
   
   4. Where the financial product is marketed or positioned as an investment, or having an investment component on request, information about the past investment performance of the product over periods and at intervals which are reasonable with regard to the type of product involved including a warning that past performances are not necessarily indicative of future performances

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<tr>
<td>a. 1, 3 and 4</td>
<td>b. 1, 2 and 3</td>
</tr>
<tr>
<td>c. 1, 2 and 4</td>
<td>d. 2, 3 and 4</td>
</tr>
<tr>
<td>e. All of these</td>
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</table>

13. An FSP has to appoint a Compliance Officer if:

   a. It has more than one Key Individual or one or more representatives
   
   b. It has a Key Individual
   
   c. It has only representatives
   
   d. It has one or more representatives

14. Moira is a Compliance Officer at Liberty Insurance Services and has recently become aware of some non-compliance issues. What should she do?

   a. Decide whether they are material and if they are mention it in her compliance report
   
   b. Discuss it with her colleagues at other financial institutions
   
   c. Report them to the FAIS Supervision Department for advice
   
   d. Report them immediately to the FSCA (FSB)

15. Michael is the Key Individual of Blue Financial. He chooses to dismiss Lee Anne as their Compliance Officer. Whose responsibility is it to inform the Registrar of the reasons for dismissal and the New Compliance Officer?

   a. Lee Anne
   
   b. Michael
   
   c. It is not a requirement to inform the Registrar
   
   d. Internal auditors
   
   e. a and b
16. The FAIS Registrar may consider certain information when an FSP applies for a licence. Choose the statement which is NOT considered

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<tbody>
<tr>
<td>a.</td>
<td>Only refer to the documentation submitted by the applicant</td>
</tr>
<tr>
<td>b.</td>
<td>Consider additional information obtained from external sources without giving the applicant an opportunity to comment on the information</td>
</tr>
<tr>
<td>c.</td>
<td>Consider additional information obtained from external sources provided the applicant was given opportunity to comment on the information</td>
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</table>

17. Apply your knowledge of the Compliance function and explain the following: 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?

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<tbody>
<tr>
<td>a.</td>
<td>Ensures that the compliance controls in business are effective and implemented</td>
</tr>
<tr>
<td>b.</td>
<td>Ensures that the representatives function according to their job descriptions</td>
</tr>
<tr>
<td>c.</td>
<td>Ensures the FSP is financially sound</td>
</tr>
<tr>
<td>d.</td>
<td>Ensures that the Representatives are fit and proper</td>
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</table>

18. Analyse the following Statement and explain the meaning: The Act also requires the compliance officer to ‘supervise’ the compliance function:

<p>| | |</p>
<table>
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<tbody>
<tr>
<td>a.</td>
<td>Is responsible for the establishment of the compliance function, including all the control requirements</td>
</tr>
<tr>
<td>b.</td>
<td>Is responsible for all compliance-related functions</td>
</tr>
<tr>
<td>c.</td>
<td>Requirements of the Act are met through the procedures which the FSP (key individual) must establish</td>
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</table>

19. Identify the type of reports that the Compliance officer must send to the Registrar.

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<tbody>
<tr>
<td>a.</td>
<td>Is responsible for the establishment of the compliance function, including all the control requirements</td>
</tr>
<tr>
<td>b.</td>
<td>Make recommendations as required</td>
</tr>
<tr>
<td>c.</td>
<td>The compliance officer’s report must also include reporting any irregularity or suspected irregularity</td>
</tr>
<tr>
<td>d.</td>
<td>Constantly test/review the integrity of the compliance controls</td>
</tr>
</tbody>
</table>
Chapter 2

Contribute Towards Maintaining an FSCA (FSB) License
This topic covers the following critical learning outcomes:

| 2.1 | Explain the requirements an FSP must meet to maintain an FSP license assist in maintaining an FSP license by executing the required actions as a representative, in terms of the Act. |
| 2.2 | Assist in maintaining an FSP license by executing the required actions as a representative, in terms of the Act. |
| 2.3 | Discuss the requirements around the display of licenses. |
| 2.4 | Explain the implications for a representative if an accreditation is suspended or withdrawn or lapsed in terms of the Medical Schemes Act 1998 or any other enabling legislation. |
| 2.5 | Explain what is meant by "undesirable practices." |
| 2.6 | Check that executives of duties and actions as a representative do not constitute undesirable business practices. |
| 2.7 | Describe the implication for a representative if the Registrar declares a business practice to be undesirable. |
| 2.8 | Explain the reparation measures available to the Registrar if a representative continues with undesirable business practices. |
| 2.9 | Describe the offenses prescribed by the FAIS Act. |
2. Contribute Towards Maintaining an FSCA (FSB) License

2.1 Requirements for Licensing of the FSP

2.1.1 Licensing Conditions and Restrictions

2.1.1.1 The Impact of Licensing Conditions on an FSP

An FSP FAIS license carries conditions.

There are standard conditions and there are conditions specifically applicable to the FSP license. 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 license categories, there must be internal controls to ensure that the financial service (or management and oversight) they provide correspond with the specific license conditions and restrictions.

An FSP may request additional product categories to be added to its license and it may also have more than one license because the structure of the business may be such that products are grouped together, which makes it logical to have a specific license for that part of the business. The FAIS Act requires that a certified copy of the FSP license must be displayed in a prominent and durable manner within every business premises of the FSP.

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.

2.2 Apply for an FSP license

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 chapter, 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.
2.2.1 Introduction to Sections 8 and 13 of the FAIS Act

2.2.1.1 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.

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.

2.2.1.2 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.

2.2.2 Section 8

2.2.2.1 The Application Process

Figure 2.1
<table>
<thead>
<tr>
<th>Step</th>
<th>Detail</th>
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<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 license | The Registrar may impose conditions and/or restrictions on the FSP license 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 license:  
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 license

An FSP must display certified copies of the license 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 license and that the license 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.

### 3B. Registrar considers application

The Registrar may withdraw a license 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 licenses must be issued in accordance with the actions of the Registrar.

### 4. Registrar issues license

If the Registrar approves the application, a license 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 license as well and the same fit and proper requirements apply. If the FAIS license 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 license will be considered suspended or withdrawn.

### 5. Registrar refuses application

In the event that the application is refused, the Registrar must advise the applicant and provide reasons for the refusal.

Once issued with a license, 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 the provider's business, complies with the requirements in respect of personal character qualities of honesty, integrity and good standing.

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

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24 Medical Schemes Act, 1998 (Act No. 131 of 1998)
25 Section 8(7)(d)(iv) of the Act
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 license of the FSP.

2.2.3 Section 13

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

**Table 2.2: 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>
<tr>
<td>Nobody may act as a representative for an FSP unless the person meets the fit and proper requirements.</td>
<td>The key individual must ensure that the representatives under his or her management meet the fit and proper requirements.</td>
</tr>
<tr>
<td>If a representative was debarred, he can only operate as a representative again if the procedures for reappointment of rehabilitated debarred representatives have been followed.</td>
<td>The key individual must ensure that the necessary checks are done on representatives before appointment, to ensure that they are not debarred. 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 required in FAIS subordinate legislation.

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.

2.3 Requirements for Changing an Aspect of an FSP License

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 to maintain its license, the FSP is required to inform the Registrar of any changes to the business information that was provided during the application process.
2.4 The Impact of Licensing Conditions on an FSP

Note: This section must be studied in conjunction with the following Board Notices:
- 123 of 2009

In terms of the FAIS Act:

**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;

**Definition of intermediary services:**
“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 -

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

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;
2.4.1 Different types of Conditions

There are a few standard conditions that appear in each license, for example:

**FAIS Act Section 8(8)**

"The license 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:__________

**Further conditions/restrictions:**

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 license, 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).

The financial services provider must at all times during the currency of the provider’s license, maintain the services of any key individual or key individuals 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.

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.

The financial services provider must not in any manner change the name of the financial services business as reflected on the license 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 license under the provisions of Section 8(5)(b)(Q) of the Act.

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.”

An FSP must apply to be licensed and the FSP licensing forms 1, 3, 4 & 5 must be complete. All licensing forms are available on the FSCA (FSB)s website - https://www.fsb.co.za/Departments/fais/registration/Pages/application.aspx

2.4.1.1 Form 1 – Business information of Financial Services Provider

Instructions - All applicants must complete Form FSP1, which relates to the business information of the applicant. All fields must be completed unless it specifically states “if applicable”.

Explanatory notes (The number next to the note refers to the relevant fields that must be completed.)

1.1/1.2 Provide the full name of the sole proprietor (natural person) or entity and, where applicable, the trading name of the business must be provided. If the trading name is the same as the sole proprietor’s or entity’s name, provide the sole proprietor’s or entity’s name. In the case of the applicant being a division of an entity provide the entity’s name (1.1) and the division’s name (1.2).

1.3 The relevant institutional form must be indicated and the required information must be provided.

If the applicant is a partnership, close corporation, company, trust, union or other entity, Form FSP 3 must be completed in respect of every partner, member, director, trustee, secretary general or responsible person. In the case of a public company, details of shareholders that hold more than 25% of the issued share capital must be provided, and in the case of a private company, Form FSP 3 must be completed in respect of each shareholder.

1.4 All contact details of the FSP must be provided. These details will be used in all correspondence with the applicant as well as to liaise with the applicant after the license has been granted. Ensure that details are updated if they change after the application has been lodged.

1.5 Details of the person responsible for liaising with the Registrar must be provided. All correspondence from the Registrar will be sent to the designated person.

1.6 The financial year-end of the FSP must be provided.

1.7 The business bank account details used for the activities of the FSP must be provided.

If the FSP is to receive money on behalf of clients, and where the Act requires a separate bank account [Part VIII of the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003 (BN 80/2003)], such an account should be opened for the purpose of depositing clients’ funds therein and the information pertaining to the separate account must be provided. If there is more than one business or separate bank account, provide the details of the main account number on the form and attach a list of the other account numbers.
1.8 Details of the person responsible for dealing with the payment of fees and levies on behalf of the FSP must be provided, even if the person is the same as the contact person.

1.9 Foreign regulation – if the entity is subject to foreign regulation provide the foreign regulator’s name as well as proof of registration (the document provided as proof should be dated and not be older than two months).

1.10 Local regulation – if the entity is subject to regulation imposed by a regulator other than the FSCA (FSB), provide the regulator’s name.

1.11 Details of the guarantee policy required under Section 45 of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), and the regulations issued pursuant thereto, for applicants receiving, holding or in any other manner dealing with premiums payable under a short-term insurance policy must be provided and a copy of the guarantee policy must be attached.

1.12 An explanation of the applicant’s business activities must accompany the application.

2.4.1.2 Form 3 – Directors, Officers and Applicable Shareholders

Instructions - Form FSP3 must be completed in respect of the following persons:

- Directors;
- Shareholders (If the company is a public company, shareholders holding more than 25% of the shares);
- Members of a close corporation;
- Trustees of a trust;
- Partners in a partnership;
- Secretary General of a union; and
- Persons responsible for the management of any other entity not listed above.

A SEPARATE FORM MUST BE COMPLETED IN RESPECT OF EACH PERSON:

A. Indicate the role of the person relating to the FSP. For example, if the FSP is a public company and Mr A is a director and shareholder holding more than 25% of the issued shares of the company then points 1 and 2 must be marked with an [X] and the relevant applicable information must be provided.

B. Indicate in the space provided with [X] whether the person referred to in Section A is a natural person or legal person as defined on page 3 of this form.

C. If the person is a natural person complete Section C.

D. If the person is a legal person complete Section D.

The contact person of the legal person is the natural person that the Registrar can contact if required. Please provide the name of the person and telephone number.

E. Both natural and legal persons must complete Section E.

F. Directors, members, trustees and partners must complete the indemnity form in Section G.
2.4.1.3  Form 4 – Key individuals / Sole Proprietor

Instructions - This form must be completed by an applicant that is a sole proprietor and any key individual of an applicant.

A sole proprietor means an FSP that is a natural person. The expression ‘key individual’ is defined in Section 1(1) of the Act as follows:

‘Key individual’, in relation to an authorised financial services provider, or a representative, carrying on business as –

- 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
- a corporate body or trust consisting of only one natural person as a member, director, shareholder or trustee, means any such natural person.

If an applicant intends to render various financial services, the key individual (see also guidance note for further explanation) or individuals responsible for managing or overseeing the various financial services must be listed.

The key individual is responsible for managing or overseeing the activities of the FSP and such individual must comply with the requirements in the Determination of Fit and Proper Requirements for Financial Services Providers, 2008.

GUIDANCE NOTE:
Subparagraph (b) of the definition requires little or no explanation, in that it deals with entities (persons), which are managed, owned or governed by one natural person only. In this scenario it is clear that this natural person is the key individual as defined.

Subparagraph (a) of the definition will be broken down into the two functions mentioned in this subparagraph, that are the function of managing and the function of overseeing.

Reference is made to the Concise Oxford Dictionary for definitions of the terminology. Managing is defined as ‘having executive control or authority (Managing Director.’. Overseeing or oversee is defined as ‘officially supervise (workers, work, etc.).’.

It is therefore clear from these definitions that a key individual mentioned in subparagraph (a) would include persons in executive control such as directors and other persons performing a managerial function over activities relating to the rendering of a financial service.

In a life insurance company, for example, key individuals may therefore include, directors, provincial managers, and depending on the structure of a particular entity, any other individual whom in the opinion of the controlling body is also engaged in overseeing the activities of a representative, in rendering a financial service regulated by the Act. However, it is not the intention to include every person in a supervisory capacity, or indeed, every director.
2.4.1.4  Form 5 - Representatives

Personal information of representative including details of natural and legal person and subcategories appointed to render.

2.5  Manage the licensing conditions

a.  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 of (after) the change. There are designated forms to be used for this purpose and different fees are payable.

The changes that the registrar must be informed of include the following:

<table>
<thead>
<tr>
<th>Any change in the name of the business</th>
<th>Any change in the trading name or any division of the business</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any change in the type of business (conversion to a close corporation, partnership, etc.)</td>
<td>Any change in the business contact details (address, telephone, fax and email)</td>
</tr>
<tr>
<td>Any change in the contact person (address, telephone, fax and email)</td>
<td>Any change in the financial year-end</td>
</tr>
<tr>
<td>Any change in the bank details</td>
<td>Any change in nominee company or independent custodian involved</td>
</tr>
<tr>
<td>Any change in the contact person responsible for dealing with the payment of fees, penalties and levies</td>
<td>Any change in shareholders</td>
</tr>
<tr>
<td>Any change in directors</td>
<td>Any change in members</td>
</tr>
<tr>
<td>Any change in foreign clearing firm or foreign forex service provider involved</td>
<td>Any change of compliance officer</td>
</tr>
<tr>
<td>Any change in auditor</td>
<td>Any change in the representatives</td>
</tr>
</tbody>
</table>

b.  Condition 2 – Reporting Changes Relating to Key Individuals

This condition requires that there must be a key individual appointed in terms of a license 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 employment, 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.

c. **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.

d. **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); and
- 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 license.

Only when the amended license is issued, may the FSP continue/start with providing financial service under that name.

e. **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.
FSR Act
Chapter 5 Part 1(d)ii
Chapter 8 Part 1 111(1-7)
Chapter 8 Part 3 125
CHAPTER 5
CO-OPERATION AND COLLABORATION
Part 1 - Co-operation and collaboration
Co-operation and collaboration between financial sector regulators and Reserve Bank
76. (1) The financial sector regulators and the Reserve Bank must co-operate and collaborate when performing their functions in terms of financial sector laws, the National Credit Act, and the Financial Intelligence Centre Act, and must for this purpose—

(d) co-ordinate, to the extent appropriate, actions in terms of financial sector laws, the National Credit Act and the Financial Intelligence Centre Act, including in relation to—

(ii) licensing;

CHAPTER 8
LICENSING
Part 1 - Licensing requirements
License requirement in respect of providers of financial products and financial services, and market infrastructures
111. (1) A person may not provide, as a business or part of a business, a financial product, financial service or market infrastructure except—

(a) in accordance with a license in terms of a specific financial sector law, the National Credit Act or the National Payment System Act; or

(b) if no specific financial sector law provides for such a license, in accordance with a license in terms of this Act.

(2) A person may not provide, as a business or part of a business, a financial product designated in terms of Section 2, or a financial service designated in terms of Section 3, except in accordance with a license in terms of this Chapter.

(3) Subsections (1) and (2) only apply to a contractor if a responsible authority specifically, in a standard, requires that contractor to be licensed.

(4) A person may not describe or hold itself out as being licensed in terms of a financial sector law, including being licensed to provide particular financial products, financial services or market infrastructure, unless that person is so licensed.

(5) A person may not permit another person to identify the first person as licensed in terms of a financial sector law, including licensed in terms of a financial sector law to provide particular financial products, financial services or market infrastructure, unless the first person is so licensed.
For the purposes of subsections (4) and (5), a person whose license has been suspended or revoked is not licensed.

Except to the extent expressly provided by this Act, this Act does not affect the provisions of the specific financial sector laws with respect to licensing in relation to financial products, financial services and market infrastructures.

Part 3 - Provisions relating to all licenses under financial sector laws

Application
125. This Part applies in relation to licenses in terms of all financial sector laws.

Concurrence of financial sector regulators on licensing matters

2.6 What changes to the FSP Licensing Details must be Communicated to the Registrar

Note: This section must be studied in conjunction with the following Board Notices:

- 193 of 2011 – Section 3(1)

The FAIS Act defines “intermediary service as 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.”

2.6.1 FSP Form 1

Guidance note 1.4 - All contact details of the FSP must be provided. These details will be used in all correspondence with the applicant as well as to liaise with the applicant after the license has been granted. Ensure that details are updated if they change after the application has been lodged.

In the event that FSP licensing details have changed, Form 5 must be completed and submitted to the Registrar within 15 days of the change.
Changes that must be communicated to the registrar are stipulated in the licensing conditions 1 – 4 and include:

<table>
<thead>
<tr>
<th>Any change in the name of the FSP</th>
<th>Any change in the trading name or any division of the business</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any change in the type of business (conversion to a close corporation, partnership, etc.)</td>
<td>Any change in the business contact details (address, telephone, fax and email)</td>
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<td>Any change in foreign clearing firm or foreign forex service provider involved</td>
<td>Any change of compliance officer</td>
</tr>
<tr>
<td>Any change in auditor</td>
<td>Any change in the representatives</td>
</tr>
</tbody>
</table>

**Extent and condition of exemption**

An FSP is exempt from Section 19(2)(a) and (3) to (56) of the Act unless:

- It is required by law to have financial statements audited and reported on;
- It is required by law that financial statements are independently reviewed by an independent reviewer or otherwise prepared, in which case Section 19(2)(a) and (3) to (6) applies with the necessary changes.

2.7 Informing the Registrar within the Prescribed Timeframes

The compliance officer is required to inform the registrar of any changes to the FSP’s licensing details.

The FSCA (FSB) has an online system that must be used to communicate this information.
SUBMITTING AN AMENDMENT TO A LICENSE (“PROFILE CHANGE”)

Types of profile changes that can be submitted online:

- Add/Modify FSP management - Add / remove directors, shareholders, trustees and members;
- Application for additional approval of Category IV - Application for the additional approval as a Category IV FSP;
- Application for approval of a new Auditor of FSP - Application for the approval of a new auditor;
- Application for approval of a new Key Individual - Application for the approval of a new Key Individual;
- Application for approval of additional financial products - Application for approval in additional subcategories (where the FSP is already approved for that category of license);
- Application for change of FSP name / trading name - Change the FSP’s registered or trading name;
- Application for phase II approval of new Compliance Officer - Application for the approval of a new compliance officer of the FSP (the compliance officer should already have phase I approval);
- Application for additional approval of Category I - Application for the additional approval as a Category I FSP;
- Application for additional approval of Category II - Application for the additional approval as a Category II FSP;
- Application for additional approval of Category IIA - Application for the additional approval as a Category IIA FSP;
- Remove financial products from license - Remove existing category and/or sub-categories from the license;
- Resignation of Auditor - Removal of an auditor from the profile of an FSP;
- Resignation of Compliance Officer - Removal of a compliance officer from the profile of an FSP.
- Update FSP details - Update the FSP’s contact, banking and other general information; and
- Update Key Individual details only - Update the key individual’s personal, product and qualification information.

In the event that FSP licensing details have changed, Form 5 must be completed and submitted to the Registrar within 15 days of the change.
2.8 The Implications to the FSP if Licensing Conditions are not Met

If the FSP does not meet the required licensing conditions, the registrar may suspend or withdraw any license, including the license of a licensee under provisional or final suspension.

**Extracts from FAIS Act – Section 9**

9. Suspension and withdrawal of authorisation

(1) The registrar may, subject to Subsection (2) and irrespective of whether the registrar has taken or followed, or is taking or following, any step or procedure referred to in Section 4, at any time suspend or withdraw any license (including the license of a licensee under provisional or final suspension) if satisfied, on the basis of available facts and information, that the licensee-

(a) does not meet or no longer meets the fit and proper requirements applicable to the licensee, or if the licensee is a partnership, trust or corporate or unincorporated body, that the licensee or any key individual of the licensee does not meet or no longer meets the fit and proper requirements applicable to the licensee or the key individual;

(b) has failed to comply with any other provision of this Act;

(c) is liable for payment of a levy under Section 15A of the FSCA (FSB) Act, 1990 (Act No. 91 of 1990), a penalty under Section 41(2) and (3) or an administrative sanction under Section 6D(2) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001), and has failed to pay the said levy, penalty or administrative sanction and any interest in respect thereof;

(d) does not have an approved key individual;

(f) has failed to comply with any directive issued under this Act; or

(g) has failed to comply with any condition or restriction imposed under this Act.

(2) (b) Where the registrar contemplates the suspension or withdrawal of any license, the registrar must also inform the licensee of-

(i) any terms to be attached to the suspension or withdrawal, including-

(aa) a prohibition on concluding any new business by the licensee as from the effective date of the suspension or withdrawal and, in relation to unconcluded business, such measures as the registrar may determine for the protection of the interests of clients of the licensee; and

(bb) terms designed to facilitate the lifting of the suspension.

(c) Where the license is suspended or withdrawn, the registrar must make known the reasons for the suspension or withdrawal and any terms attached thereto by notice on the official web site and may make known such information by means of any other appropriate public media.

(3) Notwithstanding the provisions of Subsection (2), the registrar may under urgent circumstances, where the registrar is satisfied on reasonable grounds that substantial prejudice to clients or the general public may occur-

(b) make known such provisional suspension or withdrawal by notice on the official web site and, if necessary, by means of any other appropriate public media.
(4) (a) The registrar must, within a reasonable time after receipt of any response contemplated in Subsection (3)(a) consider the response, and may thereafter decide to-

(ii) render the provisional suspension or withdrawal final and must inform the licensee accordingly.

(b) The registrar must make known the terms of and reasons for such final suspension or withdrawal, or the lifting thereof, by notice on the official web site and, if necessary, in any other appropriate public media.

2.9 Requirements around the Display of Licenses

FAIS Act Section 8(8) and 8(9a)

The FAIS Act stipulates that a licensee must display a certified copy of their license in a prominent place within every business premises covered by the license.

The licensee must also make reference to the license in all business documentation, advertisements and other promotional material.

Any person who is considering entering into a business relationship with a licensee may request proof of licensed status, and the licensee is obliged to make the license available within a reasonable period of time.

A person may not, under any circumstances, use any license or copy of a license for business purposes

- if the license has lapsed; or
- if the license has been withdrawn or provisionally withdrawn during any time when the licensee is under provisional or final suspension;

2.10 Internal Controls and Measures

The following section covers internal controls and measures to render financial services within the limitations on categories and subcategories.

Note This section must be studied in conjunction with the following Board Notices:

- 123 of 2009 – Licensing Conditions

An authorised financial services provider must be satisfied that it’s representatives (and the key individuals of the representative) are at all times when rendering a financial service on behalf of the provider competent to act, and comply with:

- The fit and proper requirements; and
Any other requirements contemplated in Subsection (1)(b)(ii) of the FAIS Act. All role-players must know and fully understand their roles and responsibilities and they must execute their duties accordingly.

2.11 Levies Payable

2.11.1 Levies Payable to the FSCA (FSB)

The FSCA (FSB) raises levies in terms of the legislation that it oversees. The FAIS Act also allows the Registrar FSCA (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 license. The formulae differ between the various categories.

An example is a large insurance company that has different subsidiaries each with its own FSP license, but part of the group. The group will pay one levy in respect of all the representatives and key individuals operating in the respective licenses where licenses span across one legal entity.

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 license 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 FSCA (FSB) and the Ombud for Financial Services Providers (FAIS Ombud) levies.

The following tables are provided as examples of how the levies are calculated and it should be remembered that these figures change annually.

**Category I or IV**

Category I or IV FSPs, excluding any such provider who is also authorised as a Category II, IIA or III provider, must on or before 31 October of the levy year, pay a levy which is subject to a maximum amount of R1 641 281, and is calculated as follows:

(a) a base amount of R3 182; and
(b) A x R508

Where A = the total number of key individuals of the FSP 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.
Category II, IIA or III

Category II, IIA or III FSPs must on or before 31 October of the levy year pay a levy, which is subject to a maximum of R1 641 281, and is calculated as follows:

(a) a base amount of R6 411; and
(b) A x R508; and
(c) B x 0.0000164289

Where A = the total number of key individuals of the FSP approved by the relevant 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; and

Where B = the total value of investments managed on behalf of clients in terms of the authorisation as an FSP on 30 June of the levy year.

The investments under management held in foreign currency must be included at the exchange rate published in the Press at that date.

Category I or Category IV

FSPs licensed only for Long-term Insurance subcategory A or Friendly Society Benefits

A Category I or a Category IV FSP to render financial services in respect of only the financial product subcategories Long-term Insurance subcategory A or Friendly Society Benefits, must on or before 31 October of the levy year pay a levy, which is subject to a maximum of R1 641 281, and is calculated as follows:

(a) a base amount of R3 182; and
(b) A x R250

Where A = the total number of key individuals of the FSP approved by the relevant 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.

Levy for funding of Office of Ombud for Financial Services Providers

A person who is authorised as a financial services provider must on or before 31 October of the levy year pay a levy, which is subject to a maximum of R256 479, and is calculated as follows:

(a) a base amount of R947; and
(b) A x R360.

Where A = the total number of key individuals of the financial services provider approved by the relevant Registrar plus the total number of representatives appointed by the financial services provider, less key individuals that are also appointed as representatives, as at 31 August of the levy year.
Important

Levies due by FSPs will be calculated based on the information available to the Registrar on 31 August. It is therefore important for FSPs to ensure that their information is correct and should changes need to be made, notify the FSCA (FSB) or make changes on the FAIS ePortal before 31 August.

Should the levy not be paid, the license of the authorised financial services provider may be withdrawn in terms of Section 9 of the Financial Advisory and Intermediary Services Act.

2.11.2 Levies to the Ombud for Financial Services Providers (FAIS Ombud)

**BOARD NOTICE 81 OF 2016**

**FSCA (FSB) ACT, 1990 LEVIES ON FINANCIAL INSTITUTIONS**

20. Levy for funding of Office of Ombud for Financial Services Providers

Subject to sub-paragraph (2), a person who is authorised in terms of Section 8 of the Financial Advisory and Intermediary Services Act, as a financial services provider must on or before 31 October of the levy year pay a levy, which is subject to a maximum of R239 700, and is calculated as follows:

(a) a base amount of R885; and

(b) $A \times R337$

where-

$A = \text{the total number of key individuals of the financial services provider approved by the relevant Registrar plus the total number of representatives appointed by the financial services provider, less key individuals that are also appointed as representatives, as at 31 August of the levy year.}$

(2) Multiple authorised financial services providers who form part of the same legal entity are jointly and severally liable for payment of a single levy as referred to in sub-paragraph (1). For purposes of such payment, the key individuals and the representatives of such authorised financial services providers are deemed to be the key individuals and representatives of one authorised financial services provider.

(3) Should the levy mentioned in sub-paragraph (1) not be paid, the license of the authorised financial services provider may be withdrawn in terms of Section 9 of the Financial Advisory and Intermediary Services Act.
2.12 The Conditions under which Suspensions, Withdrawals and Reinstatements of Authorisation may be Imposed

The Registrar may suspend or withdraw a FAIS license, subject to certain conditions. The license may also be reinstated, subject to certain conditions.

2.12.1 Reasons for Suspension or Withdrawal26

The Registrar may suspend or withdraw any license 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 license 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 FSCA (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; and
- has failed to comply with any condition or restriction imposed under this Act.

26 Section 9(2) of the FAIS Act
27 Section 9(2) of the Act
2.12.2 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 license. 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. 28
- may publish the provisional suspension or withdrawal on the official website and if necessary, by means of any other appropriate public media. 29

The Registrar must consider a response received from the licensee and may decide to:

- lift the provisional suspension or withdrawal; or
- make it final. 30

28 Section 9(3)(a) of the Act
29 Section 9(3)(b) of the Act
30 Section 9(4)(a) of the Act
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. 31

If a license is suspended or withdrawn, the licensee is not authorised to act as an FSP.

2.12.3 Debarment Following Suspension of Withdrawal

If a license has been withdrawn in terms of Section 9 of the Act (which deals with suspension and withdrawal of licenses), the person is debarred for a period specified by the Registrar from applying for a new license and the Registrar may change the period if there are good grounds for the change. 32

2.12.4 Registrar may Consult a Regulatory Authority

Before suspending or withdrawing a license, 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 license. 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 license may have dire consequences in the financial services industry.

2.12.5 Accreditation under Medical Schemes Act 1998

Section 8(7) of the FAIS Act, has certain implications in respect of the 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 License will also be deemed to be suspended or withdrawn.

Similarly, if the accredited (FAIS) FSPs license 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 license 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 license.

31 Section 9(3)(b) of the Act
32 Sections 9(5) & (6) of the Act
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 license. If the Registrar has set specific conditions and the licensee meets the conditions to the satisfaction of the Registrar, the license 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 license has been withdrawn may also approach the Court for reinstatement.

Figure 3.3 A license of a NATURAL person may lapse in the following instances:

- The Licensee (FSP) is FINALLY SEQUESTRATED
- The Licensee (FSP) becomes permanently UNABLE to CARRY ON BUSINESS because of PHYSICAL or MENTAL ILLNESS
- The Licensee (FSP) DIES
- The Licensee (FSP) is FINALLY LIQUIDATED or DISSOLVED
- THE business of the Licensee (FSP) has become DORMANT
- In ANY OTHER case where the Licensee (FSP) VOLUNTARILY and FINALLY SURRENDERS THE LICENCE TO THE REGISTRAR
2.13 Lapsed License

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 license and the reasons therefore and the Registrar MAY publish the lapsing of a license by notice on the official website and, if necessary, in any other appropriate public media announcement.

2.14 Lapsing a License Differs from Suspension or Withdrawals

Table 2.3

<table>
<thead>
<tr>
<th>Suspension or withdrawal of a FAIS license</th>
<th>Lapsing of a FAIS license</th>
</tr>
</thead>
<tbody>
<tr>
<td>Suspension or withdrawal of a license is initiated by the Registrar following actions or omissions by the FSP.</td>
<td>Lapsing of a license 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 license under certain conditions.</td>
<td>There are no provisions in the Act for the reinstatement of a lapsed license.</td>
</tr>
</tbody>
</table>
| After withdrawal of a license, the person will be debarred from applying for a new license.  
This is slightly different to debarment as it is applicable to honesty, integrity and good standing requirements. | There are no requirements for debarment in terms of lapsing a license. |
| There are implications for accredited FSPs under the Medical Schemes Act (discussed above) as the FSP will lose the accreditation if the FAIS license is suspended or withdrawn and vice versa. | Accreditation in terms of the Medical Schemes Act (where applicable) also deemed to have lapsed. |

2.15 Voluntary Sequestration, Winding-up or Closure of a Business on its Licensing Status.

Section 38 of the FAIS Act states that:

| NO | Application for voluntary surrender of an estate brought before a court in terms of Section 3 of the Insolvency Act |
| NO | Special resolution relating to the winding-up, as provided for in Section 349 of the Companies Act, and registered in terms of that Act |
| NO | Written resolution relating to the winding-up, as provided for in Section 67 of the Close Corporations Act, and registered in terms of that Section |
NO  Voluntary closure of business

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

UNLESS a copy or notice of the intended process has been lodged with the Registrar;

or

UNLESS the Registrar has declared to the FSP or representative by notice, that the Registrar is satisfied with the arrangements that have been made to meet all liabilities with regard to transactions entered into with clients prior to sequestration, winding-up or closure, as the case may be;

or

The Registrar may declare that the application, resolution or closure is contrary to the FAIS Act and that it has no legal effect.

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 an 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; and
- 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; and
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.

2.16 Business Rescue or 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 FSCA (FSB) legislation as defined in Section 1 of the FSCA (FSB) 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.
2.17 Undesirable Business Practices

FAIS Act – Section 34(1)
34. Undesirable practices

(1) Subject to subsections (2) and (3), the registrar may by notice in the Gazette declare a particular business practice to be undesirable for all or a category of authorised financial services providers, or any such provider.

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:

- 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.
- The Registrar considers the representations and decides to declare the business practice as “undesirable” or not.
- 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). 33
- 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. 34
- The FSP who must rectify or reinstate must do so within 60 days after the direction was issued. 35

33 Sections 34(3) & (4) of the Act
34 Section 34(5) of the Act
35 Section 34(6) of the Act
• If the FSP does not adhere to the Registrar’s directive, a fine not more than R10 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.

If it is determined that an FSP is operating with undesirable business practices, the registrar has the right to place a notice in the Gazette stating this. The provider must ensure that there are processes in place to ensure that they are aware of any such notices, and when made aware they must cease any such action immediately.

The registrar is allowed to suspend or withdraw a license and the conditions are listed below:

<table>
<thead>
<tr>
<th>Extract from FAIS Act – Section 9(1)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>9. Suspension and withdrawal of authorisation</strong></td>
</tr>
<tr>
<td>(1) The registrar may, subject to Subsection (2) and irrespective of whether the registrar has taken or followed, or is taking or following, any step or procedure referred to in Section 4, at any time suspend or withdraw any license (including the license of a licensee under provisional or final suspension) if satisfied, on the basis of available facts and information, that the licensee—</td>
</tr>
<tr>
<td>(a) does not meet or no longer meets the fit and proper requirements applicable to the licensee, or if the licensee is a partnership, trust or corporate or unincorporated body, that the licensee or any key individual of the licensee does not meet or no longer meets the fit and proper requirements applicable to the licensee or the key individual;</td>
</tr>
<tr>
<td>(c) has failed to comply with any other provision of this Act;</td>
</tr>
<tr>
<td>(d) is liable for payment of a levy under Section 15A of the FSCA (FSB) Act, 1990 (Act No. 91 of 1990), a penalty under Section 41(2) and (3) or an administrative sanction under Section 6D(2) of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001), and has failed to pay the said levy, penalty or administrative sanction and any interest in respect thereof;</td>
</tr>
<tr>
<td>(e) does not have an approved key individual;</td>
</tr>
<tr>
<td>(f) has failed to comply with any directive issued under this Act; or</td>
</tr>
<tr>
<td>(g) has failed to comply with any condition or restriction imposed under this Act.</td>
</tr>
</tbody>
</table>

2.18 Implications where the Registrar issues a Directive

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.
2.19 The Process of On-site Inspections by the Registrar

In support of the function of “enforcement”, the Registrar has the authority to conduct on-site visits to verify the state of compliance.

2.20 FAIS Act Offenses

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.

The offences, which carry the above penalties, are the following:

**Table 2.4 : Contravention of or failure to comply with the following Sections in the Act**

<table>
<thead>
<tr>
<th>Offense Description</th>
<th>Section(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to get a license to operate as an FSP</td>
<td>Section 7(1)</td>
</tr>
<tr>
<td>Conducting financial services-related business with a person who is not licensed</td>
<td></td>
</tr>
<tr>
<td>for such services and the conditions and restrictions allow the specific services</td>
<td></td>
</tr>
<tr>
<td>or the person is a representative as described in the Act – Section 7(3).</td>
<td></td>
</tr>
<tr>
<td>Failure to display a FAIS license</td>
<td></td>
</tr>
<tr>
<td>• or to refer to the license in business documentation, advertisements and other</td>
<td></td>
</tr>
<tr>
<td>promotional material;</td>
<td></td>
</tr>
<tr>
<td>• or failure to have the license available when proof is requested or when required</td>
<td></td>
</tr>
<tr>
<td>to enter into a business relationship with the licensee – Section 8(8).</td>
<td></td>
</tr>
<tr>
<td>Failure to ensure</td>
<td></td>
</tr>
<tr>
<td>• that a representative acts on behalf of an authorised FSP or an exempted FSP and</td>
<td></td>
</tr>
<tr>
<td>failure to ensure that a representative provides adequate information to prove</td>
<td></td>
</tr>
<tr>
<td>his/her agreement/ mandate with an FSP or</td>
<td></td>
</tr>
<tr>
<td>failure to ensure that a debarred representative’s reappointment meets the</td>
<td></td>
</tr>
<tr>
<td>requirements of the Act – Section 13(1).</td>
<td></td>
</tr>
<tr>
<td>Failure to debar a representative as described in Section 14(1).</td>
<td></td>
</tr>
<tr>
<td>Failure to maintain and keep records as required in Section 18.</td>
<td></td>
</tr>
<tr>
<td>Failure to submit compliance reports to the Registrar – Section 17(4).</td>
<td></td>
</tr>
<tr>
<td>Failure to have the financial statements</td>
<td></td>
</tr>
<tr>
<td>audited and reported within four (4)</td>
<td></td>
</tr>
</tbody>
</table>
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). |

2.21 Processes to Avoid Actions that can be Regarded as Offences under FAIS

2.21.1 Civil Remedies

With effect from 28 February 2014, the Registrar can now 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.

2.21.2 Anti-Money-Laundering Controls

There is an obligation on FSPs who are accountable institutions as defined in the Financial Intelligence Centre Act 36 (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.

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.

36 Act 38 of 2001
2.21.3 Administrative Penalties

2.21.3.1 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.37

Penalties relating to the Ombud for Financial Services Providers (FAIS Ombud)

Any person who commits any act in respect of the Ombud for Financial Services, 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.

2.22 Recourse that an FSP has in the Event of a Decision Made by the Registrar

Note: This section must be studied in conjunction with the following Board Notices:

- FAIS Act – Section 9 (2)
- FAIS Act – Section 39

The Registrar must inform the licensee of the intent to suspend or withdraw the license and the grounds therefor. The licensee is entitled to a reasonable opportunity to respond before a final decision is made.

37 Section 41 (2)(a) of the FAIS Act
2.23  Knowledge Test – Chapter 2

Test your knowledge

1. When the Registrar intends to suspend or withdraw a license, the licensee is:
   I. Entitled to be given a reasonable opportunity to make a submission in this regard
   II. Entitled to appeal against the decision
   III. Not allowed the opportunity to make a submission in this regard
   IV. Allowed to continue working for another three months in order to conclude all outstanding business

2. Scrutinise the statements below and advise which of the following statements apply to Representatives who give advice and/or render intermediary services in respect of multiple license categories or product subcategories?
   1. The relevant minimum and maximum periods of supervision start on the date that the Representative is appointed to render services in a particular license category or product subcategory
   2. They can gain the experience at the same time, and will remain under supervision until the most onerous experience requirement is met
   3. They must gain the experience separately for the different categories, and will remain under supervision until the most onerous experience requirement is met
   4. Any significant interruption, being eight consecutive weeks or longer, must be compensated for by arranging an additional period under supervision, equal to the interrupted period
   i)  1 and 3
   ii)  1 and 2
   iii)  2 and 3
   iv)  3 and 4

3. The FAIS Act requires the FSP to take certain actions in respect of the licensing conditions. Identify one or more of these actions:
   a. The FSP may be licensed to only provide intermediary service or only advice in respect of a particular category of financial product. Both services can’t be offered
   b. Specific conditions include reference to the categories for which the FSP is authorise
   c. FSPs must adhere to the conditions and also ensure that there are adequate systems and processes in the business to ensure compliance with the conditions
   I. All of the above
   ii. None of these
   iii. B & C
4. Apply your knowledge of the FAIS Act and identify which section of the Act the following statement refers to:  ___________ of the FAIS Act includes the requirement for qualifications of representatives and duties of FSPs towards the maintenance of the FAIS license.

| a. | Section 11 |
| b. | Section 13 |
| c. | Section 10 (A) |
| d. | Section 18 |

5. Complete the Sentence.
   “The FSP may have more than one license because the financial services of the FSP are limited to the specific sub-product category for which a license is issued because”:

| a. | The structure of the business may be such that products are grouped together, which makes it logical to have a specific license for that part of the business |
| b. | Where representatives (and key individuals) work across various (sub)-products and license categories, there must be internal controls to ensure that the financial service (or management and oversight) they provide correspond with the specific license conditions and restrictions |
| c. | There may be limitations in terms of the type of financial service which is allowed for a specific financial products category or sub-category |

6. Choose the CORRECT statements which are classed as offences in terms of the FAIS Act.

| a. | Failure to display a FAIS license |
| b. | Failure to get a license to operate as an FSP |
| c. | Failure to have the license available when proof is requested |
| e. | All of the above |

7. Analyse the statements below and advise which statement best describes the conditions that apply to the display of the FAIS license.

| a. | An FSP must display certified copies of its FAIS license clearly in every head office and regional office and must ensure that all business documentation, advertisements and other promotional material refer to the license |
| b. | An FSP must display copies of its FAIS license clearly in every business premises and must ensure that all business documentation, advertisements and other promotional material refer to the license |
| c. | An FSP must display certified copies of its FAIS license clearly in every business premises and must ensure that all business documentation, advertisements and other promotional material refer to the license |
| d. | An FSP must display certified copies of its FAIS license clearly in every business premises and need only ensure that advertisements refer to the license |
8. Apply your knowledge of licensing conditions and explain what the requirements are regarding the display of licenses.

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>An FSP must display certified copies of the license in a prominent and durable manner in every business premise</td>
<td>i) 1 and 3</td>
</tr>
<tr>
<td>An FSP must ensure that all business documentation, advertisements and other promotional material displays the license number and other details</td>
<td>ii) 2 and 3</td>
</tr>
<tr>
<td>An FSP must display certified copies of the license in a prominent and durable manner in the Head Office and Regional offices if applicable</td>
<td>iii) 3 and 4</td>
</tr>
<tr>
<td>An FSP must ensure that all business documentation, advertisements and other promotional material refers to the license</td>
<td>iv) 1 and 4</td>
</tr>
</tbody>
</table>

9. The Registrar may suspend or withdraw a FAIS license, subject to certain conditions. Which statement is TRUE regarding suspension and withdrawal of licenses?

<table>
<thead>
<tr>
<th>Statement</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>The license may also be reinstated, subject to certain conditions</td>
<td>a. 1</td>
</tr>
<tr>
<td>If an accredited Medical Schemes FSP loses its accreditation in terms of the Medical Schemes Act, the FAIS License will also be deemed to be suspended or withdrawn</td>
<td>b. 2</td>
</tr>
<tr>
<td>If the accredited Medical Schemes (FAIS) FSP's license is suspended or withdrawn in terms of the FAIS Act, it will not lose its accreditation in terms of the Medical Schemes Act</td>
<td>c. 3</td>
</tr>
<tr>
<td>If the accredited Medical Schemes (FAIS) FSP's license is suspended or withdrawn in terms of the FAIS Act, it will lose its accreditation in terms of the Medical Schemes Act</td>
<td>d. 4</td>
</tr>
</tbody>
</table>

10. Where an FSP and product supplier are the same legal entity, it (including a Representative) may receive or offer the following from or to a third party:

<table>
<thead>
<tr>
<th>Offer/Receivables</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any Cash, Cash equivalent</td>
<td>i) 1 and 3</td>
</tr>
<tr>
<td>STI, LTI or Medical Schemes Act commission</td>
<td>ii) 1, 2 and 3</td>
</tr>
<tr>
<td>Any Domestic/foreign travel, Hospitality, Accommodation, Sponsorship</td>
<td>iii) 1,2 and 4</td>
</tr>
<tr>
<td>Other fees if the fees are agreed by client in writing and it may be stopped by client</td>
<td>iv) 2 and 4</td>
</tr>
</tbody>
</table>

11. The Registrar when deciding whether a business has been guilty of committing undesirable business practices, must consider whether the business practice has, or is likely to have, a direct or indirect effect on which of the below mentioned results. Choose the correct option:

<table>
<thead>
<tr>
<th>Effect</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harming the relations between FSPs</td>
<td>a. 1</td>
</tr>
<tr>
<td>Unreasonably prejudicing clients</td>
<td>b. 2</td>
</tr>
<tr>
<td>Deceiving any client</td>
<td>c. 3</td>
</tr>
<tr>
<td>All of the above</td>
<td>d. 4</td>
</tr>
</tbody>
</table>
12. There are prescribed principles that must be taken into account before the Registrar can declare the business practice as undesirable, including:

<table>
<thead>
<tr>
<th>Option</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>The business practice must have had a direct or indirect effect during the preceding two months resulting in harming the relations between FSPs or any FSP or category of FSPs, and clients or the general public</td>
</tr>
<tr>
<td>b.</td>
<td>The business practice must have, or is likely to have, a direct or indirect effect resulting in the Ombud making determinations against brokers</td>
</tr>
<tr>
<td>c.</td>
<td>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</td>
</tr>
<tr>
<td>d.</td>
<td>The business practice must have, or is likely to have, a direct or indirect effect resulting in the share price of the affected FSPs declining</td>
</tr>
</tbody>
</table>

13. The Fais Act specifically makes reference to what is meant by undesirable practices. Choose the prescribed principles that must be taken into account before the Registrar can declare the practice undesirable.

<table>
<thead>
<tr>
<th>Option</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>The business practice has the effect of harming the relations between FSPs or any FSP or category of FSPs, and clients or the general public</td>
</tr>
<tr>
<td>b.</td>
<td>The business practice has the effect of unreasonably prejudicing clients</td>
</tr>
<tr>
<td>c.</td>
<td>The business practice has the effect of deceiving any client</td>
</tr>
<tr>
<td>d.</td>
<td>The business practice has the effect of unfairly affecting any client; and if allowed to continue, the practice will defeat one or more objects of the FAIS Act</td>
</tr>
<tr>
<td>e.</td>
<td>All of the above</td>
</tr>
</tbody>
</table>

14. Section 34 of the FAIS Act empowers the FAIS Registrar to declare a particular business practice “undesirable” for all categories of Financial Services Providers. As a Representative, you need to understand the implications for an FSP if the Registrar publishes a notice regarding an “undesirable business practice”. The principles, which the FAIS Registrar must consider before s/he can declare a practice undesirable includes:

<table>
<thead>
<tr>
<th>Option</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>There are prescribed principles that must be taken into account before the Registrar can declare a practice undesirable and this includes that 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</td>
</tr>
<tr>
<td>b.</td>
<td>That the directors and/or management must have committed fraud or theft</td>
</tr>
<tr>
<td>c.</td>
<td>There are prescribed principles that must be taken into account before the Registrar can declare a practice undesirable and this includes that the business practice must have a direct effect resulting in the loss of funds</td>
</tr>
<tr>
<td>d.</td>
<td>That the FAIS Registrar must publish an intention to declare a business practice as undesirable only in the national and local media</td>
</tr>
</tbody>
</table>
15. There are certain implications for an FSP if the Registrar publishes a notice regarding an undesirable business practice. Which of the statements below are FALSE in this regard?

| (a) The FSP may carry on with the business practice concerned, until the registrar provides written directive for the FSP to desist | i) b and c |
| (b) The registrar may direct a non-authorised FSP, who carries on the business practice on/after date of publication of the notice, in contravention of the notice, to rectify, to the satisfaction of the registrar, anything which was caused by or arose out of the business practice | ii) a, b and d |
| (c) An FSP who was directed by the registrar to rectify anything must do so within 60 days after such direction is issued | iii) c and d |
| (d) An FSP who was directed by the registrar to rectify anything must do so within 30 days after such direction is issued |

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

| (a) The business practice must have had a direct or indirect effect during the preceding two months resulting in harming the relations between FSPs or any FSP or category of FSPs, and clients or the general public | |
| (b) The business practice must have, or is likely to have, a direct or indirect effect resulting in the Ombud making determinations against brokers | |
| (c) 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 | |
| (d) The business practice must have, or is likely to have, a direct or indirect effect resulting in the share price of the affected FSPs declining | |

17. There are reparation measures available to the Registrar should the representative continue to be guilty of such undesirable business practices. Choose the statement that is TRUE:

| (a) If an FSP continues such business practices after the date of publication, the Registrar may inform the FSP to rectify or reinstate, to the satisfaction of the Registrar, any damage or loss which was caused by or arose out of the carrying on of the business practice concerned | |
| (b) The FSP who must rectify or reinstate must do so within 90 days after the direction was issued | |
| (c) If the FSP does not adhere to the Registrar's directive, a fine of not more than R10 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 | |
| (d) Business must be informed to continue doing business with, or using the services of an FSP whose business practice has been declared undesirable | |
18. Alan is a Representative working for ABC Brokers for the past three years. Seven years ago, he was involved in a motor vehicle accident and he was found guilty of drunken driving. Which of the following statements are FALSE with regard to Alan being fit and proper:

a. Alan is fit and proper because the offence does not relate to honesty and integrity
b. Alan is fit and proper because the offence occurred more than five years ago
c. Only if Alan gets a jail sentence will his honesty and integrity be affected
d. Only if Alan was found guilty in civil proceedings by a court of law of having acted fraudulently, dishonestly, unprofessionally, dishonorably or in breach of a fiduciary duty, within five years before the date of appointment by the FSP will he be deemed not fit and proper

i)  a and d
ii)  c only
iii) a and b
iv) b and d

19. Section 7(1), 8(8), 13(1), 14(1), 18, 19(2) or 34(4) or (6) all refer to requirements for Representatives under the FAIS Act. If the Representative contravenes any of these requirements the Representative is guilty of an offence and will be liable for a fine and imprisonment. Choose the correct penalty as prescribed by the Act

I. Fine not exceeding R10 000 000 or imprisonment for a period not exceeding 10 years, or both (such fine and such imprisonment)
II. Fine not exceeding R 10 000 000
III. Imprisonment for a period not exceeding 10 Years
IV. Fine of R 10 000 000 and imprisonment for a period not exceeding 15 years
Chapter 3

Operate as the Key Individual in terms of the FAIS Act
This topic covers the following critical learning outcomes:

| 3.1 | Describe the roles and responsibilities of key individuals as defined in the FAIS Act. |
| 3.2 | Describe the regulated Management and oversight responsibilities of a key individual. |
| 3.3 | Explain the implication for a representative should a key individual no longer meet the good standing, honesty and integrity requirements. |
3. Operate as the Key Individual in terms of the FAIS Act

3.1 The Roles and Responsibilities of Key Individuals as defined in the FAIS Act

**Note: This section must be studied in conjunction with the following Board Notices:**

- 104 of 2008 – Section 1

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 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
- 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).

### 3.1.1 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.
Examples that explain the various “hats” that key individuals can wear.

**Example:**
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.

### 3.1.2 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 license. 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.
3.2 The Requirements for Approval of a Key Individual by the Registrar

3.2.1 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, integrity and good standing, 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 3.1: Submitting Documents

<table>
<thead>
<tr>
<th>Submitting Documents</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Role</strong></td>
<td>A description of what best describes the applicant’s (FSPs) role in the organisation is required.</td>
</tr>
<tr>
<td><strong>Fit and proper requirements</strong></td>
<td>• Questions relating to honesty, integrity and good standing must be completed (refer the discussion on honesty, integrity and good standing above).</td>
</tr>
<tr>
<td></td>
<td>• Details about qualifications must be completed and certified copies of qualifications must be attached.</td>
</tr>
<tr>
<td><strong>Employment history</strong></td>
<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></td>
<td>• Reference letters from previous employers must be submitted.</td>
</tr>
<tr>
<td></td>
<td>• Details of experience for the categories of financial services and the subcategories 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.</td>
</tr>
<tr>
<td></td>
<td>• Reference letters from previous employers regarding responsibilities of the applicant in the various categories must be submitted.</td>
</tr>
</tbody>
</table>
### Operational ability
- 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.

### General
- If the applicant is both key individual and a representative, a separate form (FSP 5) must be completed.
- The applicant needs to sign an indemnity, authorising the FSCA (FSB) to verify all information.

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 license, which may include specific conditions regarding the key individual. Such conditions may include that, where after the date of granting a license, 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.

### 3.3 Controls required to ensure Sufficient Management and Oversight of Financial Services Rendered

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. 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>
<thead>
<tr>
<th>Section of Act</th>
<th>Provision</th>
</tr>
</thead>
</table>
| 7 Authorisation of FSPs | - FSP must be licensed  
- FSP may only conduct business within conditions of license 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 |
| 8 Application for authorisation | - License 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  
- License display, references in documentation and proof  
- License may be amended |
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
</table>
| 8A | Compliance with fit and proper requirements after authorisation | • Prohibition from making use of a license where FSP no longer have such authorisation  
• Prohibition from publishing documentation that is misleading or contrary to public interest or contains an incorrect statement of fact  
• Fit and proper requirements must be complied with on a continued basis |
| 9 | Suspension and withdrawal of authorisation | • Reasons for suspension or withdrawal  
• Provisional suspension or withdrawal  
• Process  
• Consequences for FSP |
| 11 | Lapping of license | • Reasons for lapse  
• Process to be followed by licensee, KI or other responsible person |
| 12 | Exemption in respect of product suppliers | • Only exempt if applied for and approved by Registrar – conditions |
| 13 | Qualifications of representatives and duties of authorised FSPs | • Reps to be authorised  
• Only lawfully appointed representatives are able to render financial services.  
• FSP/KI to ensure reps are competent  
• FSP/KI to ensure reps comply with legislation and codes  
• Representative register to be maintained and submitted as required |
| 14 | Debarment of representatives | • Reasons for debarment  
• Process  
• Notification to Registrar and update of register  
• Debarment by Registrar – reasons and process |
| 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 |
| 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 |
<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>18</td>
<td>Maintenance of records</td>
<td>• FSP to maintain specified types of records for period of five years</td>
</tr>
</tbody>
</table>
| 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  
• 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. |
| 21 | 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 |
### Regulations
- Power to Registrar to:
  - Issue regulations.
  - Prescribe any matters in Act.
  - Prohibit actions.
  - Compliance matters
  - Call for information.
  - Limits of penalties if contravened

### Offences and penalties
- Contravention or failure to comply with various provisions of the Act and submitting false or misleading information
- Limits of penalties

### 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.

### Business rescue
- Requirements and process FSP to follow

### Application by Registrar for sequestration or liquidation
- Requirements and process to follow

### Directives
- Registrar authorised to issue directives

### Right of appeal
- Any person has right of appeal against a decision by Registrar or Ombud.

### 3.4 Individual Acting as 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>

Part of a key individual's fit and proper requirements is the operational ability to fulfill 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.
The financial soundness requirements are no longer limited to FSPs only. These new rules now also apply to Juristic Representatives of FSPs, although they do not apply to Key Individuals or Representatives who are natural persons. FSPs that are registered Banks, Long-term or Short-term insurers are also exempt, providing they meet the financial soundness requirements of the legislation that applies to them.

3.5  Good Standing, Honesty and Integrity Requirements for a Key Individual

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, most of the requirements are 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 FSCA (FSB), being the regulator, will approve the appointment of key individuals for each FSP.

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

Table 3.2

<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>Good standing, 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 Requirements</td>
<td>N</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</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, Re-examinations</td>
<td>N</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Competence: Continuous Professional Development (CPD)</td>
<td>N</td>
<td>Y</td>
<td>Y</td>
<td>Y</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 3.3

<table>
<thead>
<tr>
<th>Operational Ability</th>
<th>Y</th>
<th>Y</th>
<th>Y</th>
<th>N</th>
<th>Y</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial Soundness</td>
<td>Y</td>
<td>Y</td>
<td>N</td>
<td>N</td>
<td>Y</td>
</tr>
</tbody>
</table>

Key Individuals must:
- meet the requirement in respect of good standing, honesty and integrity;
- have the minimum experience requirements;
- have the required qualifications; and
- have completed the relevant first level regulatory examination before the Registrar will APPROVE the appointment.

- have completed the relevant second level regulatory examinations for the categories and subcategories, if these are required by the FSP;
- meet the requirement in respect of honesty, integrity and good standing;
- have the minimum experience requirements;
- have the required qualifications; and
- have completed the relevant regulatory examinations for the categories and subcategories before a LICENSE will be granted.

At least one (1) or more of the approved key individuals must:
- have the same experience and qualifications; and
- 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.

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.

Application for authorisation
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
If the applicant is a partnership, trust or corporate or unincorporated body, the requirements of honesty, integrity and good standing, 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 personal character qualities of:

- honesty, integrity and good standing;
- competence; and
- operational ability.

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

3.6 Meeting the Good Standing, Honesty and Integrity Requirements

3.6.1 Good Standing, Honesty, Integrity and Good Standing 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.

The honesty, integrity and good standing requirement is ongoing. Section 2(4) of BN 194 of 2017 Chapter 2 requires that good standing, 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.
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, integrity and good standing 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, integrity and good standing of the FSP, KI, within five (5) years before application, approval or appointment.

The FSP had its authorisation to carry on business/any license withdrawn or suspended by any regulatory or supervisory body because of an act of dishonesty, negligence, incompetence or mismanagement, 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.

3.7 Implications for no longer Meeting Requirements

These are the implications for a key individual should they no longer meet the good standing, honesty, integrity and good standing requirements.

3.7.1 Changes in the Personal Circumstances of Key Individuals

Section 13(2)(a) of the FAIS Act and BN 194 of 2017 Chapter 2 requires that the FSP must be AT ALL TIMES satisfied that the key individual meets the requirements of honesty, integrity and good standing 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, integrity and good standing, 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, integrity and good standing 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 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.38

3.8 Competence Requirements for a Key Individual

Note: This section must be studied in conjunction with the following Board Notices:

- 194 of 2017 – Part 3 – minimum qualification
- 194 of 2017 – Part 4 – Regulatory examinations
- 194 of 2017 – Part 5 – Class of Business Training and Product Training
- 194 of 2017 – Chapter 4 - CPD

The competency requirements for a key individual include the following:

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

3.8.1 Experience Requirements for Key Individuals

The key individual's experience39 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.

3.8.1.1 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:

38 Section 2(b)(iii) of Board Notice 122 of 2003 read together with Section 8(1)(i) and (ii) of the Act.
39 BN 194 of 2017 – Chapter 3 Parts 2, 3, 4 & 5
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 II: For 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 FSCA (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.

3.8.2 Experience Required for Product Categories

BN 194 of 2017 – Chapter 3 Parts 2, 3, 4 & 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.

40 BN 194 of 2017 – Chapter 3 Parts 2, 3, 4 & 5
### Table applicable to Category I:

<table>
<thead>
<tr>
<th>Column A: Financial products</th>
<th>Column B: Advice: Min. experience</th>
<th>Column C: Intermediary services: Min. 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 Shares</td>
<td>2 years</td>
<td>1 year</td>
</tr>
<tr>
<td>1.9 Money-market instruments</td>
<td>2 years</td>
<td>1 year</td>
</tr>
<tr>
<td>1.10 Debentures and securitised debt</td>
<td>2 years</td>
<td>1 year</td>
</tr>
<tr>
<td>1.11 Warrants, certificates or other instruments</td>
<td>2 years</td>
<td>1 year</td>
</tr>
<tr>
<td>1.12 Bonds</td>
<td>2 years</td>
<td>1 year</td>
</tr>
<tr>
<td>1.13 Derivative instruments</td>
<td>2 years</td>
<td>1 year</td>
</tr>
<tr>
<td>1.14 Participatory interest in a collective investment scheme</td>
<td>1 year</td>
<td>1 year</td>
</tr>
<tr>
<td>1.15 Forex Investment</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>6 months</td>
</tr>
<tr>
<td>1.21 Long-term Insurance subcategory B2-A</td>
<td>1 year</td>
<td>6 months</td>
</tr>
<tr>
<td>1.22 Long-term Insurance subcategory B1-A</td>
<td>1 year</td>
<td>6 months</td>
</tr>
<tr>
<td>1.23 Short-term Insurance Personal Lines A1</td>
<td>1 year</td>
<td>6 months</td>
</tr>
<tr>
<td>1.24 Structured Deposits</td>
<td>2 years</td>
<td>1 year</td>
</tr>
<tr>
<td>1.25 Securities and instruments</td>
<td>2 years</td>
<td>1 year</td>
</tr>
<tr>
<td>1.26 Participatory interest in a CIS hedge fund</td>
<td>2 years</td>
<td>1 year</td>
</tr>
</tbody>
</table>
Table applicable to Category II:

<table>
<thead>
<tr>
<th>Column A Financial Product</th>
<th>Column B: Minimum Experience</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1. Long-term Insurance subcategory B1</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. Shares</td>
<td>3 years</td>
</tr>
<tr>
<td>2.6. Money market instruments</td>
<td>3 years</td>
</tr>
<tr>
<td>2.7. Debentures and securitised debt</td>
<td>3 years</td>
</tr>
<tr>
<td>2.8. Warrants, certificates and other instruments</td>
<td>3 years</td>
</tr>
<tr>
<td>2.9. Bonds</td>
<td>3 years</td>
</tr>
<tr>
<td>2.10. Derivative instruments</td>
<td>3 years</td>
</tr>
<tr>
<td>2.11. Participatory interests in a collective investment scheme</td>
<td>2 years</td>
</tr>
<tr>
<td>2.12. Forex Investment</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. Long-term Insurance subcategory B2</td>
<td>2 years</td>
</tr>
<tr>
<td>2.16. Long-term Insurance subcategory B2-A</td>
<td>2 years</td>
</tr>
<tr>
<td>2.17. Long-term Insurance subcategory B1-A</td>
<td>2 years</td>
</tr>
<tr>
<td>2.18. Structured Deposits</td>
<td>3 years</td>
</tr>
<tr>
<td>2.19. Securities and instruments</td>
<td>3 years</td>
</tr>
<tr>
<td>2.20. Participatory interest in a CIS hedge fund</td>
<td>3 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.
3.8.3 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 license 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).

3.8.4 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;
- 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 license changes to include the financial services in other subcategories, the experience requirements of the other subcategories must be met.
3.8.5 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.

3.8.6 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 could have been gained simultaneously in multiple subcategories, even while working under supervision, provided that proof of such experience can be submitted.

3.8.7 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; and
- may have been gained in the management and/or oversight of services similar to or corresponding to the financial services rendered by the provider.

Although not a ‘new’ concept, the Registrar has specifically included a section dealing with when the experience of an FSP, KI and Rep will lapse. If an FSP or Representative has not rendered the particular financial service in respect of a particular financial product relevant to a particular category of FSP for a period of 5 consecutive years, the experience will lapse. This means a person will have to obtain the experience again in order to meet the fit and proper requirement. Similarly, the experience of a KI will lapse if the KI has not managed or overseen a specific financial service relating to a particular category of FSP for a period of 5 consecutive years. It will, therefore, be important for FSPs to be able to show the required ongoing experience gained which is defined as, “continuous practical working experience that entails the active and on-going gaining of knowledge, skills and expertise.”

3.9 On-going Training and Development Requirements for Key Individuals

It is important that FSPs maintain a competence register in order to track compliance with the relevant requirements and to provide proof to the Registrar, if requested to do so. Authorised Financial Services Providers (FSPs), Key Individuals (KIs) and Representatives (Reps) must meet certain competence requirements which are set out in the Fit and Proper Requirements. The new Fit and Proper Requirements introduce a formal definition of “competence" which means “having the skills, knowledge and expertise needed for the proper discharge of a person’s responsibilities in the performance of his or her functions.”

The competence requirements prescribed in the new Fit and Proper Requirements have been broadened to ensure that FSPs, KIs and Reps provide a professional financial service.

There are some exemptions for certain FSPs, KIs and Reps and transitional arrangements for FSPs, KIs and Reps who are already authorised when the new Fit and Proper Requirements commence on 1 April 2018. Any FSP or person authorised after this date, and who does not qualify for an exemption, will have to meet the full requirements.
3.9.1 Qualifications Requirements for Key Individuals

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.

3.9.2 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:

- evaluate the content of the qualifications; and
- 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 3.4: 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, integrity and good standing</td>
</tr>
</tbody>
</table>
3.9.3 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; and
- If a qualification, in terms of content, matches the qualifying criteria 100%, it is recognised as a Specific (SP) qualification.

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 FSCA (FSB) for recognition of the particular qualification, if the qualification is appropriate.

3.9.3.1 Qualifications List

We are looking at an extract from Board Notice 194 of 2017 - List 1 for Category I FSPs.
Below is an example. Refer to the Board Notice for an extensive list.

<table>
<thead>
<tr>
<th>All Categories</th>
<th>Equities Settlement</th>
<th>Mercantile Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actuarial Science</td>
<td>Equity Investments</td>
<td>Micro-economics</td>
</tr>
<tr>
<td>Advanced Investment Advice</td>
<td>Equity/Equities</td>
<td>Money Laundering Control</td>
</tr>
<tr>
<td>Agricultural Economics</td>
<td>Estate and Trust Law</td>
<td>Money laundering schemes</td>
</tr>
<tr>
<td>Applied Accountancy Skills</td>
<td>Estate Planning</td>
<td>Money Market</td>
</tr>
<tr>
<td>Applied Mathematics</td>
<td>Ethics</td>
<td>Money Market Settlement</td>
</tr>
<tr>
<td>Applied Statistics</td>
<td>Finance</td>
<td>Network Administration</td>
</tr>
<tr>
<td>Applied Time Value of Money</td>
<td>Finance For Non-Financial Managers</td>
<td>Operational Risk Management</td>
</tr>
<tr>
<td>Asset Classes &amp; Basic Investment Principles</td>
<td>Financial Accounting</td>
<td>Payment Of Entitlement</td>
</tr>
<tr>
<td>Auditing</td>
<td>Financial Advice</td>
<td>Performance and Risk Strategy</td>
</tr>
<tr>
<td>Auditing and Internal Control</td>
<td>Financial Analysis</td>
<td>Personal Financial Planning</td>
</tr>
<tr>
<td>Authorisations And Approvals (Trading)</td>
<td>Financial Calculations</td>
<td>Personal Insurance Products and Practice</td>
</tr>
<tr>
<td>Banking</td>
<td>Financial Engineering</td>
<td>Portfolio Management</td>
</tr>
<tr>
<td>Banking Operations</td>
<td>Financial Governance</td>
<td>Practical Accounting Data Processing</td>
</tr>
<tr>
<td>Basic Economic Principles</td>
<td>Financial Management</td>
<td>Primary, secondary and wholesale markets</td>
</tr>
<tr>
<td>Blockchain</td>
<td>Financial Market Regulatory Environment</td>
<td>Principles of Insurance</td>
</tr>
<tr>
<td>Bond and stock markets</td>
<td>Financial Markets</td>
<td>Principles of Life Insurance</td>
</tr>
<tr>
<td>Bonds Settlement</td>
<td>Financial Operations</td>
<td>Principles of Taxation</td>
</tr>
<tr>
<td>Business Administration</td>
<td>Financial Planning</td>
<td>Process Management (Process Modeling And Control)</td>
</tr>
<tr>
<td>Business Assurance</td>
<td>Financial Planning Principles</td>
<td>Production Management</td>
</tr>
<tr>
<td>Business Economics</td>
<td>Financial Reporting</td>
<td>Prudential Requirements</td>
</tr>
<tr>
<td>Business Entities</td>
<td>Financial Services Industry</td>
<td>Quality Control In Call Centres</td>
</tr>
<tr>
<td>Business Environment</td>
<td>Financial Services Operations</td>
<td>Quantitative Economics</td>
</tr>
<tr>
<td>Business Ethics</td>
<td>Financial Services Preparations</td>
<td>Quantitative Finance</td>
</tr>
<tr>
<td>Business Finance</td>
<td>Financial Statements</td>
<td>Quantitative Investment Analysis</td>
</tr>
</tbody>
</table>
Table 3.5

<table>
<thead>
<tr>
<th>A key individual who only manages and oversees</th>
<th>must have obtained qualification relevant to key individuals prior to being appointed and approved as a key individual.</th>
</tr>
</thead>
<tbody>
<tr>
<td>A key individual who manages and oversees, acts as a representative and has adequate product experience</td>
<td>must have obtained the relevant qualification recognised for the financial product(s) the key individual is authorised for as a representative.</td>
</tr>
</tbody>
</table>

Remember, a relevant qualification is just ONE (1) of the fit and proper competency requirements; the key individual must still have the required management and oversight experience as well as meeting the other requirements.

3.9.4 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.

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.

If the key individual is also acting as a representative, he will have to complete the applicable regulatory examination (RE5).
3.9.4.1 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 RE1).
- Key individuals fulfilling the roles of representatives must complete the relevant (category) key individual first-level regulatory examination (RE1), as well as the relevant regulatory examination applicable to representatives (RE5).
- 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.

3.9.5 Continuous Professional Development

CPD is now a reality and this means that FSPs must maintain and update the knowledge and skills that are appropriate for the activities of its Key Individuals and Reps by complying with minimum CPD requirements.
3.9.5.1 What will Count for CPD?
Various requirements must be met in order to meet CPD standards. For example, the CPD activities must:

- be relevant to the function and roles of the key individuals and Reps;
- contribute to the skill and professional standards of the FSP;
- address needs or gaps in the technical and generic knowledge of the KI;
- ensure that KIs and Reps understand the environment in which they are rendering services; and
- take into consideration changing conditions relevant to the products for which they are authorised.

A CPD activity, in terms of the definition, must be accredited by a Professional Body who must also allocate an hourly value to the activity (or part thereof), and it must be verifiable.

It is interesting to note that product specific training (mentioned above) does not count for CPD purposes.

3.9.5.2 Who is affected by CPD?
As a general rule, the CPD requirements apply to all FSPs, KIs and Reps. But, they do not apply to Category I FSPs (including their KIs and Reps) that are authorised only to render financial services in respect of Long-term Insurance subcategory A and/or Friendly Society Benefits.

3.9.5.3 How many CPD hours are required?
The minimum number of CPD hours per 12-month cycle that FSPs, KIs and Reps need to go through depends on how and for what they are authorised. In summary, where FSPs, KIs and/or Reps are authorised to render or oversee the rendering of financial services in:

- more than one class of business (e.g. Investments and Long-Term Insurance) they must complete a minimum of 18 hours of CPD activities;
- more than one subclass of business within a single class of business (e.g. Motor policy and Property policy under ST Insurance: personal lines) – 12 hours of CPD activities; and
- single subclass of business within one class of business must complete 6 hours of CPD activities.

There is a concession for FSPs, KIs and Reps that are authorised, approved or appointed for less than 12 months in a particular CPD cycle. In their case, they need only complete a pro-rated minimum number of CPD hours. Also, similar pro-rating will apply where a Rep is continuously absent from work if that absence is due to maternity leave; long-term illness or disability; or the representative’s caring responsibilities to care for a family member who has a long-term illness or disability.
3.9.5.4 Planning and Recording CPD

Each CPD cycle will run for 12 months, from 1 June every year to 31 May of the following year and FSPs must, within 30 days after each cycle, update their CPD in their competence register. Our advice is rather to do this as and when the training takes place.

In addition to keeping these records, all FSPs must have policies and procedures that set out how they will maintain, update and develop the knowledge and skills that are appropriate for the activities of their KIs and Reps. It should also include training plans for each CPD cycle that address needs and gaps and should demonstrate that the CPD will continually improve the professional standards and practices of the FSP.

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:

- 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.


3.9.5.5 Calculations for CPD Hours

\[(X ÷ 12) \times Y = Z\]

- \(X =\) Number of annual required CPD hours
- \(Y =\) number of months authorised, approved or appointed during a particular CPD cycle
- \(Z =\) Required pro rata CPD hours

3.9.5.6 Calculations for the Reduction of CPD Hours

\[(X ÷ 12) \times Y = Z\]

- \(X =\) Number of annual required CPD hours
- \(Y =\) number of months absent from work in a particular CPD cycle
- \(Z =\) Required pro rata CPD hours
3.9.6 Class of Business Training

3.9.6.1 What is a Class of Business?

The product categories that an FSP can be licensed for, have been divided into 9 broad classes, each with its own subclasses. For example, Short-term Insurance Personal Lines is a class of business with subclasses such as ‘Personal Lines: Motor policy, Personal Lines: Accident and health policy’, etc. Investments is another class with shares, retirement annuities and derivatives being some of the subclasses.

3.9.6.2 What is Class of Business Training?

Class of business training must include training on the general and special characteristics of the range of financial products within the class, the typical fee structures, charges and other general risks relevant to the products in that class, appropriateness of different products or features for different types of clients, how economic factors may impact these products or the effect of applicable legislation such as tax.

Class of business training can only be provided by an accredited provider (as defined) or an education institution. Training providers will be accredited by Skills Education Training Authorities (SETA) and according to Quality Council for Trades and Occupations (QCTO) criteria.

3.9.6.3 When does the Class of Business Training Requirement Commence?

The provisions which relate to class of business training commence on 1 August 2018. However, there are a number of transitional arrangements which apply – details have been provided below.

3.9.6.4 Who does Class of Business Training apply to?

As a rule, class of business training generally applies to all FSPs, KIs and Reps. But, there are some entities that are exempted (see Figure 4.3).

FSPs and Reps must complete class of business training **before** rendering a financial service in relation to a product and KIs must, **prior** to managing or overseeing any financial service, complete class of business training for those classes that they are approved for.

| Category I FSPs and KIs and reps authorised, approved or appointed only for Long-term insurance subcategory A and/or Friendly Society Benefits |
| Category I reps only appointed for execution of sales for Tier 1 financial products (subject to conditions) |
| Category I reps only appointed for Tier 2 financial products |

**Figure 3.3 – Exempted from Class of Business**
3.9.6.5 Transitional Arrangements for FSPs, KIs and ‘Full’ Reps

There is some relief, however, for FSPs, KIs and ‘full’ Reps (i.e. not under supervision), authorised prior to 1 April 2018 as their experience is recognised and they are considered to have completed the class of business training. It goes without saying, that any changes made after 1 April 2018, will require compliance with the new requirements. One of the conditions of these transitional arrangements is that Category I KIs will have to inform the Registrar of the different classes of business they currently manage and oversee across all FSPs where the KI is appointed.

3.9.6.6 Transitional arrangements for Reps under Supervision

A Rep who is working under supervision on 1 April 2018 or who is appointed under supervision between 1 April and 31 July 2018, has 1 year (i.e. until 31 July 2019) to meet the class of business training requirements.

3.9.7 Product Specific Training

3.9.7.1 What is Product Specific Training?

Product specific training is training about a particular financial product, including any amendments or changes to that particular financial product. In terms of the definition, this training must include an assessment.

A lot of detail is provided about what must be included in product specific training, such as:

- the specific characteristics, terms and features of the product,
- how the product and any underlying features are structured,
- the fee structure, charges and other costs associated with the product and how these will impact on real return or benefits of the product,
- details of guarantees and risks,
- the impact of tax on benefits or real return,
- how abnormal market conditions may impact how the product performs,
- any lock-in periods,
- identity of the product supplier and providers of any underlying component as well as their good standing and regulatory status, etc.

The Registrar does not prescribe who is able to offer product specific training, but we anticipate that many product suppliers who are the experts on their products, will make this type of training available to FSPs.

The regulations put the onus on the FSP to ensure that KIs and Reps have gone through product specific training, but we would strongly advise FSPs, KIs and Reps to ask the product suppliers with whom they do business whether they will be providing such training.
3.9.7.2 When does the Product Specific Training Requirement Commence?

The commencement date for the product specific training requirements is 1 May 2018. However, there are again certain exemptions and transitional arrangements which FSPs must be cognisant of.

3.9.7.3 Who does Product Specific Training Apply to?

Product specific training applies to all FSPs, KIs and Reps, except:

- Category II, Category IIA or Category III – FSPs and Reps, provided they comply with all other competency requirements;
- KIs of all Categories of FSPs not giving advice; and
- Those FSPs, KIs and Reps illustrated in Figure 4.3 (above).

Similar to class of business training, FSPs and Reps must complete product specific training before giving advice and/or providing an intermediary service relevant to the financial product for which they are approved or appointed.

3.9.7.4 Transitional Arrangements for FSPs and ‘Full’ Reps

FSPs and Reps (excluding Reps under supervision) who are authorised and appointed before the commencement date of the Board Notice (i.e. 1 April 2018) are deemed to have completed the product specific training only for those particular financial products that they were appointed for at that date and they must have given advice or rendered intermediary services in respect of those particular financial products. However, if there are any changes or amendments to these products, then they must complete product specific training on the amendments or changes. While this gives some relief to those who are already active in the industry, FSPs taking on new entrants as Reps will have to carefully plan for their training needs as this will require provision for additional time and costs.

3.9.7.5 Transitional Arrangements for Reps under Supervision

A Rep working under supervision as at 1 April 2018, or a person appointed under supervision during April 2018, has until 31 July 2018 (i.e. three months from 1 May 2018) to comply with the product specific training requirements. Three months is not a long time, and again, we would strongly advise FSPs to contact the product suppliers with whom they do business about such training.

3.9.8 Record Keeping Required

The below record keeping is required for the on-going meeting of fit and proper requirements for Key Individuals.

3.9.8.1 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; and
- initial and ongoing checks on the fitness and propriety of representatives and key individuals, such as honesty, integrity and good standing.

### 3.9.8.2 Record Keeping and Reporting Requirements for Class of Business and Product Specific Training

One of the responsibilities of an FSP is to make sure that it can show that it is monitoring and tracking the competence of its KIs and Reps and that they are receiving appropriate and relevant training. FSPs must also demonstrate that the technical knowledge, skill and expertise they obtain is evaluated and reviewed as the market changes to ensure that they remain competent for the activities they perform. FSPs need to ensure that its KIs and Reps are proficient in respect of the product and understand the class of business and product specific training relevant to the products they are authorised for.

FSPs must be able to report to the Registrar if asked to do so, and therefore they must implement a Competence Register by 1 May 2018 where they must keep a record of all qualifications, regulatory exams, class of business and product specific training (provided both internally and obtained externally) and CPD.

FSPs must update the Competence Register with all class of business and product specific training completed by it, its KIs and Reps within 15 days after the training occurred and retain all information and documentation relating to the training for at least 5 years.

Each CPD cycle will run for 12 months, from 1 June every year to 31 May of the following year and FSPs must, within 30 days after each cycle, update their CPD in their competence register. Our advice is rather to do this as and when the training takes place.

In addition to keeping these records, all FSPs must have policies and procedures that set out how they will maintain, update and develop the knowledge and skills that are appropriate for the activities of their KIs and Reps. It should also include training plans for each CPD cycle that address needs and gaps and should demonstrate that the CPD will continually improve the professional standards and practices of the FSP.
### 3.10 Knowledge Test – Chapter 3

**Test your knowledge**

| 1. Which of the following is TRUE? |  
|-----------------------------------|---|
| a. Section 7 of the FAIS Act includes the qualifications of Representatives and duties of FSPs towards the maintenance of the FAIS license | i) a and d only |
| b. FSPs may only have one license | ii) b and c only |
| c. The licensing conditions will never include exemptions applicable to the FSP | iii) a and b only |
| d. The financial services of the FSP are limited to the specific categories and sub product for which a license is issued | iv) d only |

| 2. Which of the following statements are TRUE: Choose one answer. |  
|-----------------------------------------------|---|
| a. Records of ongoing compliance by Representatives as required by Section 13(1) and (2) of the Act include the necessary documentation to confirm that they represent the FSP in terms of a mandate or contract and that the FSP accepts responsibility for the activities of the Representative accordingly |  
| b. Complaints must be recorded in accordance with the complaints policy of the FSCA (FSB) |  
| c. It is the compliance officer’s duty to ensure that client information is securely filed and protected against any misuse by any unauthorised person |  
| d. An FSP may disclose confidential information acquired or obtained from a client if the client’s employer requested information verbally and in writing |  

| 3. Which of the following roles may be fulfilled by a Key Individual in terms of the FAIS Act? Choose the CORRECT roles. |  
|-------------------------------------------------|---|
| a. Managing and overseeing the FSPs business |  
| b. Compliance and auditing |  
| c. Being a Key Individual and a Representative |  
| d. Being an accountant and Key Individual |  

| 4. All Key Individuals must meet critical Fit and Proper requirements. Choose the INCORRECT statement. Fit and Proper includes: |  
|-------------------------------------------------|---|
| a. Honesty and Integrity |  
| b. Competence in all financial product categories |  
| c. Operational ability |  
| d. All of the above |  

---
5. All FSPs, Key Individuals and Representatives need to meet specific requirements and criteria to be able to render a service and be licensed. Choose the CORRECT one.

a. Honesty and integrity  
b. Competence (qualifications and experience)  
c. Management ability  
d. All of the above

6. Which of the following statements are FALSE? Key Individuals or FSPs have certain responsibilities in relation to the management of services under supervision.

a. The FSP/Key Individual must satisfy the Registrar that the business has the financial ability to provide services under supervision  
b. The FSP/Key Individual must satisfy the Registrar that there is a competent person to act as supervisor (which can be the FSP or the Key Individual or a Representative) and that person must only have supervisory experience  
c. The FSP/Key Individual must place the supervisees who are getting the experience in the subcategories for which they are appointed or in a position where he/she can gain experience in the specific subcategory  
d. The FSP/Key Individual must ensure that Representatives who act under supervision must complete RE2 and the relevant qualification for the applicable category or subcategory within three years from the date of appointment

7. Complete the following: The key individual is the person responsible for __________ the activities of the financial services provider and its representatives when they render financial services to clients with regard to financial products.

a. Managing and overseeing  
b. Advising and recording  
c. Keeping records of  
d. None of the above

8. Analyse the following statements and identify the TRUE statement:

a. The activities of the FSP refer to the rendering of an intermediary service and/or advice relating to the financial products for which the FSP is licensed (category and subcategories). The key individual is the person who the Registrar holds responsible for compliance and non-adherence to the Act and subordinate legislation  
b. The activities of the FSP refer to the rendering of an intermediary service relating to the financial products for which the FSP is licensed. The key individual is the person who the Registrar holds responsible for compliance to the Act  
c. The activities of the FSP refer to the rendering advice relating to the financial products for which the FSP is licensed (category and subcategories). The key individual is the person who the Registrar holds responsible for non-adherence to the Act and subordinate legislation  
d. The activities of the FSP refer to the rendering of an intermediary service and/or advice relating to the financial products for which the FSP is licensed (category and subcategories). The Representative is the person who the Registrar holds responsible for compliance and non-adherence to the Act and subordinate legislation
9. Key Individuals are responsible for certain processes within the industry. Which statement is NOT a responsibility within their job function?

a. Managing and overseeing the activities relating to the FSP
b. Key Individuals bring both technical and managerial skill to their organisation
c. Legal and accounting reporting
d. A and C

10. Any person wanting to offer a financial service in respect of a financial product will need a license. The Registrar will not issue a license unless the FSP and Key Individual are able to meet all the identified requirements. Which one of the following statements are NOT a requirement and is INCORRECT?

a. Personal qualities of honesty and integrity
b. Competence and operational ability
c. Must have passed matric
d. Financial soundness
e. None of the above
Chapter 4

Adhere to the General Code of Conduct
**This topic covers the following critical learning outcomes:**

<table>
<thead>
<tr>
<th>Learning Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.1 Describe the general and specific duties of a provider.</td>
</tr>
<tr>
<td>4.2 Describe what could possibly be a conflict of interest.</td>
</tr>
<tr>
<td>4.3 Discuss the impact of requirements regarding the disclosure rules of the FSP.</td>
</tr>
<tr>
<td>4.4 Apply the requirements of the General Code of Conduct for FSP’s and Representatives.</td>
</tr>
<tr>
<td>4.5 Explain the disclosures that need to be made by a representative before rendering a financial service.</td>
</tr>
<tr>
<td>4.6 Explain disclosures that must be made by a representative when rendering a financial Service.</td>
</tr>
<tr>
<td>4.7 Describe the disclosure requirements regarding the provider, product supplier and financial service</td>
</tr>
<tr>
<td>4.8 Explain the specific disclosure requirements regarding fees and commission</td>
</tr>
<tr>
<td>4.9 Apply disclosure requirements in terms of financial services.</td>
</tr>
<tr>
<td>4.10 Explain the process of advice that should be followed by a representative.</td>
</tr>
<tr>
<td>4.11 Explain the requirements when a representative receives Custody of financial products and funds.</td>
</tr>
<tr>
<td>4.12 Explain the manner in which complaints are to be handled by the representative as required by the General Code of Conduct. For FSP’s and Representatives</td>
</tr>
<tr>
<td>4.13 Explain the manner in which complaints are to be handled by the representative as required by the General Code of Conduct. For FSP’s and Representatives</td>
</tr>
<tr>
<td>4.14 Follow the complaints procedures and processes that are in place. For the representative</td>
</tr>
<tr>
<td>4.15 Explain the requirements of the General Code of conduct for FSP’s and Representatives relating to the terminations of Agreement</td>
</tr>
</tbody>
</table>
4. Adhere to the General Code of Conduct

4.1 Processes to Manage Conflict of Interest

4.1.1 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.

4.1.2 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.
Table 4.1

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

<table>
<thead>
<tr>
<th>When a provider (including a representative) renders a financial service the provider must disclose to the client:</th>
<th>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.</th>
</tr>
</thead>
</table>

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. 41

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

<table>
<thead>
<tr>
<th>A forex investment intermediary must: 42</th>
<th>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.</th>
</tr>
</thead>
</table>

In addition to the above, the General Code was amended in 2010 43 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)
- 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

---

41 Sections 3(1)(b) & (c) of the General Code
42 Section 3(h)(i)& (ii) of the Forex Code
43 Section 3A of Board Notice 58 of 2010
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:

- omission 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.

4.2 Conflict of Interest

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.

When a provider 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 such service and 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.

4.2.1 Conflict of Interest Policy

• Every FSP must have, maintain and implement the policy, and it must:
  o 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;
  o Specify the „type and basis“ on which a representative will qualify for a financial interest offered and that it is not prohibited;
  o 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;
  o The policy must be easy to understand;
  o The policy must be adopted by the Board;
• Employees, representatives and associates must be aware of policy through training and educational material;
• Providers must monitor compliance with requirements pertaining to conflicts of interest and review the policy annually;
• 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 provided in line with contractual relationship and reasonable requests or instructions of the client. These must be executed as soon as possible with due regard to the interests of the client whose interests must be prioritised over any interests of the provider or a representative.
• Transactions of a client must be accurately accounted for.

4.3 Measure by FSPs to Manage Potential Conflicts of Interest

Note: This section must be studied in conjunction with the following Board Notices:
• 127 of 2010 – Sections 3(2), 4(2) & 4(3)

When a provider renders a financial service, representations made, and information provided to a client by the provider must be provided in plain language to, avoid uncertainty or confusion and not be misleading:

The FSP involved must not deal in any financial product for its own benefit, account or interest where the dealing is based upon advance knowledge of pending transactions for or with clients. In addition, any non-public information, that is disclosure and which could be expected to affect the prices of such products.
4.4 Apply the Requirements of the General Code of Conduct for FSPs and Representatives

Note: This section must be studied in conjunction with the following Board Notices:

- 104 of 2008 – Sections 4(9) & 9(d)
- General Code of conduct – Sections 8 and 21

Subject to the provision of the General Code of Conduct, a provider other than a direct marketer, 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 reasonable and appropriate, provide to the client any material contractual information and any material illustrations, projections or forecasts in the possession of the provider;

in particular, at the earliest reasonable opportunity, provide, where applicable, full and appropriate information of the following:

- name, class or type of financial product concerned;
- nature and extent of benefits to be provided, including details of the manner in which such benefits are derived or calculated and the manner in which they will accrue or be paid;
- where the financial product is marketed or positioned as an investment or as having an investment component;
- concise details of the manner in which the value of the investment is determined, including concise details of any underlying assets or other financial instruments;
- separate disclosure of any charges and fees to be levied against the product, including the amount and frequency thereof and, where the specific structure of the product entails other underlying financial products, in such a manner as to enable the client to determine the net investment amount ultimately invested for the benefit of the client; and
- on request, information concerning the past investment performance of the product over periods and at intervals which are reasonable with regard to the type of product involved including a warning that past performances are not necessarily indicative of future performances;
- the nature and extent of monetary obligations assumed by the client, directly or indirectly, in favour of the product supplier, including the manner of payment or discharge thereof, the frequency thereof, the consequences of non-compliance and, subject to subparagraph (xiv), any anticipated or contractual escalations, increases or additions;
- the nature and extent of monetary obligations assumed by the client, directly or indirectly, in favour of the provider, including the manner of payment or discharge thereof, the frequency thereof, and the consequences of non-compliance;
• the nature, extent and frequency of any incentive, remuneration, consideration, commission, fee or brokerages ("valuable consideration"), which will or may become payable to the provider, directly or indirectly, by any product supplier or any person other than the client, or for which the provider may become eligible, as a result of rendering of the financial service, as well as the identity of the product supplier or other person providing or offering the valuable consideration; Provided that where the maximum amount or rate of such valuable consideration is prescribed by any law, the provider may (subject to clause 3(1)(a)(vii)) elect to disclose either the actual amount applicable or such prescribed maximum amount or rate;

• concise details of any special terms or conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided;

• any guaranteed minimum benefits or other guarantees;

• to what extent the product is readily realisable or the funds concerned are accessible;

• any restrictions on or penalties for early termination of or withdrawal from the product, or other effects, if any, of such termination or withdrawal;

• material tax considerations;

• whether cooling off rights are offered and if so, procedures for the exercise of such rights;

• any material investment or other risks associated with the product; and in the case of an insurance product in respect of which provision is made for increase of premiums, the amount of the increased premium for the first five years and thereafter on a five year basis but not exceeding twenty years;

• fully inform a client in regard to the completion or submission of any transaction requirement–

• that all material facts must be accurately and properly disclosed, and that the accuracy and completeness of all answers, statements or other information provided by or on behalf of the client, are the client’s own responsibility;

• that if the provider completes or submits any transaction requirement on behalf of the client, the client should be satisfied as to the accuracy and completeness of the details;

• of the possible consequences of the misrepresentation or non-disclosure of a material fact or the inclusion of incorrect information; and

• that the client must on request be supplied with a copy or written or printed record of any transaction.

4.5 Disclosures that need to be Made before Rendering a Financial Service

What must be Disclosed?

An FSP/representative, 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.

4.6 Disclosures that must be made when Rendering a Financial Service

Representatives must disclose the following:

• 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, integrity and good standing requirements.

4.6.1 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:

• The FSP must satisfy the Registrar that it has the required operational ability to facilitate services under supervision;
• Representatives may work under supervision in Categories I, II, IIA, III and IV;
• There are different “entry level” requirements for each of these categories;
• Representatives must get their qualifications within the prescribed time;
• Representatives have certain duties while working under supervision. Refer to the summary of the various duties and responsibilities explained previously;
• Supervisors have certain duties while overseeing representatives. Refer to the summary of the various duties and responsibilities explained previously.
4.7 Requirements for an FSP when Custody of Financial Products and Funds Occur

The General Code 44 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.

The following must be done:

Table 4.2

| Separate bank account | • 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.  
• The FSP is responsible for bank charges except the charges that relate to deposit or withdrawal, which the client must pay. 45  
• The FSP must pay all interest accumulating in the account to the client or owner of the funds. 46 |
|---|---|
| Receipt of funds | • When the FSP receives funds from a client, without a bank being involved, it must issue a written confirmation when the money is received. 47  
• The money must be paid into the bank account within one (1) business day of receipt. 48 |
| Receipt of documents | • 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. 49 |
| Safeguarding | • 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:  
• the funds or financial products are dealt with according to the client’s mandate. 50 |

44 PART VIII, Section 10 of the General Code  
45 Section 10(1)(d)(iii) of the General Code  
46 Section 10(1)(d)(iv) of the General Code  
47 Section 10(1)(b) of the General Code  
48 Section 10(1)(d)(i) of the General Code  
49 Section 10(1)(a) of the General Code  
50 Section 10(1)(e)(i) of the General Code
- the funds or financial products are easily distinguished from the FSPs' funds or assets. 51
- 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, money-laundering legislation may prevent the client from access it). 52

### General Code of Conduct 10 (1)

10. (1) Subject to the provisions of any other applicable Act, a provider who receives or holds financial products or funds of or on behalf of a client must account for such products or funds property and promptly and—

(a) when documents of title are lodged with the provider on behalf of the client, the provider must immediately provide written confirmation of receipt thereof which contains a description of the documents that is sufficient to identify them;

(b) when a provider receives funds into safe custody without the mediation of a bank, the provider must on receipt of the money, issue a written confirmation of receipt thereof;

(c) where the provider, or a third party on behalf of either of them, is in control of such financial products or funds, take reasonable steps to ensure that they are adequately safeguarded;

(d) open and maintain a separate account, designated for client funds, at a bank and –

(i) must within one business day of receipt pay into the account all funds held on behalf of clients;

(ii) ensure that the separate account only contains funds of clients and not those of the provider;

(iii) pay all bank charges in respect of the separate account except that bank charges specifically relating to a deposit or withdrawal of the funds of the client are for the client's own account; and

(iv) ensure that any interest accruing to the funds in the separate account is payable to the client or the owner of the funds;

(e) take reasonable steps to ensure –

(i) that at all times such financial products or funds are dealt with strictly in accordance with the mandate given to the provider;

(ii) that client financial products or funds are readily discernible from private assets or funds of the provider; and

(iii) that, subject to any applicable contractual or statutory provisions, a client has ready access to any amount paid into the separate account, less any deductions which are authorised, and charges and fees required or authorised to be paid by law.

51 Section 10(1)(e)(ii) of the General Code
52 Section 10(1)(e)(iii) of the General Code
General Code of Conduct 11

11. A provider must at all times have and effectively employ the resources, procedures and appropriate technological systems that can reasonably be expected to eliminate as far as reasonably possible, the risk that clients, product suppliers and other providers or representatives will suffer financial loss through theft, fraud, other dishonest acts, poor administration, negligence, professional misconduct or culpable omissions.

General Code of Conduct 12

Specific control objectives

12. A provider, excluding a representative, must, without limiting the generality of Section 11, structure the internal control procedures concerned so as to provide reasonable assurance that –

(a) the relevant business can be carried on in an orderly and efficient manner;
(b) financial and other information used or provided by the provider will be reliable; and
(d) all applicable laws are complied with.

General Code of Conduct 20

Termination of Agreement or Business

20. Subject to the Act, and Sections 3(2) and (3) of this Code -

(a) (i) a provider must, subject to any contractual obligations, give immediate effect to a request of a client who voluntarily seeks to terminate any agreement with the provider or relating to a financial product or advice;

(c) where a representative ceases to operate as a representative of a provider, such provider must immediately take, where reasonably necessary or appropriate in consultation with the clients and product suppliers concerned, reasonable steps to notify all affected clients accordingly and ensure that outstanding business is completed or transferred to such provider or another representative of that provider.
4.8 Requirements of the General Code of Conduct for FSPs and Representatives relating to Marketing and Advertising

4.8.1 Advertising

The General Code requires that FSPs or representatives must adhere to certain advertising principles.

Table 4.3

<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</td>
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<tr>
<td></td>
<td>reasonable prospect of being met under current circumstances;</td>
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<tr>
<td></td>
<td>• make it clear that they are not guaranteed and are provided for</td>
</tr>
<tr>
<td></td>
<td>illustrative purposes only;</td>
</tr>
<tr>
<td></td>
<td>• show dependence on performance of underlying assets or variable</td>
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<tr>
<td></td>
<td>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 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

53 Section 14(1)(a) to (c) of the General Code
54 Section 14(2) of the General Code
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 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.55

4.8.2 Direct Marketing

In the General Code of Conduct, the term “direct marketer” means a provider who, in the normal course of business, provides all or the predominant part of the financial services concerned in the form of direct marketing i.e. anything financial product or financial service sold directly to the customer typically through a contact centre.

The General Code requires that direct marketers adhere to certain advertising principles.56

Providing a Financial Service 57

When a 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 license 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.

55 Section 14(3) of the General Code
56 Section 15 of the Code
57 Section 15 (1) (a) to (e) of the General Code
Providing Advice 58

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

- 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:
  - business or trade name of the product supplier
  - legal status and relationship with product supplier
  - the following information on the product:
    - Name, class or type of financial product concerned
    - Nature and extent of benefits to be provided
    - Manner in which the benefits are calculated, specifically the manner in which the value of underlying assets in the investment is determined
    - Client's monetary obligations and the manner of payment
    - Existence of cooling rights and the procedures to exercise the rights
    - 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 the client of the costs and financial implications, before finalisation (refer to the discussion around disclosure on replacement products above).

Before concluding the transaction 59

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:

- Telephone contact details of the compliance department of the product supplier;
- To what extent the product is readily realisable or the funds concerned are accessible, where appropriate;
- Details of manner in which benefits will be paid;
- Any restrictions on or penalties for early termination or withdrawal from the product, or other effects, if any, of the termination or withdrawal;
- 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;
- Commission, consideration, fees, charges or brokerages payable to the direct marketer by the client, or by the product supplier or by any other person;

58 Section 15 (2) (a) to (c) of the General Code as amended by BN 43 of 2008
59 Section 15 (3) (a) to (l) of the General Code
• 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;

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

• In the case of an insurance product in respect of which provision is made for increase of premiums, the FSP is obliged to only make further disclosures as it applies to the contractual increases;

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

• Any guaranteed minimum benefits or other guarantees where appropriate;

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

**Record of Advice** 60

A direct marketer must give the client a record of advice (where appropriate) which must include:

• A summary of the information on which the advice was based

• The financial products which were considered

• The financial product/s that were recommended with an explanation of why the product/s were selected

**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.

**Provide Information** 61

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.

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60 Section 15 (4) of the General Code as amended by BN 43 of 2008
61 Section 15 (6) (a) to (c) of the General Code
General Code of Conduct 14

ADVERTISING AND DIRECT MARKETING

14. (1) An advertisement by any provider must -
   (a) not contain any statement, promise or forecast which is fraudulent, untrue or misleading;
   (b) if it contains –
      (i) performance data (including awards and rankings), include references to their source and date;
      (ii) illustrations, forecasts or hypothetical data –
         (aa) contain support in the form of clearly stated basic assumptions (including but not limited to any relevant assumptions in respect of performance, returns, costs and charges) with a reasonable prospect of being met under current circumstances;
         (bb) make it clear that they are not guaranteed and are provided for illustrative purposes only; and
         (cc) also contain, where returns or benefits are dependent on the performance of underlying assets or other variable market factors, clear indications of such dependence;
      (iii) a warning statement about risks involved in buying or selling a financial product, prominently render or display such statement; and
      (iv) information about past performances, also contain a warning that past performances are not necessarily indicative of future performances; and
   (b) if the investment value of a financial product mentioned in the advertisement is not guaranteed, contain a warning that no guarantees are provided.

14(2) Where a provider advertises a financial service by telephone -
   (a) an electronic, voice-logged record of all communications must be maintained. Where no financial service is rendered as a result of the advertisement, such record need not be maintained for a period exceeding 45 days.

14(3) Where a provider advertises a financial service by means of a public radio service, the advertisement must include the business name of the provider.

General Code of Conduct 15

(1) A direct marketer must, when rendering a financial service to or on behalf of a client, at the earliest reasonable opportunity furnish the client with the following particulars:
   (a) the business or trade name of the direct marketer;
   (b) confirmation whether the direct marketer is a licensed financial service provider and details of the financial services which the direct marketer is authorised to provide in terms of the relevant license and any conditions or restrictions applicable thereto;
   (c) telephone contact details of direct marketer (unless the contact was initiated by the client);
   (d) telephone contact details of the compliance department of the direct marketer;
[e] whether the direct marketer holds professional and indemnity insurance.

Provided that where the direct marketer is a representative, the information contemplated in sub-paragraphs (a) to (c) above must be provided in respect of the provider to which the representative is contracted.

(2) When providing a client with advice in respect of a product, a direct marketer must at the earliest reasonable opportunity:

(a) make enquiries to establish whether the financial product or products concerned will be appropriate, regard being had to the client's risk profile and financial needs, and circumstances;

(b) furnish the client with the following particulars where appropriate:

(i) business or trade name of the product supplier;

(ii) legal status and relationship with product supplier;

(iii) the following details in respect of the product:

(aa) Name, class or type of financial product concerned;

(bb) Nature and extent of benefits to be provided;

(cc) Manner in which such benefits are derived or calculated, with specific reference to the underlying assets of any investment component and the manner in which the value of such investment component is determined;

(dd) Monetary obligations assumed by the client as well as manner of payment;

(ee) Whether cooling off rights are offered and, if so, procedures for the exercise of such rights;

(ff) Any material investment or other risks associated with the product;

(c) when advising or being advised by a client that the financial product concerned is to replace an existing financial product held by the client, inform the client of actual and potential financial implications, costs and consequence set out in clause 8(1)(d) of this Code before any transaction is concluded.

(3) A direct marketer must prior to the conclusion of any transaction and where a contract is concluded provide the client with the following information, provided where such information is provided orally, it must be confirmed in writing within 30 days:

(a) Telephone contact details of the compliance department of the product supplier;

(b) To what extent the product is readily realisable or the funds concerned are accessible where appropriate;

(c) Details of manner in which benefits will be paid;

(d) Any restrictions on or penalties for early termination or withdrawal from the product, or other effects, if any, of such termination or withdrawal;

(e) 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;

(f) Commission, consideration, fees, charges or brokerages payable to the direct marketer by the client, or by the product supplier or by any other person;
(g) 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;

(h) Consequences of non-compliance with monetary obligations assumed by the client and any anticipated or contractual escalations, increases or additions;

(i) In the case of an insurance product in respect of which provision is made for increase of premiums, abbreviated disclosures of such contractual increases;

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

(k) Any guaranteed minimum benefits or other guarantees where appropriate.

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

(4) A direct marketer must provide a client (where applicable) with a record of advice as contemplated in Section 9(1)(a) to (c) in writing.

(5) A direct marketer shall be obliged to 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 furnished to a client telephonically need not be reduced to writing but a copy of the relevant voice-logged records must be provided, on request, to the client or Registrar within a reasonable time.

4.9 Handling Complaints

This section addresses the manner in which complaints are to be handled by the FSP as required by the General Code of Conduct for FSPs and Representatives.

The General Code prescribes the requirements for complaints handling.

Table 6.4

GENERAL OBLIGATIONS OF FSP 62

<table>
<thead>
<tr>
<th>An FSP must</th>
</tr>
</thead>
<tbody>
<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 complaint 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 satisfaction, advise the client of any further steps which may be available to the client in terms of the Act or any other law.</td>
</tr>
</tbody>
</table>

62 Section 16(2) of the General Code
SPECIFIC OBLIGATIONS OF AN 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).

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.

63 Section 19(1) and 19(2) of the General Code
General Code of Conduct 16

COMPLAINTS

GENERAL

16. (1) In this Part -

“complaint” means a complaint as defined in Section 1(1) of the Act (excluding the reference to Section 26(1)(a)(iii) therein), submitted by a client to a provider for purposes of resolution by the provider;

“internal complaint resolution system and procedures”, in relation to a provider and a client, means the system and procedures established and maintained by the provider in accordance with this Code for the resolution of complaints by clients;

“Ombud” means the Ombud for Financial Services Providers referred to in Section 20(2) of the Act;

“resolution”, or “internal resolution”, in relation to a complaint and a provider, means the process of the resolving of a complaint through and in accordance with the internal complaint resolution system and procedures of the provider;


16(2) A provider must -

(a) request that any client who has a complaint against the provider must lodge such complaint in writing;

(b) maintain a record of such complaints for a period of five years;

(c) handle complaints from clients in a timely and fair manner;

(d) take steps to investigate and respond promptly to such complaints; and

(e) where such a complaint is not resolved to the client’s satisfaction, advise the client of any further steps which may be available to the client in terms of the Act or any other law.

General Code of Conduct 18

Resolution of complaints

18. The internal complaint resolution system and procedures of the provider excluding a representative must be designed to ensure the existence and maintenance of at least the following for purposes of effective and fair resolution of complaints:

(a) availability of adequate manpower and other resources;

(b) adequate training of all relevant staff, including imparting and ensuring full knowledge of the provisions of the Act, the Rules and this Code with regard to resolution of complaints;

(c) ensure that responsibilities and mandates are delegated to facilitate complaints resolution of a
routine nature;
(d) ensure that there is provision for the escalation of non-routine serious complaints and the handling thereof by staff with adequate expertise;
(e) internal follow-up procedures to ensure avoidance of occurrences giving rise to complaints, or to improve services and complaint systems and procedures where necessary.

General Code of Conduct 19
Specific obligations
19. (1) Subject to the other provisions of this Part, the internal complaint resolution system and procedures of a provider excluding a representative must contain arrangements which –
(a) must -
(i) reduce the details of the internal complaint resolution system and procedures of the provider, including all subsequent updating or upgrading thereof, to writing;
(ii) provide that access to the procedures is at all times available to clients at any relevant office or branch of the provider, or by electronic medium, and that such availability is appropriately made known by public press or electronic announcements or separate business communications to existing clients;
(iii) include in the details envisaged in subparagraph (i), a reference to the duties of the provider and the rights of a client set out in Rule 6(a) and (b) of the Rules;
(iv) include in such details a 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; and
(v) include in such details the name, address and other contact particulars of the Ombud;
(b) must stipulate that complaints must, if possible, be submitted in writing and must contain all relevant information, and that copies of all relevant documentation must be attached thereto;
(c) must provide that the receipt of complaints is promptly acknowledged in writing to the client, with communication particulars of contact staff to be involved in the resolution of the complaint, and are properly internally recorded by the relevant staff for purposes of compliance with Section 18(b) and (d) of the Act;
(d) must make provision that after the receipt and recording of a particular complaint, the complaint will as soon as practically possible be forwarded to the relevant staff appointed to consider its resolution, and that –
(i) the complaint receives proper consideration;
(ii) appropriate management controls are available to exercise effective control and supervision of the consideration process;
(iii) the client is informed of the results of the consideration within the time referred to in Rule 6(b) of the Rules: Provided that if the outcome is not favourable to the client, full written reasons must be furnished to the client within the time referred to in Rule 6(b) of the Rules, and the client must be advised that the complaint may within six months be pursued with the Ombud whose name, address and other contact particulars must simultaneously be provided to the client.
4.10 Complaints Procedures and Processes

**General Code of Conduct 17**

**Basic principles of systems and procedures**

17. A provider, excluding a representative must maintain an internal complaint resolution system and procedures based on the following:

(a) Maintenance of a comprehensive complaints policy outlining the provider’s commitment to, and system and procedures for, internal resolution of complaints;

(b) transparency and visibility: ensuring that clients have full knowledge of the procedures for resolution of their complaints;

(c) accessibility of facilities: ensuring the existence of easy access to such procedures at any office or branch of the provider open to clients, or through ancillary postal, fax, telephone or electronic helpdesk support; and

(d) fairness: ensuring that a resolution of a complaint can during and by means of the resolution process be effected which is fair to both clients and the provider and its staff.

In any instance 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.

4.11 Termination of Agreement of Business

This section covers the requirements of the General Code of Conduct for FSPs and Representatives relating to the termination of agreement of business. 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.

If a client requests or voluntarily seeks to terminate a business relationship with the FSP regarding a financial product or service, the provider (FSP) must takes reasonable steps to ensure that the client fully understands all the implications of the termination.

4.11.1 Representative Stops to Operate

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.

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

64 Section 20 of the General Code
affected clients and ensure that any outstanding business is completed promptly or transferred to another provider.

4.11.1.1 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.
4.12 Knowledge Test – Chapter 4

Test your knowledge

1. There are certain duties and responsibilities imposed on FSPs. Choose the CORRECT statements which describe this.
   
   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 the 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. b and c

2. What is the definition of a Sole Proprietor Financial Services Provider? Choose the INCORRECT definition:
   
   a. An FSP, as a Sole Proprietor is the natural person, who is the owner of the business and will be authorised as an FSP
   b. An FSP, as a Sole Proprietor is a company or closed corporation which may be authorised as an FSP
   c. The Sole Proprietor is also the Representative for the sole proprietor FSP
   d. a and c

3. When an FSP provides a client with ongoing financial services, he/she has to provide the client with a written statement identifying the financial products and other necessary details as set out by the General Code of Conduct. How often does a written statement need to be sent to the client? Choose the INCORRECT statement.
   
   a. It may be sent quarterly
   b. It may be sent half-yearly
   c. It has to be sent annually
   d. None of the above
4. The FICA imposes certain duties on accountable institutions. Apply your knowledge of these duties and choose the correct statements.

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<table>
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<tbody>
<tr>
<td>a. Accountable institutions may keep certain records</td>
<td>I) a and d only</td>
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<tr>
<td>b. Accountable institutions may report certain information</td>
<td>II) a and c only</td>
</tr>
<tr>
<td>c. Accountable institutions must be able to establish and verify the identity of their clients</td>
<td>III) a and b only</td>
</tr>
<tr>
<td>d. Accountable institutions must implement measures that will assist them in complying with the FICA</td>
<td>IV) c and d only</td>
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5. The General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003 Part II General Provisions Section 3 states that a provider must have appropriate procedures and systems in place to -

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<tr>
<td>a. Record such verbal and written communications relating to a financial service rendered to a client as are contemplated in the Act, this Code or any other Code drafted in terms of Section 15 of the Act</td>
<td></td>
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<tr>
<td>b. Store and retrieve such records and any other material documentation relating to the client or financial service rendered to the client</td>
<td></td>
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<tr>
<td>c. Keep such client records and documentation safe from destruction</td>
<td></td>
</tr>
<tr>
<td>d. All such records must be kept for a period of five years after termination, to the knowledge of the provider, of the product concerned or, in any other case, after the rendering of the financial service concerned</td>
<td></td>
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<td>e. All of the above</td>
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6. A conflict of interest includes in its definition any situation in which an FSP or Representative has an actual or potential conflict of interest which would negatively affect the client. Which one of these statements are INCORRECT?

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<tr>
<td>a. When it influences the objective performance of the product supplier</td>
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<tr>
<td>b. When it influences the objective performance of the underlying investments</td>
<td></td>
</tr>
<tr>
<td>c. When it influences the objective performance of the FSP or representative</td>
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<tr>
<td>d. When it influences the objective performance of the Registrar</td>
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7. A conflict of interest is a situation in which an FSP or a Representative renders a financial service to a client and in rendering that service that could potentially benefit the FSP or Representative. Which statement is INCORRECT and does NOT describe a conflict of interest?

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<tr>
<td>a. When it influences his performance or its obligations to the client</td>
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<tr>
<td>b. When it prevents a Provider or Representative from rendering an unbiased and fair financial service to a client</td>
<td></td>
</tr>
<tr>
<td>c. When it prevents the representative /FSP from acting in the interest of a client</td>
<td></td>
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<tr>
<td>d. When the Representative is employed full time by the FSP</td>
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8. If a Representative is found guilty of misconduct regarding the Code of Conduct and is no longer Fit and Proper, what restrictions will be imposed? Choose the CORRECT one.

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<tbody>
<tr>
<td>a.</td>
<td>The Representative will be placed under supervision and left on the register</td>
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<td>b.</td>
<td>The Representative will be left on the register but with a note that he is not Fit and Proper</td>
</tr>
<tr>
<td>c.</td>
<td>The Representative will be removed from the representative register and therefore debarred</td>
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<tr>
<td>d.</td>
<td>All the above</td>
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</table>

9. John and Joe are family members and work for the same FSP. John is a compliance officer and Joe is a Representative for the FSP. John is aware of suspicious activities in Joe’s department and is concerned that there may be a conflict of interest. Explain to Joe what conflict of interest means in respect of the compliance function.

<p>| | |</p>
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<tr>
<td>1.</td>
<td>One of the qualifying criteria for approval of a compliance officer by the Registrar, is the avoidance of conflict of interests between the duties of compliance officer with the duties of other employees, internal audit and control and functions of Representatives</td>
</tr>
<tr>
<td>2.</td>
<td>Conflict of interest only applies with regard to the independence of the compliance function from internal audit</td>
</tr>
<tr>
<td>3.</td>
<td>If there are conflicts of interests across the functions, the compliance officer will not be able to perform the function objectively, nor be able to identify and report on instances of non-compliance or irregularities</td>
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<tr>
<td>4.</td>
<td>Conflict of interest for compliance officers means that they are not allowed to accept any gifts or financial interest</td>
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<tr>
<td>I)</td>
<td>1, 3 and 4</td>
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<tr>
<td>II)</td>
<td>1 and 3 only</td>
</tr>
<tr>
<td>III)</td>
<td>3 and 4 only</td>
</tr>
<tr>
<td>IV)</td>
<td>2 and 4 only</td>
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</table>

10. Apply your knowledge of the concept of conflict of interest and answer the following question: One of the areas where a conflict of interest could emerge is within the structure of the FSP. If the Compliance Officer does not have access to and support from senior management, they will lack the necessary authority required to do their job. Who will be held personally responsible for ensuring the correct channels of Communication are available for the Compliance Officer?

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<tbody>
<tr>
<td>a.</td>
<td>The Compliance Officer</td>
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<tr>
<td>b.</td>
<td>The Key Individual</td>
</tr>
<tr>
<td>c.</td>
<td>The Representative</td>
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<tr>
<td>d.</td>
<td>The FSCA (FSB)</td>
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11. Analyse the following statements and choose the correct description. An FSP may not offer any financial interest to a representative of that FSP for:

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<tbody>
<tr>
<td>a.</td>
<td>Giving preference to the quantity of business secured for the FSP to the exclusion of the quality of the service rendered to clients</td>
</tr>
<tr>
<td>b.</td>
<td>Giving preference to a specific product supplier, where a representative may recommend more than one product supplier to a client</td>
</tr>
<tr>
<td>c.</td>
<td>Giving preference to a specific product of a product supplier, where a representative may recommend more than one product of that product supplier to a client</td>
</tr>
<tr>
<td>d.</td>
<td>All of the above</td>
</tr>
</tbody>
</table>
12. What is the purpose of disclosures to a client within the FAIS Act? Choose the CORRECT statement.

| a. To enable the client to make an informed decision |
| b. To enable the insurer to evaluate the risk |
| c. To be used as an agenda item for a discussion with the client |
| d. To inform the representative of the attitude of the client towards the recommended product |

13. There are certain policies regarding disclosure to a client. With whom does the duty of disclosure lie? Choose the CORRECT one.

| a. The intermediary |
| b. The intermediary and insurer |
| c. The insured |
| d. All of the above |

14. Where a financial product is being replaced by another financial product held by the client:

| a. Disclosure must be made of the actual and potential financial implications |
| 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. Only disclosure of the potential financial implications must be made |

15. The impact of this disclosure on FSPs is that they have to provide documents containing all the relevant disclosures to be used by themselves and their representatives. In addition, they have to ensure that their representatives use these disclosures when rendering financial services to their clients. Which section of the FAIS Act refers to the general disclosure of information of a provider?

| a. Section 5 |
| b. Section 9 |
| c. Section 13 |
| d. Section 11 |

16. The law requires the intermediary to make certain disclosures to his/her clients. Indicate which of the following statements are NOT a disclosure requirement.

| a. The intermediaries’ relationship with the FSP |
| b. The intermediaries’ marital status |
| c. The product supplier or suppliers that the intermediary represents |
| d. The services and products that the intermediary can offer to the client |
17. Raylene will have to maintain records for Anton’s business for at least 5 years in terms of the general Code of Conduct. One of the statements below does NOT apply to the record keeping process. Identify the statement that does not apply:

| a. Records of complaint received |
| b. Records of continued compliance with the licensing requirements |
| c. Records of instances of compliance with the Act and reasons for such compliance |
| d. Records of continued compliance |

18. When giving advice (section 8 of the General Code), representatives/FSPs must ensure that they:

| a. Take reasonable steps to seek from the client appropriate and available information regarding the client’s situation |
| b. Conduct an analysis based on the information obtained |
| c. Make adequate disclosures when replacing one product with another (fees, costs, consequences, special terms, etc.) |
| d. Keep a record of advice and provide the client with a copy |
| e. All of the above |

19. Section 16 of the FAIS Act requires that the Registrar must draft a Code of Conduct for authorised financial services providers. This has been done and the General Code of Conduct requires that financial service providers and their representatives fulfil the following responsibilities:

| a. They have to act honestly and fairly, and with due skill, care and diligence, in the interests of the provider and the integrity of the financial services industry |
| b. When representations are made or information provided to a client, it must be factually incorrect; it must be provided in plain language; it should not be misleading; it must be adequate and appropriate given the level of knowledge of the client and it must be provided timeously so as to afford the client reasonably sufficient time to make an informed decision |
| c. They should obtain appropriate and available information regarding clients’ financial situation, financial product experience and objectives in connection with the financial service required |

20. The FAIS Act requires that representatives meet specific requirements:

| a. A representative must confirm to clients (as 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 |
| b. A representative must be fit and proper as required by the FAIS Act |
| c. A representative can work under supervision while obtaining the required experience requirements |
| d. All of the above |
Chapter 5

Comply with Regulated Record Keeping Requirements
This topic covers the following critical learning outcomes:

<table>
<thead>
<tr>
<th>5.1</th>
<th>Explain the record keeping obligations by a representative as prescribed by the FAIS Act and PIC Acts.</th>
</tr>
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<tr>
<td>5.2</td>
<td>Carry out record keeping obligation and retrieval of records functionality correctly.</td>
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</table>
5. Comply with Regulated Record Keeping Requirements

5.1 Record Keeping for FICA

5.1.1 Record-keeping

An 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.

Section 18 of the FAIS Act, specifically states that an authorised financial services provider must maintain records for a minimum period of 5 years regarding:

- Subsection A – known premature cancellation of transactions or financial products by clients of the provider
- Subsection B – complaints received together with an indication of the outcome of these complaints
- Subsection C – continued compliance with the licensing requirements
- Subsection D – cases of noncompliance with the Act and reasons for non-compliance
- Subsection E – continued compliance by representatives with Section 13 of the FAIS Act

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 and due diligence investigations and transaction records.

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.

Other record-keeping requirements

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

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.

5.1.2 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 –

- is paid by the accountable institution or reporting institution to the client (including persons acting on behalf of the client); or
- 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.

Amendment to Section 34 of the FIC Act 38 of 2001, as amended by Section 27 of the FIC Act – 33 of 2004 and Section 9 of the FIC Act 11 of 2008.

Intervention by Centre

(1) If the Centre, after consulting an accountable institution, a reporting institution or a person required to make a report in terms of Section 28, 28A or 29, has reasonable grounds to suspect that a transaction or a proposed transaction may involve the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities or may constitute money laundering or a transaction contemplated in Section 29 (1) (b) it may direct the accountable institution, reporting institution or person in writing not to proceed with the carrying out of that transaction or proposed transaction or any other transaction in respect of the funds affected by that transaction or proposed transaction for a...
period as may be determined by the Centre, which may not be more than five days, in order to allow the Centre
(a) to make the necessary inquiries concerning the transaction; and
(ii) if the Centre deems it appropriate, to inform and advise an investigating authority or the National Director of Public Prosecutions.

**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 Intervention by Centre

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 FSCA (FSB) FAIS Newsletter, the FSCA (FSB) suggested the following measures to promote compliance with the FICA requirements.

Formulation and implementation of internal rules

Section 42 of the FICA requires accountable institutions to formulate and implement internal rules concerning:

- client identification and verification;
- record-keeping;
- steps taken to determine and report suspicious transactions; and
- such other matters as may be prescribed from time to time.

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. 66

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.

**Penalties**
In terms of FICA, penalties for offences range from 15 years imprisonment or a fine of R10,000,000.00. 66

Offences subject to the penalties include, among others, the following:

• Failure to identify persons;
• Failure to keep records;

66 Section 43(1)
• Destroying or tampering with records;
• Failure to give assistance to the FIC;
• Failure to report cash transactions as prescribed;
• Failure to report suspicious or unusual transactions;
• Failure to train staff or to appoint a compliance officer, or to implement internal rules.

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).

5.1.3 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 5.1

Prevention of Organised Crime Act 67 (POCA)

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: 68

• 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

67 Act No 121 of 1998
68 Section 2 of the Act
Protection of Constitutional Democracy against Terrorist and Related Activities Act

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.

5.1.3.1 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.

5.2 Third Party Outsourcing Agreements

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.

69 Act No 33 of 2004
5.3 The Security Requirements for Record Keeping in terms of Confidentiality and Access to Records

5.3.1 Confidentiality of client information

An FSP may not 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, license withdrawals, etc.) and such disclosure is not a contravention of the requirements of the General Code.

---

**FIC Act – Section 23**

**Period for which records must be kept**

An accountable institution must keep the records referred to in Section 22 which relate to:

(a) the establishment of a business relationship, for at least five years from the date on which the business relationship is terminated;

(b) a transaction which is concluded, for at least five years from the date on which that transaction is concluded.

[Date of commencement of s. 23: 30 June 2003.]

---

**FAIS Act 13 (4)**

13. Qualifications of representatives and duties of authorised financial services providers

(4) Such register must -

An accountable institution must keep the records referred to in Section 22 which relate to:

(a) contain every representative’s or key individual’s name and business address, and state whether the representative acts for the provider as employee or as mandatory; and

(b) specify the categories in which such representatives are competent to render financial services.

---

70 Section 3(3) of the General Code
FAIS Act 18 - Maintenance of records
An authorised financial services provider must, except to the extent exempted by the registrar, maintain records for a minimum period of five years regarding –

(a) known premature cancellations of transactions or financial products by clients of the provider;
(b) complaints received together with an indication whether or not any such complaint has been resolved;
(c) the continued compliance with the requirements referred to in Section 8;
(d) cases of non-compliance with this Act, and the reasons for such non-compliance; and
(e) continued compliance by representatives with requirements referred to in Section 13(1) and (2).

General Code of Conduct – Section 3 (2)
(2) (a) A provider must have appropriate procedures and systems in place to –
(i) record such verbal and written communications relating to a financial service rendered to a client as are contemplated in the Act, this Code or any other Code drafted in terms of Section 15 of the Act;
(ii) store and retrieve such records and any other material documentation relating to the client or financial service rendered to the client; and
(iii) keep such client records and documentation safe from destruction.
(b) All such records must be kept for a period of five years after termination, to the knowledge of the provider, of the product concerned or, in any other case, after the rendering of the financial service concerned.
(c) Providers are not required to keep the records themselves but must ensure that they are available for inspection within seven days of the registrar’s request.
(d) Records may be kept in an appropriate electronic or recorded format, which are accessible and readily reducible to written or printed form.

General Code of Conduct – Section 3(3)
(3) A provider may not disclose any confidential information acquired or obtained from a client or, subject to Section 4(1), a product supplier in regard to such client or supplier, unless the written consent of the client or product supplier, as the case may be, has been obtained beforehand or disclosure of the information is required in the public interest or under any law.
5.4 Knowledge Test – Chapter 5

Test your knowledge

1. Which of the following statements are TRUE with regard to the record keeping requirements in Section 24 of the FIC Act?

<table>
<thead>
<tr>
<th>Statement</th>
<th>Option</th>
</tr>
</thead>
<tbody>
<tr>
<td>In terms of Section 24 (1), the record keeping obligation may be</td>
<td>I) 1, 3 and 4 only</td>
</tr>
<tr>
<td>outsourced to a third party provided the accountable institution is given</td>
<td>II) 1, 2 and 3 only</td>
</tr>
<tr>
<td>free and easy access to these records</td>
<td>III) 1 and 3 only</td>
</tr>
<tr>
<td>Outsourcing of the record keeping function to a 3rd party discharges the</td>
<td>IV) All of these</td>
</tr>
<tr>
<td>accountable institution from the record keeping responsibility</td>
<td></td>
</tr>
<tr>
<td>Section 24(3) stipulates that if the accountable institution appoints a</td>
<td></td>
</tr>
<tr>
<td>third party to keep records on its behalf, then particulars of the third-</td>
<td></td>
</tr>
<tr>
<td>party keeping records on behalf of the accountable institution must be</td>
<td></td>
</tr>
<tr>
<td>provided to the FSCA (FSB)</td>
<td></td>
</tr>
<tr>
<td>Section 24(3) stipulates that if the accountable institution appoints a</td>
<td></td>
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<tr>
<td>third party to keep records on its behalf, then particulars of the third-</td>
<td></td>
</tr>
<tr>
<td>party keeping records on behalf of the accountable institution must be</td>
<td></td>
</tr>
<tr>
<td>provided to the FSCA (FSB)</td>
<td></td>
</tr>
</tbody>
</table>

2. Which of the following statements are TRUE with regard to the record keeping requirements of the FIC Act?

<table>
<thead>
<tr>
<th>Statement</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Records can only be kept manually</td>
<td></td>
</tr>
<tr>
<td>Section 22 of the FICA requires accountable institutions who establish a</td>
<td></td>
</tr>
<tr>
<td>business relationship or conclude a transaction with a client, to keep</td>
<td></td>
</tr>
<tr>
<td>records of a single transaction or of additional transactions concluded in</td>
<td></td>
</tr>
<tr>
<td>the course of a business relationship</td>
<td></td>
</tr>
<tr>
<td>The documents used to identify and verify clients as well as records of</td>
<td></td>
</tr>
<tr>
<td>all transactions must be retained for a period of at least five years from</td>
<td></td>
</tr>
<tr>
<td>the date on which the business relationship was started</td>
<td></td>
</tr>
<tr>
<td>In terms of Section 24 (1), the record keeping obligation may not be</td>
<td></td>
</tr>
<tr>
<td>outsourced to a third party</td>
<td></td>
</tr>
</tbody>
</table>
3. A representative receives a large sum of money to invest for a customer. The customer wants to split the money between unit trusts, investment policies, bank investments and fixed property shares, all with the shortest term possible. He does not want to comment on the reason for this choice of production combination. The representative suspects money laundering and he is, therefore, required to:

a. Inform the customer that he has to report the transaction
b. Advise the customer that he is not able to assist him without further information
c. Report the transaction without informing the customer
d. Process the request and flag the newly created accounts as suspects

4. You have to advise a new financial services provider on the FAIS requirements for the maintenance and accessibility of records. The financial services provider has limited space in his office and cannot store the hard copy records that have to be kept for five years. What advice would you give him?

a. The financial services provider has to find space in his office as he is obligated to keep the hard copy records on his premises for five years to ensure that it is available for inspection within seven days of the Registrars request
b. The financial services provider may outsource record keeping, but it has to be available for inspection within seven days of the Registrar’s request. The financial services provider may also keep the records in appropriate electronic or recorded format if it is accessible and readily reducible to written or printed format
c. The financial service provider may not outsource record-keeping and he should, therefore, convert the record into appropriate electronic format, so that it will be available on his premises at all times
d. The financial service provider may outsource record-keeping on condition that the records are stored in appropriate electronic or recorded format, and it should be readily reducible to written or printed format

5. If an accountable institution established a business relationship with a client before the commencement of FICA:

a. The provision of FICA will not apply to the relationship
b. The identity of the client must still be verified
c. The identity of the client need only be verified in the event of a suspicious transaction
d. The identity of the client need only be verified in the event of an exceptionally large transaction

6. Interpret the following statement and complete the sentence: 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. A minimum of five years except if the Registrar allowed specific exemptions in this regard
b. A minimum of fifteen years except if the Registrar allowed specific exemptions in this regard
c. A minimum of two years except if the Registrar allowed specific exemptions in this regard
7. Apply your knowledge of record keeping and choose the statement that is CORRECT.

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</thead>
<tbody>
<tr>
<td>a.</td>
<td>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 years from the date on which the business relationship was terminated</td>
</tr>
<tr>
<td>b.</td>
<td>The documents used to identify and verify clients as well as records of all transactions must be retained for a period of at least two and a half years from the date on which the business relationship was terminated</td>
</tr>
<tr>
<td>c.</td>
<td>The documents used to identify and verify clients as well as records of only transactions which are regarded important, must be retained for a period of at least five years from the date on which the business relationship commenced</td>
</tr>
<tr>
<td>d.</td>
<td>The documents used to identify and verify clients as well as records of all transactions do not have to be retained</td>
</tr>
</tbody>
</table>

8. Analyse the following statements regarding requirements that have to be met regarding record keeping in terms of the FAIS Act. Which statement is TRUE?

<p>| | |</p>
<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>a.</td>
<td>The FSP must store all records on its premises</td>
</tr>
<tr>
<td>b.</td>
<td>The FSP must store records off-site only with special permission</td>
</tr>
<tr>
<td>c.</td>
<td>The FSP must store records in an appropriate facility which is safe from destruction</td>
</tr>
<tr>
<td>d.</td>
<td>The FSP must store records in electronic format only with special permission in a facility that cannot be destroyed</td>
</tr>
</tbody>
</table>

9. Once a suspicious transaction has been reported and the authorities have investigated, The FIC must obtain information on the unlawful activities. How would they go about obtaining such information? Choose the INCORRECT statement.

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<tbody>
<tr>
<td>a.</td>
<td>They can apply for a warrant to access records</td>
</tr>
<tr>
<td>b.</td>
<td>They can apply for a warrant to access records provided that there are reasonable grounds to believe that the records will assist in identifying the proceeds of unlawful activities</td>
</tr>
<tr>
<td>c.</td>
<td>They can only apply for a warrant to access record of a bank</td>
</tr>
<tr>
<td>d.</td>
<td>b and c</td>
</tr>
</tbody>
</table>

10. The Financial Intelligence Centre Act of 2001, (Act 38 of 2001) requires an accountable institution to maintain records of the identity of clients for a period of five years after the date of the institution or termination of the business relationship or last transaction, whichever occurs last in time. Listed below are the records that need to be maintained, choose the CORRECT one.

<p>| | |</p>
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</thead>
<tbody>
<tr>
<td>a.</td>
<td>The identity of the client</td>
</tr>
<tr>
<td>b.</td>
<td>If the client is acting on behalf of another person</td>
</tr>
<tr>
<td>c.</td>
<td>The documentation with which the identity of the persons was established</td>
</tr>
<tr>
<td>d.</td>
<td>All of the above</td>
</tr>
</tbody>
</table>
Chapter 6

Manage and Oversee the Requirements of the FIC Act and Money Laundering and Terrorist Financial Control Regulations as it Applies to the FSP
This topic covers the following critical learning outcomes:

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<tr>
<td>6.1</td>
<td>Explain the requirements specific to an FSP prescribed by the FIC Act.</td>
</tr>
<tr>
<td>6.2</td>
<td>Describe how the FIC Act impacts a Representatives interaction with a client.</td>
</tr>
</tbody>
</table>
6. Money Laundering and Terrorist Financing Control Regulations, as it Applies to the FSP

6.1 The Requirements Specific to an FSP Prescribed by the FIC Act.

6.1.1 Definition

Definition of money laundering: ‘Money laundering’ or ‘money laundering activity’ means an activity which has or is likely to have the effect of concealing or disguising the nature, source, location, disposition or movement of the proceeds of unlawful activities or any interest which anyone has in such proceeds, and includes any activity which constitutes an offence in terms of Section 64 of this Act or Section 4, 5 or 6 of the Prevention Act.

6.1.2 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:

- Duty to identify and verify clients;
- Duty to keep records of business relationships and transactions;
- Reporting duties and obligations to give and allow access to information;
- 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**

- A practitioner who practices as defined in Section 1 of the Attorneys Act, 1979 (Act 53 of 1979);
- 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);
- An estate agent as defined in the Estate Agency Affairs Act, 1976 (Act 112 of 1976);
- An authorised user of an exchange as defined in the Securities Services Act, 2004 (Act 36 of 2004);
- A manager registered in terms of the Collective Investment Schemes Control Act, 2002 (Act 45 of 2002), but excludes managers who only conduct business in Part VI of the Collective Investment Schemes Control Act (Act 45 of 2002);
- A person who carries on the “business of a bank” as defined in the Banks Act, 1990 (Act 94 of 1990);
- A mutual bank as defined in the Mutual Banks Act, 1993 (Act 124 of 1993);
- A person who carries on a “long-term insurance business” as defined in the Long-Term Insurance Act, 1998 (Act 52 of 1998);
- A person who carries on a business in respect of which a gambling license is required to be issued by a provincial licensing authority;
- A person who carries on the business of dealing in foreign exchange;
- A person who carries on the business of lending money against the security of securities;
- 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);
- A person who issues, sells or redeems travellers’ cheques, money orders or similar instruments;
- 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 10.1**

**IDENTIFICATION OF NEW CLIENTS**

**Section 21(1) of the FICA requires accountable institutions:**

- to identify new clients; and
- verify their particulars before any transaction may be concluded or any business relationship is established with them unless they qualify for Exemption 2.

(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.)

Amendments to Sections 20 and 21 of the FIC Act - 2 October 2017:

Section 20A has been inserted which provides that accountable institutions may not enter into a transaction with an anonymous client or a client with a false or fictitious name;

Section 21 is amended such that when an accountable institution “engages with a prospective client” to undertake a transaction or establish a business relationship it must establish and verify the identity of the client, or such other person acting on behalf of such client;

21A provides that, in addition to the information required to be obtained in terms of Section 21 and the RMCP, the Institution must obtain information to enable the accountable institution to determine whether future transactions that will be performed in the course of the business relationship concerned are consistent with the institution’s knowledge of that prospective client, including information describing:

(a) the nature of the business relationship concerned;
(b) the intended purpose of the business relationship concerned; and
(c) the source of the funds which that prospective client expects to use in concluding transactions in the course of the business relationship concerned.
Section 21B sets out additional due diligence measures to be performed by Institutions when dealing with legal persons, trusts and partnerships including determining the nature of the client’s business and the ownership and control structures of the client.

In terms of Section 21C Institutions must conduct ongoing due diligence investigations in respect of its businesses relationship with its clients in monitoring the transactions, source of funds, background and purpose of large and complex transactions and keeping information obtained for these purposes.

Section 21D - if an Institution doubts the adequacy of information previously obtained it must repeat the steps set out in Sections 21, 21A and 21B.

Section 21E if the Institution is unable to establish or verify a client’s identity or conduct an ongoing due diligence the Institution may not establish or continue a relationship with such client.

Section 21F and 21G deal with the manner of dealing with foreign prominent officials and domestic prominent officials (21H similarly sets out these processes apply to family members and close associates of such persons), as defined in the Amendment Act and which processes are to be included in the RMCP.

**VERIFICATION OF NEW CLIENTS**

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.

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.

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.

**IDENTIFICATION AND VERIFICATION OF EXISTING CLIENTS**

Section 21(2) of the FICA requires a similar process for existing clients as for new clients.

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.
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.

6.2 Internal rules as Required by the FIC Act are in Place

Amendment to Section 32 of FIC Act 38 of 2001 (Date of commencement of 3 February 2003)

(1) A report in terms of Section 28, 29 or 31 to the Centre and a report in terms of Section 30 (1) to a person authorised by the Minister must be made in the prescribed manner.

(2) The Centre, or an investigating authority acting with the permission of the Centre or under the authority of an authorised officer, may request an accountable institution, a reporting institution or any other person that has made a report in terms of Section 28, 29 or 31 to furnish the Centre or that investigating authority with such additional information concerning the report and the grounds for the report as the Centre or the investigating authority may reasonably require for the performance by it of its functions.

(3) When an institution or a person referred to in Subsection (2) receives a request under that Subsection, that institution or person must furnish the Centre without delay with such additional information concerning the report and the grounds for the report as that institution or person may have available.
6.3 Employees Receive Training in Respect of their Obligation to Report Suspicious Transactions

6.3.1 Training and Monitoring of Compliance

An accountable institution must 71 -

a. provide training to its employees to enable them to comply with the provisions of this Act and the internal rules applicable to them;

b. appoint a person with the responsibility to ensure compliance by -

c. the employees of the accountable institution with the provisions of this Act and the internal rules applicable to them; and

d. the accountable institution with its obligations under this Act.

6.4 INSETA Annexure

Refer Annexure at the end of manual - INSETA - Monetary values FICA.

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71 Section 43(b) the FiC Act
### 6.5 Knowledge Test – Chapter 6

#### Test your knowledge

1. The FICA imposes the following duties on accountable institutions. Which of the following statements are FALSE with regard to these duties?

<p>| | | | |</p>
<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>1. Accountable institutions may keep certain records</td>
<td>I) 1 and 4 only</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Accountable institutions may report certain information</td>
<td>II) 1 and 3 only</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Accountable institutions must be able to establish and verify the identity of their clients</td>
<td>III) 1 and 2 only</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Accountable institutions must implement measures that will assist them in complying with the FICA</td>
<td>IV) 2 and 4 only</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2. You are the manager of an insurance brokerage. One of your new financial advisers asks what is required of your business as an accountable institution in terms of FICA. Which of the following statements provides the most comprehensive answer to him?

<p>| | | | |</p>
<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>a. To identify clients, verify their residential address and report unusual transactions relating to combating money laundering</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. To identify clients, verify their residential address and report on activities or transactions relating to the use of offshore funds in South Africa</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c. To follow FICA procedures to report suspicious activities or unusual transactions relating to combating money laundering</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3. 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 – there was a period of time granted for compliance with this requirement.

<p>| | |</p>
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<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>a. True</td>
<td></td>
</tr>
<tr>
<td>b. False</td>
<td></td>
</tr>
</tbody>
</table>
4. In the FIC Act ‘authorised officer’ means any official of -

a. The South African Police Service authorised by the National Commissioner to act under this Act
b. The national prosecuting authority authorised by the National Director of Public Prosecutions to act under this Act
c. An intelligence service authorised by the Director-General of that service to act under this Act; or the South African Revenue Service authorised by the Commissioner for that Service to act under this Act
d. All of the above

5. Apply your knowledge of accountable institutions nominated in the FIC Act and choose the correct answer listed below:

a. Banks, estate agents, attorneys, trust companies, collective investment schemes and long-term insurance companies (including an insurance broker and a representative of an insurer)
b. Banks, estate agents, collective investment schemes and long-term insurance companies (including an insurance broker and a representative of an insurer)
c. Banks, estate agents, collective investment schemes and long-term insurance companies
d. Banks, estate agents, attorneys, trust companies, and long-term insurance companies (including an insurance broker and a representative of an insurer)

6. As a Representative, you need to understand the requirements for compliance with the FICA requirements embedded in the FAIS legislation. Consider the following statements carefully and then choose the statement that is TRUE

a. One of the objectives of FICA is to introduce control measures to assist the detection and investigation of credit granting activities
b. In terms of FICA, accountable institutions are required to obtain statements from customers suspected to be laundering money
c. 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”
d. FICA empowers the Financial Intelligence Centre to supervise the accountable institutions

7. Section 21 (1) of FICA requires accountable institutions to identify new clients and verify their particulars before any transaction may be concluded or any business relationship is established with them unless, they qualify for Exemption 2. Exemption 2 stipulates that:

a. 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
b. Banks are not regarded as accountable institutions in terms of FICA
c. Each supervisory body is responsible for enforcing compliance with money laundering legislations by the accountable institutions under its regulation or supervision
d. FICA does not empower the Financial Intelligence Centre to supervise the accountable institutions
8. Interpret the FIC Act and consider the following the statement: An employee of an accountable institution that accepts money from a client, which is suspicious. What does the employee have to do according to the FIC Act?

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<tbody>
<tr>
<td>a.</td>
<td>The employee must report the suspicious transaction via his company’s internal procedure</td>
</tr>
<tr>
<td>b.</td>
<td>The employee may not inform the client he has reported the transaction</td>
</tr>
<tr>
<td>c.</td>
<td>The employee has to report the suspicious transaction via the Ombud</td>
</tr>
<tr>
<td>d.</td>
<td>a and b</td>
</tr>
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</table>

9. Apply your knowledge of the FIC Act with reference to penalties imposed and choose the penalty/penalties that can be imposed on a staff members or organizations who do not comply with the FIC Act:

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<tbody>
<tr>
<td>a.</td>
<td>A maximum prison sentence of 15 years or a fine not exceeding R1 0000 000.00</td>
</tr>
<tr>
<td>b.</td>
<td>A maximum prison sentence of 15 years</td>
</tr>
<tr>
<td>c.</td>
<td>A fine not exceeding R10 000 000.00 and a maximum prison sentence of 15 years</td>
</tr>
<tr>
<td>d.</td>
<td>All of the above</td>
</tr>
</tbody>
</table>

10. Analyse the statements below and select the statements that apply to the identification and verification of new clients.

<p>| | |</p>
<table>
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<tbody>
<tr>
<td>I) 1 and 3</td>
<td></td>
</tr>
<tr>
<td>II) 1 and 2</td>
<td></td>
</tr>
<tr>
<td>III) 2 and 4</td>
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<tr>
<td>IV) 1 and 4</td>
<td></td>
</tr>
</tbody>
</table>
Chapter 7

Deal with the Complaints that have been Submitted to the Ombud for FSPs
This topic covers the following critical learning outcomes:

7.1 Explain the role and authority of the Ombud for FSPs.
7. Deal with Complaints that have been Submitted to the Ombud for FSPs

7.1 The Role and Authority of the Ombud for FSPs

Note: This section must be studied in conjunction with the following Board Notices:
- 81 of 2003 – Section 3
- 81 of 2003 – Section 4(c)

The FAIS Act 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 willful 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.

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.

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.

---

72 Sections 20 to 32 of the FAIS Act
73 Section 20(3) of the Act
7.1.1 Definition

In terms of the FAIS Act:

\begin{quote}
\textbf{Definition of complaint:}

“complaint” means, subject to Section 26(1)(a)(iii), a specific complaint relating to a financial service rendered by a financial services provider or representative to the complainant on or after the date of commencement of this Act, and in which complaint it is alleged that the provider or representative –

(a) has contravened or failed to comply with a provision of this Act and that as a result thereof the complainant has suffered or is likely to suffer financial prejudice or damage;

(b) has 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 prejudice or damage; or

(b) has treated the complainant unfairly.
\end{quote}

7.1.2 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.

\textbf{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.
7.1.2.1 Jurisdiction

The following jurisdictional provisions apply to the Ombud in respect of the investigation of complaints: 

- 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.

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 complaint has either been withdrawn, or determined by the Ombud.

7.1.2.2 Report of Ombud

Every year the Ombud must submit a report to the FSCA (FSB) on the affairs and functions of the Ombud during the financial year in question, including the annual financial statements. The Ombud must at the same time submit a copy of the report to the Minister.

This report must be submitted within six months after the end of the financial year.

74 Section 27(3)(a)(i) & 4(a)(iii) of BN 81 of 2003
75 Section 4(c) of BN 81 of 2003
7.2 Obligations of the FSP in respect of an Investigation Conducted by the Ombud for FSPs

Note: This section must be studied in conjunction with the following Board Notices:

- 81 of 2003 – Section 5(c)
- 81 of 2003 – Section 6(b)
- AND the FSR Act:
  - Chapter 14 Part 1 Ombud Council 175-180 / 187-190 / 193 - 4 & 5
  - Chapter 14 Part 2 Recognition of industry ombud schemes 195-200
  - Chapter 14 Part 3 Powers of Ombud Council 201 – 208
  - Chapter 14 Part 4 General Provisions 209 – 217
  - Chapter 15 Financial Services Tribunal Part 1 and Part 3
  - Chapter 17 Miscellaneous Part 1 250 / 270 / 277 / 283 / 285 / 301

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 FSCA (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 must provide adequate contact details of the Ombud to clients.

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

I. 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.

1. The Ombud must inform every other interested party to the complaint that they have received it. 76
2. All parties must be provided particulars to enable them to respond to the complaint. 77
3. All parties must be afforded opportunity to submit a response to the complaint. 78
4. 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. 79
5. The Ombud may require the respondent (FSP/representative) to discuss the complaint and provide any relevant information that the Ombud may require.
6. The Ombud will, in the first instance, explore any reasonable prospects of resolving a complaint, by a conciliated settlement acceptable to all parties. 80
7. 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. 81
8. 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. 82
9. 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. 83
10. If the complainant is unhappy with the Ombud's determination he may appeal to the Appeal Board, provided, the Ombud grants leave to appeal.
11. **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

76 Section 27(4)(a) of the Act
77 Section 27(4)(b) of the Act
78 Section 27(4)(c) of the Act
79 Section 27(5)(a) of the Act
80 Section 27(5)(b) of the Act
81 Section 27(5)(c) of the Act.
82 IBID
83 Section 7(b)(i) of BN 81 of 2003
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:\[84\]

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. \[85\]

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. \[86\]

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 period of two (2) weeks after the date of the determination or final decision of the board, as the case may be. \[87\]

Any award of interest and costs forms part of the relevant final determination of the Ombud.

\[84\] Section 28(1)(b) of the Act
\[85\] Section 12(a) of Bn 81 of 2003
\[86\] Section 28(5) of the Act
\[87\] Section 28(6) of the Act
7.3 Processes Ensuring FSP Cooperates in the Case of an Investigation by the Ombud

Note: This section must be studied in conjunction with the following Board Notices:
- 81 of 2003 – Section 6

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.

7.3.1 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.

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.

**FAIS Act – Sections 27(5), 27(6) and 31**

27. Receipt of complaints, prescription, jurisdiction and investigation

(5) The Ombud -

(a) may, in investigating or determining an officially received complaint, follow and implement any procedure (including mediation) which the Ombud deems appropriate, and may allow any party the right of legal representation;

(b) must, in the first instance, explore any reasonable prospect of resolving a complaint by a conciliated settlement acceptable to all parties;

(c) may, in order to resolve a complaint speedily by conciliation, make a recommendation to the parties, requiring them to confirm whether or not they accept the recommendation and, where the recommendation is not accepted by a party, requiring that party to give reasons for not accepting it:

Provided that where the parties accept the recommendation, such recommendation has the effect of a final determination by the Ombud, contemplated in Section 28(1);

(d) may, in a manner that the Ombud deems appropriate, delineate the functions of investigation and determination between various functionaries of the Office;

(e) may, on terms specified by the Ombud, mandate any person or tribunal to perform any of the functions referred to in paragraph (d).

(6) For the purposes of any investigation or determination by the Ombud, the provisions of the Commissions Act, 1947 (Act No. 8 of 1947), regarding the summoning and examination of persons and the administering of oaths or affirmations to them, the calling for the production of books, documents and objects, and offences by witnesses, apply with the necessary changes.

(Commencement date of s. 27: 8 March 2003)
## Test your knowledge

### 1. Which of the following statements are TRUE?

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<tbody>
<tr>
<td>1. If a case cannot be settled through mediation or conciliation, the FAIS Ombud or the Deputy FAIS Ombud may issue a determination</td>
<td><strong>I</strong>) 1, 2 and 3</td>
<td></td>
</tr>
<tr>
<td>2. In terms of the FAIS Act, the existing voluntary ombudsmen established by the financial services and banking industry enjoy recognition</td>
<td><strong>II</strong>) 2, 3 and 4</td>
<td></td>
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<tr>
<td>3. The FAIS Ombud can officially accept a complaint for investigation if the complaint relates to a financial service that was rendered on or after 30 September 2004</td>
<td><strong>III</strong>) 2 and 4</td>
<td></td>
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<tr>
<td>4. A determination has the same legal effect as a judgment of a court</td>
<td><strong>IV</strong>) All of these</td>
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### 2. Interpret the following statements and choose which statement reflects all the actions that the FAIS Ombud is entitled to take at his discretion in terms of complaints.

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<tbody>
<tr>
<td>a. The Ombud may dismiss a complaint or uphold it</td>
<td></td>
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<tr>
<td>b. The Ombud may dismiss a complaint, uphold it or refer it to a court</td>
<td></td>
</tr>
<tr>
<td>c. The Ombud may dismiss a complaint, uphold it, refer it to a court or decline it if it is received three years after the date of the issue of the complaint</td>
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<tr>
<td>d. The Ombud may uphold a complaint or decline it if it is received three years after the date of the issue of the complaint</td>
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### 3. Apply your knowledge of The FAIS Ombud. The FAIS Ombud investigates and adjudicates complaints by clients against FSPs and representatives. When investigating a complaint, which one of the procedures does the Ombud have authority on?

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<tbody>
<tr>
<td>a. The Ombud may not dismiss the complaint, even if he is of the view that the offer made by the FSP is fair</td>
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<tr>
<td>b. If the complainant is unhappy with the Ombud’s determination he may appeal to the FSCA (FSB) provided the Ombud gives permission</td>
<td></td>
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<tr>
<td>c. 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</td>
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<tr>
<td>d. All the above</td>
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</table>
4. Analyse the following statement and choose the most correct answer. When dealing with complaints the Ombud must be independent and impartial. The objective of the Ombud is to consider and dispose of complaints. What is the manner in which the Ombud must deal with a complaint?

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<tbody>
<tr>
<td>a.</td>
<td>In a fair manner</td>
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<tr>
<td>b.</td>
<td>In an informal manner</td>
</tr>
<tr>
<td>c.</td>
<td>In an economical and expeditious manner</td>
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<tr>
<td>d.</td>
<td>All of the above</td>
</tr>
</tbody>
</table>

5. Apply your knowledge of the different departments at the Registrar's office and complete the missing word in the following sentence: Compliance Department: Responsible for dealing with complaints against FSPs that cannot be referred to the FAIS Ombud, investigations into the affairs of FSPs and ________ (suspension and withdrawal of licenses) and updating debarments on the central representative register as well as reinstatement of representatives on the central register.

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<tbody>
<tr>
<td>a.</td>
<td>Regulatory Action</td>
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<tr>
<td>b.</td>
<td>Supervisory Action</td>
</tr>
<tr>
<td>c.</td>
<td>Enforcement Action</td>
</tr>
<tr>
<td>d.</td>
<td>Complaints Action</td>
</tr>
</tbody>
</table>

6. Ryan has instituted civil action against FSP Renown Deals and is claiming for R900 000 damages due to poor advice given to him. He has just heard about the FAIS Ombud, and that he can institute action at no cost (rather than fat lawyer's bills) and wants to open a complaint at the Ombud as well. He reckons he should cover his bets and that one way or the other, he has a better chance of winning his case. He wants to claim the full R900 000.

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<tbody>
<tr>
<td>a.</td>
<td>Ryan cannot institute proceedings in the office of the Ombud and civilly at the same time, and the Ombud only has jurisdiction up to R800 000, so he will have to choose to go civil for the R900 000 or Ombud for R800 000</td>
</tr>
<tr>
<td>b.</td>
<td>Ryan may do this, but will have to pay his lawyer to represent him with the FAIS Ombud as well</td>
</tr>
<tr>
<td>c.</td>
<td>Ryan can do both at no extra charge</td>
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</table>
7. Within the FSCA (FSB) there are three departments that a Key Individual need to be aware of. These three departments are the Registration Department, the Supervision Department and the Enforcement Department. Key Individuals will liaise with each FAIS division in the execution of their duties. Which of the following is incorrect? The departments are responsible for the following:

a. The Registration Department is responsible for new licence applications, profile changes, updating the central Representative register, approval of mandates and application forms for discretionary FSPs and administrative FSPs, lapsing of licences, queries on licence status and collection of levies together with the FSCA (FSB) Finance Department

b. The Supervision Department is responsible for new licence applications, profile changes, updating the central Representative register, approval of mandates and application forms for discretionary FSPs and administrative FSPs, lapsing of licences, queries on licence status and collection of levies together with the FSCA (FSB) Finance Department

c. The Supervision Department is responsible for the implementation of a risk-based approach to supervision of Financial Service Providers, analysis of financial statements and compliance reports, conducting onsite visits to FSPs and Compliance Officers and liaising with the industry relating to changes in legislation

d. The Enforcement Department is responsible for dealing with complaints against FSPs that cannot be referred to the FAIS Ombud, and conducting onsite visits to FSPs and Compliance Officers

8. Select the correct answer:

a. The Ombud must act on all complaints received after the implementation of the act in 2002
b. The Ombud must decline to act on a complaint the occurrence of which is older than one year.
c. The Ombud must decline to act on a complaint the occurrence of which is older than three years. Note - the three years starts from when the complainant first became aware or should have become aware of the problem

9. Select the incorrect answer:

a. Official receipt of a complaint by the Ombud suspends the running of prescription in terms of the Prescription Act, 1969 (Act No. 68 of 1969), for the period after such receipt of the complaint until the complaint has either been withdrawn, or determined by the Ombud or the board of appeal
b. Official receipt of a complaint by the Ombud does not suspend the running of prescription in terms of the Prescription Act, 1969 (Act no. 68 of 1969), for the period after such receipt of the complaint until the complaint has been withdrawn, or determined by the Ombud or the Board of Appeal
10. The FAIS Ombud investigates and adjudicates complaints by clients against FSPs and representatives. When investigating a complaint, which one of the procedures may he rule on? Choose the CORRECT one.

| A. The Ombud may not dismiss the complaint, even if he is of the view that the offer made by the FSP is fair |
| B. If the complainant is unhappy with the Ombud’s determination he may appeal to the FSCA (FSB) provided the Ombud gives permission |
| C. 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 |
| D. All the above |

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**inseta**

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RE5 Self-Study Guide : Representatives (from Regulatory Examination Preparation Guide for Representatives)  
Page 221
Chapter 8

Operate as a representative in terms of the FAIS Act
This topic covers the following critical learning outcomes:

<table>
<thead>
<tr>
<th>8.1</th>
<th>Describe the roles and responsibilities of representatives as defined in the FAIS Act.</th>
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<tbody>
<tr>
<td>8.2</td>
<td>Apply knowledge of the role of the representative in terms of the FAIS Act.</td>
</tr>
<tr>
<td>8.3</td>
<td>Explain the fit and proper requirements that apply to the representatives. (Good Standing, honesty, integrity, qualifications, experience, knowledge tested through regulated examinations and continuous professional development).</td>
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<tr>
<td>8.4</td>
<td>Distinguish between advice and intermediary services in terms of the Act.</td>
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<tr>
<td>8.5</td>
<td>Describe the purpose and requirements of the register of representatives.</td>
</tr>
<tr>
<td>8.6</td>
<td>Explain when representatives should be under supervision.</td>
</tr>
<tr>
<td>8.7</td>
<td>Explain the disclosure requirements for a representative under supervision.</td>
</tr>
<tr>
<td>8.8</td>
<td>Describe the implications if a representative no longer meets the Fit and Proper requirements.</td>
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<tr>
<td>8.9</td>
<td>Discuss the purpose of debarment.</td>
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<tr>
<td>8.10</td>
<td>Describe when debarment should be considered.</td>
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<tr>
<td>8.11</td>
<td>Explain the debarment process that should be followed in the event of a possible contravention of the FAIS Act.</td>
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<tr>
<td>8.12</td>
<td>Explain what recourse a debarred representative may have.</td>
</tr>
</tbody>
</table>
8. Operate as a representative in terms of the FAIS Act

8.1 Describe the Roles and Responsibilities of Representatives as Defined in the FAIS Act

Note: This section must be studied in conjunction with the following Board Notices:
- 104 of 2008 – Sections 3(b)(i), 4(9)

8.1.1 Definition of a Representative

The FAIS Act defines a “representative” as follows:

Definition of a 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 –

- does not require judgment on the part of the latter person; or
- 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.

8.1.2 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’.

8.1.2.1 The Responsibilities of Representatives

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.
8.2 Explain when an Individual is Obliged to be Registered in terms of FAIS

8.2.1 Appointment of Representatives

The FAIS Registrar does not issue licenses 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 (FSCA (FSB)) authorises an FSP to provide financial services and issues a license. Representatives are not “licensed“ by the FSCA (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 insolar 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.
8.3 Representatives Register

**Note: This Section must be studied in conjunction with the following Board Notices:**
- 104 of 2008 – Section 2(a)
- BN 194 Of 2017 Ch 2,3,4,6

8.3.1 Overview of the Register of Representatives

The FAIS Act 88 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
- enable the Registrar to maintain a central register with all the information gathered from the FSP registers; and
- calculate the levies (fees) payable by the FSP in respect of each representative and key individual.

88 Section 13 of the FAIS Act 37 of 2002
8.3.2 Information Required for the Register of Representatives

The register requires the following information:

Table 8.1

<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>

8.3.3 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.

Table 8.2: 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></td>
<td>Resignation</td>
</tr>
<tr>
<td>Regulatory examinations</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.
8.4 Processes that enable FSPs to check that a representative meets the fit and proper requirements and can be appointed

This section covers the processes that enable FSPs to check that a representative meets the fit and proper requirements and can be appointed.

Note: This section must be studied in conjunction with the following Board Notices:
- 104 of 2008 – Section 3(b)
- 194 of 2017 – Chapters 2, 3, 4 & 6

8.4.1 Overview of the Fit and Proper Requirements for Representatives

The fit and proper requirements for honesty, integrity and good standing 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.

8.4.2 What are the Fit and Proper Requirements for Representatives?

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

- Honesty, integrity and good standing
- Competence (including experience, qualifications, and knowledge tested through examinations determined by the Registrar)
- Continuous professional development
8.4.2.1 Honesty, Integrity and Good Standing

The requirements in terms of honesty, integrity and good standing 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. 89

The FAIS Registrar has similar powers, even though the FSCA (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, integrity and good standing 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.

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. 90

If the FSP becomes aware of a change in the circumstances of the representative that affects his honesty, integrity and good standing 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”.

A person may not be appointed as a representative if:

- The person was found guilty in any criminal proceedings or liable in any civil proceedings of acting fraudulently, dishonestly, unprofessionally, 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, integrity and good standing 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,
integrity and good standing of the representative, within five (5) years before appointment.

The FSP had its authorisation to carry on business/any license withdrawn or suspended by any regulatory or supervisory body because of an act of dishonesty, negligence, incompetence or mismanagement of the representative, within 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.

An important additional incident listed in the regulations is where the FSPs, KIs and/or Reps have “… demonstrated a lack of readiness and willingness to comply with legal, regulatory or professional requirements and standards.”

8.4.2.2 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 8.3

<table>
<thead>
<tr>
<th>GENERAL COMPETENCY REQUIREMENTS FOR REPRESENTATIVES</th>
</tr>
</thead>
<tbody>
<tr>
<td>A representative, must at date of appointment by an FSP:</td>
</tr>
<tr>
<td>• have the minimum experience requirements;</td>
</tr>
<tr>
<td>• have all the required qualifications (unless the representative works under supervision and the minimum qualifications for supervision are met)</td>
</tr>
<tr>
<td>• must have completed all regulatory examinations.</td>
</tr>
<tr>
<td>PROVIDED THAT</td>
</tr>
<tr>
<td>The Registrar may exempt representatives from any of the above while they are working (providing financial service) under supervision.</td>
</tr>
</tbody>
</table>

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.

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

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

8.4.2.3 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 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.)
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.

SPECIFIC EXPERIENCE REQUIREMENTS for representatives for each category.

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 license 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 license 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.

Experience requirements for Category III Representatives
- All the general experience requirements must be met in respect of Category III, and in addition:
  - the representative must have three (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:
  - 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”.

8.4.2.4 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.

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.

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:
- evaluate the content of the qualifications; and
- 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.
Table 8.1 - Example of qualifying criteria for a representative

<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>Apply knowledge of the financial products and role-players within the financial services environment.</td>
</tr>
<tr>
<td></td>
<td>Explain the relationship between different industry players.</td>
<td></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 8.2

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

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 FSCA (FSB) (download the form from the FSCA (FSB) website) for recognition.
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.

Any changes or additions to a license of an FSP, KI or appointment of a Rep, after the commencement date of 1 April 2018, the new requirements will have to be met.

When reviewing acceptable qualifications, the Registrar will determine if the qualification provides the relevant knowledge and skills necessary for the KI and Rep to fulfil the responsibilities under the Act.

There are two instances where these qualification requirements do not apply:

- Where FSPs, KIs and Representatives render financial services only in respect of Long-term Insurance subcategory A and/or Friendly Society Benefits, and/or
- Where Reps are appointed to perform “execution of sales” only. In this case, Reps must meet a minimum qualification of Grade 12 National Certificate or equivalent.

8.4.3 Regulatory Examinations for Representatives

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

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.

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.

The Registrar appointed examination bodies that are responsible for compiling the examination questions and for administering the 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).
8.4.4 Continuous Professional Development for Representatives

Note: This section must be studied in conjunction with the following Board Notices:

- 194 of 2017 – Chapter 4

Representatives will also have to complete CPD programmes.

The FSCA (FSB) must approve CPD activities and/or programmes and BN 194 of 2017 contains the conditions for approval.

Examples of verifiable CPD programmes and/or activities include the following:

- Courses, conferences and seminars
- Studies leading to informal assessments (e.g. additional qualification, which may be done through private study, distance learning or attendance at formal courses)
- Workshops
- 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 12 to 36 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.
8.5 Representatives under Supervision

Note: This section must be studied in conjunction with the following Board Notices:

- 104 of 2008 – Section 3(b), 4(3), 4(4), 6(2)
- 194 of 2017 – Section 7(7), 7(12)

Definition of service under supervision:

Board Notice 104 of 2008 defines “service under supervision” to mean 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 Act.

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 91, 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.

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. 92

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91 Published in Board Notice 104 of 2008
92 Section 4(1)(a) of BN 104
Table 8.3 depicts the level of supervision that is required in respect of representatives of Categories I and IV:

<table>
<thead>
<tr>
<th>Category</th>
<th>Column One: Subcategory</th>
<th>Column Two: Direct supervision</th>
<th>Column Three: Ongoing level of supervision</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
<td>Long-term Insurance Subcategory A</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>1.2</td>
<td>Short-term Insurance Personal Lines</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.3</td>
<td>Long-term Insurance Subcategory B1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.4</td>
<td>Long-term Insurance Subcategory C</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.5</td>
<td>Retail Pension Benefits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.6</td>
<td>Short-term Insurance Commercial Lines</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.7</td>
<td>Pension Fund Benefits (excluding Retail Pension Benefits)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.8</td>
<td>Securities and Instruments: Shares</td>
<td>The first 4 months of the period under supervision</td>
<td>After 4 months for the rest of the period under supervision</td>
</tr>
<tr>
<td>1.9</td>
<td>Securities and Instruments: Money Market Instruments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.10</td>
<td>Securities and Instruments: Debentures and Securitised Debt</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.11</td>
<td>Securities and Instruments: Warrants, Certificates and other Instruments acknowledging Debt</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.12</td>
<td>Securities and Instruments: Bonds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.13</td>
<td>Securities and Instruments: Derivative Instruments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.14</td>
<td>Participatory Interests in one or more Collective Investment Schemes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.15</td>
<td>Forex Investment Business</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.16</td>
<td>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</td>
<td>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</td>
<td>Short-term Deposits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.19</td>
<td>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>
</tbody>
</table>

93 Board Notice 60 of 2010.
The new requirements introduce:

**6 new product categories for Tier 1**, separated from or are associated with existing subcategories.

**‘New’ Product Categories**

Details of the **6 new product categories** have been set out in Table 8.4. Five of these product categories are only new in the sense that they have been stripped out from existing product categories and have been assumed their own grouping or name. This means that FSPs who are already licensed for the associated or ‘old’ subcategory and make use of financial products which now fall into the new product category will have to take the necessary steps to update their licence.

Failure to do so means that an FSP will no longer be able to do business in those financial products which now fall under a new product category.

**Table 8.4**

<table>
<thead>
<tr>
<th>New Product Category (Subcategory)</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Long-term insurance subcategory B1-A</td>
<td>Long-term insurance policies referred to in the definition of long-term insurance subcategory B1 which require no or limited underwriting</td>
</tr>
<tr>
<td>Long-term insurance subcategory B2-A</td>
<td>Long term insurance policies referred to in the definition of long-term insurance subcategory B2 where the investment portfolio is managed by the product supplier with no option by the policyholder to request a change or amendment</td>
</tr>
<tr>
<td>Short-term insurance personal lines A1</td>
<td>Short-term insurance personal line policies (excluding marine or engineering or guarantee policies, with no or limited underwriting, with a contract term of less than 24 months, which are not subject to the principle of average and which meet certain conditions relating to policy benefit and exclusions</td>
</tr>
<tr>
<td>Structured deposit</td>
<td>Combination of short-term or long-term deposit with another tier 1 financial product, or short-term or long-term deposit where the return value depends on or is derived from the performance of an underlying financial product, index, etc</td>
</tr>
</tbody>
</table>
Securities and instruments | Securities and instruments that have not already been defined in the determination
---|---
Participatory interest in a hedge fund | Participatory interest in a collective investment scheme that is a hedge fund

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:
  - Matric;
  - Grade 12; or
  - An appropriate certificate at NQF Level 4. 94
- 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. 95
- 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 license 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:

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94 Section 3(b)(i) of BN 104
95 Ibid
• 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.

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 when appointed by the FSP.

Board Notice 104 provides the following important definitions:

**Definition of direct supervision:**
“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.

**Definition of ongoing level of supervision:**
“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.

**Definition of investment team meetings:**
“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.
8.6 Qualified Individuals in the Role of Supervisor

Note: This section must be studied in conjunction with the following Board Notices:
- 104 of 2008 – Exemption for Services under Supervision
- 104 of 2008 – Sections 4(3), 4(9)(f), 4(2)

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

8.7 Supervision Requirements

Note: This section must be studied in conjunction with the following Board Notices:
- 104 of 2008 – Sections 4(1), 4(2), 4(7), 4(9)

Responsibilities, duties and requirements

<table>
<thead>
<tr>
<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>
</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.</td>
</tr>
<tr>
<td>Identify the representatives</td>
<td>Attend meetings with supervisee and clients where</td>
<td></td>
</tr>
</tbody>
</table>
who act under supervision and differentiate between representatives who meet all the requirements and those who are working under supervision in the representative register.

- Place supervisees in correct categories for services under supervision.
- Ensure that the supervisee has a good understanding of and exposure to the categories and/or subcategories in which he is providing financial service.
- Observe selected meetings between the supervisee and customers (frequency may differ).
- Assess the advice given by the supervisee for appropriateness in terms of the requirements of the General Code.
- 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.
- Have documented evidence, together with the supervisee, of the method and frequency of the supervision for the period of services under supervision.
- 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.

the purpose of the meeting is the rendering of financial services.

- Do appropriate post-transaction sampling.
- 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.
- Any other activity that enables the supervisor to scrutinise the activities of the supervisee in respect of financial services being provided by the supervisee.
- Ensure that the supervisee has a good understanding of and exposure to the categories and/or subcategories in which he is providing financial service.
- Observe selected meetings between the supervisee and customers (frequency may differ).
- Assess the advice given by the supervisee for appropriateness in terms of the requirements of the General Code.
- 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.
- Have documented evidence, together with the supervisee, of the method and frequency of the supervision for the period of services under supervision.
- Disclose to clients that he is acting under supervision.
- Complete the required qualifications within the prescribed time limits.
- Undertake the relevant product training.
- Request guidance from the supervisor if in doubt.
- The supervision period must be linked to the category or subcategory the representative is appointed for.
- Maximum period any representative can act under supervision in any category or subcategory is six (6) years from date of appointment.
- 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.
- Must complete RE1 (for the applicable category or subcategory) within two (2) years of appointment as representative.
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.

8.8 Supervisor’s Role

*Note: This section must be studied in conjunction with the following Board Notices:*

- 104 of 2008 – Sections 4(9), 7, 4, 9, 9(c)

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.
8.9 Supervisory Functions

**Note: This section must be studied in conjunction with the following Board Notices:**
- 104 of 2008 – Section 2, 4(4), 4(3), 4(9)

**Definition of Supervisor:**
Referring to Board Notice 104 of 2008, “supervisor” means –
- An authorised financial services provider being a natural person; or
- A representative of the provider who meets, to the satisfaction of the provider, the relevant requirements of this Exemption; or
- A key individual of the financial services provider who meets, to the satisfaction of the provider, the relevant requirements of this Exemption.

The FSP must have procedures in place to monitor the compliance of supervisors. These processes must be documented.

**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.
8.10 Disclosure

Note: This section must be studied in conjunction with the following Board Notices:

- Part II – General Provisions
- Part III – Information on Product Suppliers
- Part IV – Information on Providers
- Part VI – Information about Financial Service

Representatives must disclose the following:

- 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.

8.11 Define 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. 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.
Debarment:
The responsible authority for a financial sector law may make a debarment order in respect of a natural person if the person has:
- Contravened a financial sector law in a material way.

8.12 Debarment of Representatives

8.12.1 Reasons for Debarment and Debarment Procedure

Note: This section must be studied in conjunction with the following Board Notice:
- 194 of 2017 – Chapters 2, 3, 4 & 6
- BN 82 of 2003
- FAIS Act Section 14

Representatives must be debarred when they:
- do not meet the FAIS fit and proper requirements

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: 96

Date of first appointment: 2004 to 2007

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.

96 FAIS Circular 01/2010
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.

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 FSCA (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: 97

"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.
FAIS Act – Section 14

14. Debarment of Representatives

(1) 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) or has contravened or failed to comply with any provision of this Act in a material manner, is prohibited by such 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):

Provided that 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 uncompleted business of the representative is properly concluded. For the purposes of the imposition of a prohibition contemplated in Subsection (1), the authorised financial services provider must have regard to information regarding the conduct of the representative as provided by the registrar, the Ombud or any other interested person.

(2)

(a) The authorised financial services provider must within a period of 15 days after the removal of the names of a representative and key individuals from the register as contemplated in Subsection (1), inform the registrar in writing thereof and provide the registrar with the reasons for the debarment in such format as the registrar may require.

(b) The registrar may make known any such debarment and the reasons therefor by notice on the official web site or by means of any other appropriate public media.

14A. Debarment by Registrar

(1) The registrar may, subject to Subsection (2), at any time debar a person, including a representative, for a specified period from rendering financial services if satisfied on the basis of available facts and information that the person -

(c) does not meet, or no longer meets, the requirements contemplated in Section 8(1)(a); or

(d) has contravened or failed to comply with any provision of this Act.

(2) The provisions of Section 9(2), regarding a decision to suspend a license, apply with the necessary changes to the debarment of a person contemplated in Subsection (1).

(3) 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 as contemplated in Section 13(3).

(4) The registrar may make known any such debarment and the reasons thereof, or the lifting thereof, by notice on the official web site or by means of any other appropriate public media.

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 i.e. representative has contravened the Act in a material manner. In such instances, the key individual must ensure that the correct procedures are followed in terms of labour law requirements before debarment is affected.
The **FSP may use information regarding the conduct** of a representative received from the Ombud for Financial Services Providers (FAIS Ombud), the Registrar and any other source.

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.

### 8.13 Debarment Process

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 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 FSCA (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 FSCA (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.

8.14 Timeframes and Processes to notify the Registrar of a Debarment

8.14.1 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. 98

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.

98 Section 14A (3)
The debarment timeframes:

- 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 person to be debarred is issued with the notice in order to afford him a reasonable opportunity (14 days) to respond thereto.

Reappointment of debarred representatives

The requirements for the reappointment of debarred representatives is detailed as follows:

- At least 12 months since debarment must have elapsed in order to consider reappointment
- Unless debarment was consequent on lack of competency referred to in Section 13 of the FAIS Act, and the applicant has within the debarment period met the competency requirements
- All un-concluded business referred to in the provisions under Section 14 of the FAIS Act has been properly concluded
- All complaints and/or legal proceedings submitted by clients have been properly and lawfully concluded
- All Fit and Proper requirements as contemplated in Section 8 and Section 13 of the FAIS Act have been complied with.
8.15 Knowledge Test – Chapter 8

Test your knowledge

1. As a Representative, you need to ensure that the following requirements are met with regard to the confidentiality of client information:

   1. An FSP may not disclose any confidential information acquired or obtained from a client unless the client consented in writing after the disclosure
   2. An FSP may not disclose any confidential information acquired or obtained from a client unless the client consented in writing beforehand
   3. An FSP may not disclose any confidential information acquired or obtained from a client unless disclosure of the information is required in the Registrar’s interest
   4. An FSP may not disclose any confidential information acquired or obtained from a client unless disclosure is required in terms of any law

   I) 1 and 4
   II) 1 and 3
   III) 2 and 4
   IV) 1 and 2

2. Apply your knowledge of disclosure requirements as a representative about product information. Which of the following disclosures must be made?

   1. A written statement to the client, at least once a month, which identifies the products and states the ongoing monetary obligations of the client, amongst other things
   2. 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
   3. Material tax considerations and whether cooling off rights are offered and, if so, procedures for the exercise of such rights
   4. Amounts of insurance premium increases of an insurance product for the first five years and thereafter on a five-yearly basis, but not exceeding 20 years

   I) 3 and 4
   II) 2 and 3
   III) 2 and 4
   IV) 2, 3 and 4
3. Analyse the following statements and choose which ones apply to Representatives who give advice and/or render intermediary services in respect of multiple license categories or product subcategories.

1. The relevant minimum and maximum periods of supervision start on the date that the Representative is appointed to render services in a particular license category or product subcategory
2. They can gain the experience at the same time and will remain under supervision until the most onerous experience requirement is met
3. They must gain the experience separately for the different categories and will remain under supervision until the most onerous experience requirement is met
4. Any significant interruption, being eight consecutive weeks or longer, must be compensated for by arranging an additional period under supervision, equal to the interrupted period

4. Interpret the following scenario and choose the correct answer:
South Financial Services is looking to appoint a Category III Representative. Which of the following individuals meet the general and specific experience requirements?

a. Joan worked in various categories within financial services intermittently for the last ten years in the USA and New Zealand
b. John worked in England in Category III for eight years and returned to South Africa four years ago to start his own insurance business
c. Anne worked for one year in Australia and two and a half years in South Africa providing Category III services
d. Moses has worked at a company offering Category III financial services for the last five years in various roles including office management and graphic design
e. b and c

5. If a Representative does not meet one or more of the competence requirements by the cutoff date:

a. The FSP should give him a written warning and leave him on the rep register
b. He can continue to render financial services until he meets the requirements but must be supervised
c. He is not fit and proper and must be removed from the rep register
d. He can continue to render intermediary services only

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<td>I</td>
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<td>II</td>
<td>1 and 2</td>
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<td>III</td>
<td>2 and 3</td>
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<td>IV</td>
<td>3 and 4</td>
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<td>b.</td>
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<td>c.</td>
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<td>d.</td>
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<td>e.</td>
<td>b and c</td>
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<td>c.</td>
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<tr>
<td>d.</td>
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</tbody>
</table>
6. Representatives need not be licensed under FAIS. However, due to the fact that they work for an FSP who is licensed, they need to comply with the Fit and Proper requirements and be listed in the FSP’s Representative Register. Which of the following statements is FALSE with regard to the fit and proper requirements, which a Representative need to meet?

<p>| | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td>a.</td>
<td>Honesty and integrity</td>
</tr>
<tr>
<td>b.</td>
<td>Competence</td>
</tr>
<tr>
<td>c.</td>
<td>Relevant qualification</td>
</tr>
<tr>
<td>d.</td>
<td>5 years management experience</td>
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</tbody>
</table>

7. Interpret the Fit and proper requirements for a representative and look at the below mentioned requirements and advise which one does not apply to Representatives?

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</thead>
<tbody>
<tr>
<td>a.</td>
<td>Honesty and integrity</td>
</tr>
<tr>
<td>b.</td>
<td>Competence</td>
</tr>
<tr>
<td>c.</td>
<td>Experience</td>
</tr>
<tr>
<td>d.</td>
<td>Financial Soundness</td>
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</table>

8. Apply your knowledge of the Regulatory Examinations and choose the Correct Exam that a Representatives needs to pass before the representative can assume his/her role

<p>| | |</p>
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<tr>
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<tbody>
<tr>
<td>a.</td>
<td>Regulatory Examination Level 1 is not compulsory for Representatives</td>
</tr>
<tr>
<td>b.</td>
<td>Representatives must first obtain the required qualifications before completing Regulatory Examination Level 1</td>
</tr>
<tr>
<td>c.</td>
<td>Regulatory Examination Level 2 applies to Key Individuals only</td>
</tr>
<tr>
<td>d.</td>
<td>Regulatory Examination Level 1 is compulsory for Representatives</td>
</tr>
</tbody>
</table>

9. Interpret the following statement and choose that option which is true. There are certain timelines that have to be met for successful completion of the experience, qualifications, regulatory examinations and CPD requirements. Failure by a Representative to meet the competency requirements by the relevant date means that the FSP is required to take appropriate action.

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<th></th>
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</thead>
<tbody>
<tr>
<td>a.</td>
<td>Ensure ongoing compliance with continuous professional development (CPD) requirements</td>
</tr>
<tr>
<td>b.</td>
<td>Ensure compliance within a time period of two years from application</td>
</tr>
<tr>
<td>c.</td>
<td>Ensure compliance within a time frame of three years</td>
</tr>
<tr>
<td>d.</td>
<td>None of the above</td>
</tr>
</tbody>
</table>

10. The concept of financial service consists of the following alternatives:

<p>| | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td>a.</td>
<td>Giving advice</td>
</tr>
<tr>
<td>b.</td>
<td>Giving advice and providing an intermediary service</td>
</tr>
<tr>
<td>c.</td>
<td>Providing an intermediary service</td>
</tr>
<tr>
<td>d.</td>
<td>Providing managerial services</td>
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<tbody>
<tr>
<td>a)</td>
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<tr>
<td>b)</td>
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<tr>
<td>c)</td>
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<tr>
<td>d)</td>
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</tbody>
</table>
11. Prior to providing advice to a client, the FSP or its Representative must take reasonable steps to obtain from the client certain information to be able to advise the client correctly. Which statement is TRUE?

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<thead>
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<tbody>
<tr>
<td>a.</td>
<td>Financial situation</td>
</tr>
<tr>
<td>b.</td>
<td>Financial product experience</td>
</tr>
<tr>
<td>c.</td>
<td>Financial objectives</td>
</tr>
<tr>
<td>d.</td>
<td>All of the above</td>
</tr>
</tbody>
</table>

12. Apply your knowledge of Advice and scrutinize the following scenario and choose the correct option: Jonathan has been requested to provide Adrian with advice with regard to short term deposit options. Adrian is very busy and in meetings and so cannot meet with Jonathan to provide information on his financial situation or objectives. Adrian advises Jonathan to make a decision on his behalf. Jonathan has a duty to:

<p>| | |</p>
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<tbody>
<tr>
<td>1.</td>
<td>Choose a product that Jonathan thinks is suitable, complete the record of advice and send it to Adrian within 30 days as Adrian has given him full discretion to do so</td>
</tr>
<tr>
<td>2.</td>
<td>Advise Adrian that a full needs analysis was not done and there might be limitations to the advice provided</td>
</tr>
<tr>
<td>3.</td>
<td>Advise Adrian to consider by himself, whether the advice provided is appropriate to his needs</td>
</tr>
<tr>
<td>4.</td>
<td>Assist Adrian in every way he can and to do as Adrian requested</td>
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<tbody>
<tr>
<td>a)</td>
<td>2 and 3</td>
</tr>
<tr>
<td>b)</td>
<td>1, 2 and 3</td>
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<tr>
<td>c)</td>
<td>1 and 3</td>
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<tr>
<td>d)</td>
<td>4 only</td>
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</table>

13. Which of the following statements is FALSE in respect of the Representatives register?

<p>| | |</p>
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<thead>
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<tbody>
<tr>
<td>a.</td>
<td>The FSP must have a register of all Representatives and Key Individuals employed or mandated by the FSP</td>
</tr>
<tr>
<td>b.</td>
<td>The Representatives register must be updated every 30 days and sent to the FSCA (FSB)</td>
</tr>
<tr>
<td>c.</td>
<td>Updates to the Representatives register include any changes in the fit and proper circumstances of either a Representative or Key Individual and these changes are reflected on the register</td>
</tr>
<tr>
<td>d.</td>
<td>If a Representative or Key Individual is no longer employed by an FSP then the individual must be removed from the list completely</td>
</tr>
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</table>

14. How often should the Representative register be updated?

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<tbody>
<tr>
<td>a.</td>
<td>Every month</td>
</tr>
<tr>
<td>b.</td>
<td>Bi-annually</td>
</tr>
<tr>
<td>c.</td>
<td>Within 15 days of any changes to the Representative’s fit and proper circumstances</td>
</tr>
<tr>
<td>d.</td>
<td>As soon as there are any changes to the Representative’s fit and proper circumstances</td>
</tr>
</tbody>
</table>
15. Apply your knowledge of the process to be followed in terms of the removal of a Representative’s name from the Register. What is the time period in which this must be done? Choose the CORRECT statement.

a. Within 5 days of the removal of the Representative’s name
b. Within 30 days of the removal of the Representative’s name
c. Within 10 days of the removal of the Representative’s name
d. Within 15 days of the removal of the Representative’s name

16. Analyse the following Statements and select the correct Statement:

a. The Registration Department is responsible for new license applications, profile changes, updating the central Representative register, approval of mandates and application forms for discretionary FSPs and administrative FSPs, lapsing of licenses, queries on license status and collection of levies together with the FSCA (FSB) Finance Department
b. The Supervision Department is responsible for new license applications, profile changes, updating the central Representative register, approval of mandates and application forms for discretionary FSPs and administrative FSPs, lapsing of licenses, queries on license status and collection of levies together with the FSCA (FSB) Finance Department
c. The Supervision Department is responsible for the implementation of a risk-based approach to supervision of Financial Service Providers, analysis of financial statements and compliance reports, conducting onsite visits to FSPs and Compliance Officers and liaising with the industry relating to changes in legislation
d. The Enforcement Department is responsible for dealing with complaints against FSPs that cannot be referred to the FAIS Ombud, and conducting onsite visits to FSPs and Compliance Officers

17. If there is a significant interruption while the Representative is gaining experience of six consecutive weeks (or longer) then an additional period under supervision must be arranged equal to the length of the interruption. What is this statement an example of?

a. Responsibilities of an FSP in terms of services under supervision
b. What is included in and expected of supervision
c. Requirements of a Key Individual
d. Conditions, which must apply to the period under supervision

18. Which of the following statements is TRUE? The following applies to the Regulatory Examinations for Representatives.

a. Regulatory Examination Level 2 applies to Representatives and Key Individuals
b. Regulatory Examination Level 1 is not compulsory for Representatives
c. 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
d. Representatives must first obtain the required qualifications before completing Regulatory Examination Level 1
19. Analyse the specific supervision conditions that apply to Categories II, IIA and III and select one such condition:

| a. Conduct sample checks on a weekly basis to ensure that the supervisee did not deviate from the relevant mandate or investment team meetings |
| b. Supervision also includes any other activity, which enables the supervisor to scrutinise the activities of the supervisee in respect of financial services being provided by the supervisee |
| c. Supervisor must do appropriate post-transaction sampling on a daily basis |
| d. Conduct sample checks on a monthly basis to ensure that the supervisee does not deviate from the relevant mandate or investment team meetings |

20. Apply your knowledge of Advice and scrutinize the following scenario and choose the correct option: Respond to the following scenario and indicate which criteria is applicable. Bridgette is a Representative for Sanlam and was appointed in June 2010. She does not meet the full qualifications criteria for Categories I and IV and can only be exempted if the following criteria are met:

| 1. Bridgette must have had Matric or Grade 12 or an appropriate certificate at NQF level 4 when she was appointed and work under supervision until the full qualification is obtained |
| 2. Bridgette must have completed a skills programme and an appropriate certificate at NQF level 4 when she was appointed. |
| 3. If Bridgette works in subcategory 1.17 Long – term deposits, she must have had ABET level 1; or the proven ability to read, write and calculate to the satisfaction of Sanlam when she was appointed |
| 4. If Bridgette works in subcategory 1.1 Long – term Insurance Category A, she must have had ABET level 1; or the proven ability to read, write and calculate to the satisfaction of Sanlam when she was appointed |

| a) 1 and 3 |
| b) 1 and 2 |
| c) 1 and 3 |
| d) 1 and 4 |
Questions & Answers
9. Questions & Answers

9.1 Q&As – Chapter 1

Test your knowledge

1. Which of the following would qualify as a representative of an FSP in terms of the FAIS Act?
   a. An accountant whose job does not lead clients to buying a financial product
   b. A clerk who does not have to use judgement in performing his job functions
   c. An admin manager who handles general admin queries only
   d. A contractor who renders financial services

2. Choose a statement that best describes the importance of remaining up to date with regard to the regulatory environment that will affects the FSP:
   1. The FSP must ensure that there are procedures and systems in place to identify changes in legislation and Representatives should rely only on FSPs for information about changes
   2. It is important that the Key Individual/FSP and representative stay up to date with changes and updates in the FAIS legislation – including the subordinate legislation
   3. It is crucial for an FSP to be aware of changes in legislation as well as new legislation introduced and to ensure that all staff, such as Representatives are informed of the changes and requirements
   4. It is important that the business aligns its practices and compliance with applicable legislation on an annual basis

   i. 1 and 3 only
   ii. 2 and 3 only
   iii. 3 and 4 only
   iv. 1 and 4 only

3. Interpret the following statement and choose the description that best suits the statement
   “The FAIS Act follows a functional approach and not an institutional approach”
   a. A functional approach means that the Act regulates certain functions across institutions (insurance companies, brokerages and banks)
   b. A functional approach focusses on specific institutions
   c. The function of providing financial services across various institutions is governed by the FAIS Act

   1. B and C
   2. A and C
4. Apply your knowledge of the FAIS Act and choose the items that best explain the purpose of the Act.

a. To regulate the rendering of certain financial advisory and intermediary services to clients
b. To repeal or amend certain laws
c. To provide for matters incidental thereto. The regulation of advisory and intermediary services protects consumers and ensures that they are able to make informed decisions
d. To institute effective money laundering Control measures
e. a, b and c

5. “The purpose of the FSR Act is to establish a system of financial regulation by establishing the Prudential Authority and the Financial Sector Conduct Authority. It confers powers on these entities to preserve and enhance financial stability in the Republic by conferring powers on the Reserve Bank.”

Review the above statement choosing the statement that best describes its purpose.

a. The aim of the Act is to establish regulatory bodies that will govern the various sectors of the Financial Services Environment under the ambit of the Reserve Bank
b. The Reserve bank has established regulatory bodies that will govern the various sectors of the Financial Services Environment under the ambit of the FSR
c. The aim of the Act is to establish regulatory bodies that will govern the various sectors of the Financial Services Environment under the ambit of the FSR
d. The Reserve bank has established regulatory bodies that will govern the various sectors of the Financial Services Environment under the ambit of the Reserve Bank
e. The Reserve bank has established regulatory bodies that will govern the various sectors of the Financial Services Environment under the ambit of the FIC

6. Financial services include:

a. Instructions on the development of products
b. The rendering of advice and/or intermediary services
c. The processing of policy applications
d. Overseeing of the compliance processes

7. Financial products are categorized into categories and sub-categories under the FAIS Act Which of the following is CORRECT?

1. Category I – All persons authorised to render financial services set out in the application, other than those mentioned in the other Categories
2. Category II – All persons authorized as Discretionary FSP’s
3. Category II A – All persons authorized as Hedge Funds FSP’s
4. Category III – All persons authorized as Assistance Business FSP’s
5. Category IV – all persons authorized as Administrative FSP’s

   a. 1, 2 and 3
   b. 1, 3 and 4
   c. 3, 4 and 5
   d. 1, 2 and 5
   e. All of these
8. Mason acts for a Provider and needs to make certain disclosures to Joan. Which one of the statements below may Mason NOT disclose?

a. Name, physical address, postal and telephone contact details
b. Details of complaints procedures which a client could follow if ever necessary
c. **Critical Comparisons between different Financial Products, Providers or Representatives**
d. The Provider must convey the remuneration, including the commission received from the Product Supplier

9. Anne is employed at a dealership as an assistant to the Business Manager. Anne only uploads finance applications and prepares the paperwork for the Business Manager. Paperwork includes completing the warranty documents. Based on the scenario advise if Anne should be registered on the Representative register

a. No, Anne is only doing administrative work and does not provide advice or sells any Financial products
b. Yes, Anne should be registered in case she does have to stand in for the Business Manager
c. Yes, Anne is preparing the warranty documents and that constitutes intermediary services and therefore she must be registered
d. None of the above

10. Apply your knowledge of Financial Services Categories and advise which category the following description falls into:

   "In relation to a financial services provider, means all persons, other than persons referred to in Categories II, IIA, III and IV, who are authorized to render the financial services (other than financial services mentioned in Categories II, IIA, III and IV) as set out in the relevant application."

a. Category I
b. Category IIA
c. Category III
d. Category IV

11. Analyse the following sub categories and identify which sub categories falls under Category 1 Financial Services.

a. Long-term Insurance Subcategory A
b. Long-term Insurance Subcategory B1
c. Retail Pension Benefits
d. Pension Fund Benefits

   a. A and C
   b. B and D
   c. All of these
12. Analyse disclosure requirements and choose the one most suitable for Clients that must obtain adequate information on financial products.

1. The provider must within one month, provide, where applicable, information of the name, class or type of the financial product concerned
2. Nature and extent of the benefits as well as the way they are derived or calculated and the manner in which they will accrue or be paid
3. Where the financial product is marketed or positioned as an investment, or having an investment component a brief summary of the manner in which the value of an investment is determined, including a brief summary of any underlying assets or other financial instruments
4. Where the financial product is marketed or positioned as an investment, or having an investment component on request, information about the past investment performance of the product over periods and at intervals which are reasonable with regard to the type of product involved including a warning that past performances are not necessarily indicative of future performances

| a. 1, 3 and 4 | b. 1, 2 and 3 | c. 1, 2 and 4 | d. 2, 3 and 4 | c. All of these |

13. An FSP has to appoint a Compliance Officer if:

a. It has more than one Key Individual or one or more representatives
b. It has a Key Individual
c. It has only representatives
d. It has one or more representatives

14. Moira is a Compliance Officer at Liberty Insurance Services and has recently become aware of some non-compliance issues. What should she do?

a. Decide whether they are material and if they are mention it in her compliance report
b. Discuss it with her colleagues at other financial institutions
c. Report them to the FAIS Supervision Department for advice
d. Report them immediately to the FSCA (FSB)

15. Michael is the Key Individual of Blue Financial. He chooses to dismiss Lee Anne as their Compliance Officer. Whose responsibility is it to inform the Registrar of the reasons for dismissal and the New Compliance Officer?

a. Lee Anne
b. Michael
c. It is not a requirement to inform the Registrar
d. Internal auditors
e. a and b
16. The FAIS Registrar may consider certain information when an FSP applies for a licence. Choose the statement which is NOT considered

<table>
<thead>
<tr>
<th>Option</th>
<th>Statement</th>
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<tbody>
<tr>
<td>a.</td>
<td>Only refer to the documentation submitted by the applicant</td>
</tr>
<tr>
<td>b.</td>
<td>Consider additional information obtained from external sources without giving the applicant an opportunity to comment on the information</td>
</tr>
<tr>
<td>c.</td>
<td>Consider additional information obtained from external sources provided the applicant was given opportunity to comment on the information</td>
</tr>
<tr>
<td>d.</td>
<td>a and b</td>
</tr>
</tbody>
</table>

17. Apply your knowledge of the Compliance function and explain the following: 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?

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<thead>
<tr>
<th>Option</th>
<th>Meaning</th>
</tr>
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<tbody>
<tr>
<td>a.</td>
<td>Ensure that the compliance controls in business are effective and implemented</td>
</tr>
<tr>
<td>b.</td>
<td>Ensures that the representatives functions according to their job descriptions</td>
</tr>
<tr>
<td>c.</td>
<td>Ensures the FSP is financially sound</td>
</tr>
<tr>
<td>d.</td>
<td>Ensures that the Representatives are fit and proper</td>
</tr>
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</table>

18. Analyse the following Statement and explain the meaning: The Act also requires the compliance officer to ‘supervise’ the compliance function:

<table>
<thead>
<tr>
<th>Option</th>
<th>Meaning</th>
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<tbody>
<tr>
<td>a.</td>
<td>Is responsible for the establishment of the compliance function, including all the control requirements</td>
</tr>
<tr>
<td>b.</td>
<td>Is responsible for all compliance-related functions</td>
</tr>
<tr>
<td>c.</td>
<td>Requirements of the Act are met through the procedures which the FSP (key individual) must establish</td>
</tr>
<tr>
<td>d.</td>
<td>a and c</td>
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19. Identify the type of reports that the Compliance officer must send to the Registrar.

<table>
<thead>
<tr>
<th>Option</th>
<th>Type of Report</th>
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<tbody>
<tr>
<td>a.</td>
<td>Is responsible for the establishment of the compliance function, including all the control requirements</td>
</tr>
<tr>
<td>b.</td>
<td>Make recommendations as required</td>
</tr>
<tr>
<td>c.</td>
<td>The compliance officer’s report must also include reporting any irregularity or suspected irregularity</td>
</tr>
<tr>
<td>d.</td>
<td>Constantly test/review the integrity of the compliance controls</td>
</tr>
</tbody>
</table>
9.2 Q&As – Chapter 2

Test your knowledge

1. When the Registrar intends to suspend or withdraw a license, the licensee is:
   - I. Entitled to be given a reasonable opportunity to make a submission in this regard
   - II. Entitled to appeal against the decision
   - III. Not allowed the opportunity to make a submission in this regard
   - I. Allowed to continue working for another three months in order to conclude all outstanding business

2. Scrutinise the statements below and advise which of the following statements apply to Representatives who give advice and/or render intermediary services in respect of multiple license categories or product subcategories?
   - 1. The relevant minimum and maximum periods of supervision start on the date that the Representative is appointed to render services in a particular license category or product subcategory
   - 2. They can gain the experience at the same time, and will remain under supervision until the most onerous experience requirement is met
   - 3. They must gain the experience separately for the different categories, and will remain under supervision until the most onerous experience requirement is met
   - 4. Any significant interruption, being eight consecutive weeks or longer, must be compensated for by arranging an additional period under supervision, equal to the interrupted period
   - i) 1 and 3
   - ii) 1 and 2
   - iii) 2 and 3
   - iv) 3 and 4

3. The FAIS Act requires the FSP to take certain actions in respect of the licensing conditions. Identify one or more of these actions:
   - a. The FSP may be licensed to only provide intermediary service or only advice in respect of a particular category of financial product. Both services can’t be offered
   - b. Specific conditions include reference to the categories for which the FSP is authorised
   - c. FSPs must adhere to the conditions and also ensure that there are adequate systems and processes in the business to ensure compliance with the conditions
   - I. All of the above
   - ii. None of the above
   - iii. B & C
4. Apply your knowledge of the Fais Act and identify which section of the Act the following statement refers to: ____________ of the FAIS Act includes the requirement for qualifications of representatives and duties of FSPs towards the maintenance of the FAIS license.

   a. Section 11  
   b. Section 13  
   c. Section 10 (A)  
   d. Section 18

5. Complete the Sentence.
   “The FSP may have more than one license because the financial services of the FSP are limited to the specific sub-product category for which a license is issued because”:

   a. The structure of the business may be such that products are grouped together, which makes it logical to have a specific license for that part of the business  
   b. Where representatives (and key individuals) work across various (sub)-products and license categories, there must be internal controls to ensure that the financial service (or management and oversight) they provide correspond with the specific license conditions and restrictions  
   c. There may be limitations in terms of the type of financial service which is allowed for a specific financial products category or sub-category

6. Choose the CORRECT statements which are classed as offences in terms of the FAIS Act.

   a. Failure to display a FAIS license  
   b. Failure to get a license to operate as an FSP  
   c. Failure to have the license available when proof is requested  
   d. All the above

7. Analyse the statements below and advise which statement best describes the conditions that apply to the display of the Fais license.

   a. An FSP must display certified copies of its FAIS license clearly in every head office and regional office and must ensure that all business documentation, advertisements and other promotional material refer to the license  
   b. An FSP must display copies of its FAIS license clearly in every business premises and must ensure that all business documentation, advertisements and other promotional material refer to the license  
   c. An FSP must display certified copies of its FAIS license clearly in every business premises and must ensure that all business documentation, advertisements and other promotional material refer to the license  
   d. An FSP must display certified copies of its FAIS license clearly in every business premises and need only ensure that advertisements refer to the license
8. Apply your knowledge of licensing conditions and explain what the requirements are regarding the display of licenses.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>An FSP must display certified copies of the license in a prominent and durable manner in every business premise</td>
</tr>
<tr>
<td>2.</td>
<td>An FSP must ensure that all business documentation, advertisements and other promotional material displays the license number and other details</td>
</tr>
<tr>
<td>3.</td>
<td>An FSP must display certified copies of the license in a prominent and durable manner in the Head Office and Regional offices if applicable</td>
</tr>
<tr>
<td>4.</td>
<td>An FSP must ensure that all business documentation, advertisements and other promotional material refers to the license</td>
</tr>
</tbody>
</table>

<p>| | |</p>
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<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>i)</td>
<td>1 and 3</td>
</tr>
<tr>
<td>ii)</td>
<td>2 and 3</td>
</tr>
<tr>
<td>iii)</td>
<td>3 and 4</td>
</tr>
<tr>
<td>iv)</td>
<td>1 and 4</td>
</tr>
</tbody>
</table>

9. The Registrar may suspend or withdraw a FAIS license, subject to certain conditions. Which statement is TRUE regarding suspension and withdrawal of licenses?

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>The license may also be reinstated, subject to certain conditions</td>
</tr>
<tr>
<td>b.</td>
<td>If an accredited Medical Schemes FSP loses its accreditation in terms of the Medical Schemes Act, the FAIS License will also be deemed to be suspended or withdrawn</td>
</tr>
<tr>
<td>c.</td>
<td>If the accredited Medical Schemes (FAIS) FSP's license is suspended or withdrawn in terms of the FAIS Act, it will lose its accreditation in terms of the Medical Schemes Act</td>
</tr>
<tr>
<td>d.</td>
<td>If the accredited Medical Schemes (FAIS) FSP's license is suspended or withdrawn in terms of the FAIS Act, it will lose its accreditation in terms of the Medical Schemes Act</td>
</tr>
</tbody>
</table>

10. Where an FSP and product supplier are the same legal entity, it (including a Representative) may receive or offer the following from or to a third party:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>Any Cash, Cash equivalent</td>
</tr>
<tr>
<td>2.</td>
<td>STI, LTI or Medical Schemes Act commission</td>
</tr>
<tr>
<td>3.</td>
<td>Any Domestic/foreign travel, Hospitality, Accommodation, Sponsorship</td>
</tr>
<tr>
<td>4.</td>
<td>Other fees if the fees are agreed by client in writing and it may be stopped by client</td>
</tr>
</tbody>
</table>

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>i)</td>
<td>1 and 3</td>
</tr>
<tr>
<td>ii)</td>
<td>1, 2 and 3</td>
</tr>
<tr>
<td>iii)</td>
<td>1, 2 and 4</td>
</tr>
<tr>
<td>iv)</td>
<td>2 and 4</td>
</tr>
</tbody>
</table>

11. The Registrar when deciding whether a business has been guilty of committing undesirable business practices, must consider whether the business practice has, or is likely to have, a direct or indirect effect on which of the below mentioned results. Choose the correct option:

<p>| | |</p>
<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>Harming the relations between FSPs</td>
</tr>
<tr>
<td>b.</td>
<td>Unreasonably prejudicing clients</td>
</tr>
<tr>
<td>c.</td>
<td>Deceiving any client</td>
</tr>
<tr>
<td>d.</td>
<td>All the above</td>
</tr>
</tbody>
</table>
12. There are prescribed principles that must be taken into account before the Registrar can declare the business practice as undesirable, including:

| a. | The business practice must have had a direct or indirect effect during the preceding two months resulting in harming the relations between FSPs or any FSP or category of FSPs, and clients or the general public |
| b. | The business practice must have, or is likely to have, a direct or indirect effect resulting in the Ombud making determinations against brokers |
| c. | 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 |
| d. | The business practice must have, or is likely to have, a direct or indirect effect resulting in the share price of the affected FSPs declining |

13. The Fais Act specifically makes reference to what is meant by undesirable practices. Choose the prescribed principles that must be taken into account before the Registrar can declare the practice undesirable.

| a. | The business practice has the effect of harming the relations between FSPs or any FSP or category of FSPs, and clients or the general public |
| b. | The business practice has the effect of unreasonably prejudicing clients |
| c. | The business practice has the effect of deceiving any client |
| d. | The business practice has the effect of unfairly affecting any client; and if allowed to continue, the practice will defeat one or more objects of the FAIS Act |
| e. | All of the above |

14. Section 34 of the FAIS Act empowers the FAIS Registrar to declare a particular business practice “undesirable” for all categories of Financial Services Providers. As a Representative, you need to understand the implications for an FSP if the Registrar publishes a notice regarding an “undesirable business practice”. The principles, which the FAIS Registrar must consider before s/he can declare a practice undesirable includes:

| a. | There are prescribed principles that must be taken into account before the Registrar can declare a practice undesirable and this includes that 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 |
| b. | That the directors and/or management must have committed fraud or theft |
| c. | There are prescribed principles that must be taken into account before the Registrar can declare a practice undesirable and this includes that the business practice must have a direct effect resulting in the loss of funds |
| d. | That the FAIS Registrar must publish an intention to declare a business practice as undesirable only in the national and local media |
15. There are certain implications for an FSP if the Registrar publishes a notice regarding an undesirable business practice. Which of the statements below are FALSE in this regard

<table>
<thead>
<tr>
<th>Statement</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. The FSP may carry on with the business practice concerned, until the registrar provides written directive for the FSP to desist</td>
<td>i) b and c</td>
</tr>
<tr>
<td>b. The registrar may direct a non-authorised FSP, who carries on the business practice on/after date of publication of the notice, in contravention of the notice, to rectify, to the satisfaction of the registrar, anything which was caused by or arose out of the business practice</td>
<td>ii) a, b and d</td>
</tr>
<tr>
<td>c. An FSP who was directed by the registrar to rectify anything must do so within 60 days after such direction is issued</td>
<td>iii) c and d</td>
</tr>
<tr>
<td>d. An FSP who was directed by the registrar to rectify anything must do so within 30 days after such direction is issued</td>
<td></td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Principle</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>a. The business practice must have had a direct or indirect effect during the preceding two months resulting in harming the relations between FSPs or any FSP or category of FSPs, and clients or the general public</td>
<td></td>
</tr>
<tr>
<td>b. The business practice must have, or is likely to have, a direct or indirect effect resulting in the Ombud making determinations against brokers</td>
<td></td>
</tr>
<tr>
<td>c. 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</td>
<td></td>
</tr>
<tr>
<td>d. The business practice must have, or is likely to have, a direct or indirect effect resulting in the share price of the affected FSPs declining</td>
<td></td>
</tr>
</tbody>
</table>

17. There are reparation measures available to the Registrar should the representative continue to be guilty of such undesirable business practices. Choose the statement that is TRUE:

<table>
<thead>
<tr>
<th>Statement</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>a. If an FSP continues such business practices after the date of publication, the Registrar may inform the FSP to rectify or reinstate, to the satisfaction of the Registrar, any damage or loss which was caused by or arose out of the carrying on of the business practice concerned</td>
<td></td>
</tr>
<tr>
<td>b. The FSP who must rectify or reinstate must do so within 90 days after the direction was issued</td>
<td></td>
</tr>
<tr>
<td>c. If the FSP does not adhere to the Registrar's directive, a fine of not more than R10 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</td>
<td></td>
</tr>
<tr>
<td>d. Business must be informed to continue doing business with, or using the services of an FSP whose business practice has been declared undesirable</td>
<td></td>
</tr>
</tbody>
</table>
18. Alan is a Representative working for ABC Brokers for the past three years. Seven years ago, he was involved in a motor vehicle accident and he was found guilty of drunken driving. Which of the following statements are FALSE with regard to Alan being fit and proper:

<table>
<thead>
<tr>
<th>Statement</th>
<th>Option</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Alan is fit and proper because the offence does not relate to honesty and integrity</td>
<td>i) a and d</td>
</tr>
<tr>
<td>b. Alan is fit and proper because the offence occurred more than five years ago</td>
<td>ii) c only</td>
</tr>
<tr>
<td>c. Only if Alan gets a jail sentence will his honesty and integrity be affected</td>
<td>iii) a and b</td>
</tr>
<tr>
<td>d. Only if Alan was found guilty in civil proceedings by a court of law of having acted fraudulently, dishonestly, unprofessionally, dishonorably or in breach of a fiduciary duty, within five years before the date of appointment by the FSP will he be deemed not fit and proper</td>
<td>iv) b and d</td>
</tr>
</tbody>
</table>

19. Section 7(1), 8(8), 13(1), 14(1), 18, 19(2) or 34(4) or (6) all refer to requirements for Representatives under the FAIS Act. If the Representative contravenes any of these requirements the Representative is guilty of an Offense and will be liable for a fine and imprisonment. Choose the correct penalty as prescribed by the Act

<table>
<thead>
<tr>
<th>Penalty Description</th>
<th>I</th>
<th>II</th>
<th>III</th>
<th>IV</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. Fine not exceeding R10 000 000 or imprisonment for a period not exceeding 10 years, or both (such fine and such imprisonment)</td>
<td></td>
<td>Fine not exceeding R 10 000 000</td>
<td>Imprisonment for a period not exceeding 10 Years</td>
<td>Fine of R 10 000 000 and imprisonment for a period not exceeding 15 years</td>
</tr>
</tbody>
</table>
9.3 Q&As – Chapter 3

Test your knowledge

1. Which of the following is TRUE?
   a. Section 7 of the FAIS Act includes the qualifications of Representatives and duties of FSPs towards the maintenance of the FAIS license
   b. FSPs may only have one license
   c. The licensing conditions will never include exemptions applicable to the FSP
   d. The financial services of the FSP are limited to the specific categories and sub product for which a license is issued

   I) a and d only
   II) b and c only
   III) a and b only
   IV) d only

2. Which of the following statements are TRUE: Choose one answer.
   a. Records of ongoing compliance by Representatives as required by Section 13(1) and (2) of the Act include the necessary documentation to confirm that they represent the FSP in terms of a mandate or contract and that the FSP accepts responsibility for the activities of the Representative accordingly
   b. Complaints must be recorded in accordance with the complaints policy of the FSCA (FSB)
   c. It is the compliance officer’s duty to ensure that client information is securely filed and protected against any misuse by any unauthorised person
   d. An FSP may disclose confidential information acquired or obtained from a client if the client’s employer requested information verbally and in writing

3. Which of the following roles may be fulfilled by a Key Individual in terms of the FAIS Act? Choose the CORRECT roles.
   a. Managing and overseeing the FSPs business
   b. Compliance and auditing
   c. Being a Key Individual and a Representative
   d. Being an accountant and Key Individual

4. All Key Individuals must meet critical Fit and Proper requirements. Choose the INCORRECT statement. Fit and Proper includes:
   a. Honesty and Integrity
   b. Competence in all financial product categories
   c. Operational ability
   d. All of the above
5. All FSPs, Key Individuals and Representatives need to meet specific requirements and criteria to be able to render a service and be licensed. Choose the CORRECT one.

| a. Honesty and integrity          |
| b. Competence (qualifications and experience) |
| c. Management ability            |
| **d. All of the above**          |

6. Which of the following statements are FALSE? Key Individuals or FSPs have certain responsibilities in relation to the management of services under supervision.

| a. The FSP/Key Individual must satisfy the Registrar that the business has the financial ability to provide services under supervision |
| b. The FSP/Key Individual must satisfy the Registrar that there is a competent person to act as supervisor (which can be the FSP or the Key Individual or a Representative) and that person must only have supervisory experience |
| c. The FSP/Key Individual must place the supervisees who are getting the experience in the subcategories for which they are appointed or in a position where he/she can gain experience in the specific subcategory |
| **d. The FSP/Key Individual must ensure that Representatives who act under supervision must complete RE2 and the relevant qualification for the applicable category or subcategory within three years from the date of appointment** |

7. Complete the following: The key individual is the person responsible for ____________ the activities of the financial services provider and its representatives when they render financial services to clients with regard to financial products.

| a. Managing and overseeing |
| b. Advising and recording |
| c. Keeping records of     |
| d. None of the above      |

8. Analyse the following statements and identify the TRUE statement:

| a. The activities of the FSP refer to the rendering of an intermediary service and/or advice relating to the financial products for which the FSP is licensed (category and subcategories). The key individual is the person who the Registrar holds responsible for compliance and non-adherence to the Act and subordinate legislation |
| b. The activities of the FSP refer to the rendering of an intermediary service relating to the financial products for which the FSP is licensed. The key individual is the person who the Registrar holds responsible for compliance to the Act |
| c. The activities of the FSP refer to the rendering advice relating to the financial products for which the FSP is licensed (category and subcategories). The key individual is the person who the Registrar holds responsible for non-adherence to the Act and subordinate legislation |
| **d. The activities of the FSP refer to the rendering of an intermediary service and/or advice relating to the financial products for which the FSP is licensed (category and subcategories). The Representative is the person who the Registrar holds responsible for compliance and non-adherence to the Act and subordinate legislation** |
9. Key Individuals are responsible for certain processes within the industry. Which statement is NOT a responsibility within their job function?

a. Managing and overseeing the activities relating to the FSP
b. Key Individuals bring both technical and managerial skill to their organisation
c. Legal and accounting reporting
d. A and C

10. Any person wanting to offer a financial service in respect of a financial product will need a license. The Registrar will not issue a license unless the FSP and Key Individual are able to meet all the identified requirements. Which one of the following statements are NOT a requirement and is INCORRECT?

a. Personal qualities of honesty and integrity
b. Competence and operational ability
c. Must have passed matric
d. Financial soundness
e. None of the above
### Test your knowledge

<table>
<thead>
<tr>
<th>Quesiton</th>
<th>Statements</th>
</tr>
</thead>
</table>
| 1. | 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 the 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. b and c |
| 2. | a. An FSP, as a Sole Proprietor is the natural person, who is the owner of the business and will be authorised as an FSP  
     b. An FSP, as a Sole Proprietor is a company or closed corporation which may be authorised as an FSP  
     c. The Sole Proprietor is also the Representative for the sole proprietor FSP  
     d. a and c |
| 3. | a. It may be sent quarterly  
     b. It may be sent half-yearly  
     c. It has to be sent annually  
     d. None of the above |
4. The FICA imposes certain duties on accountable institutions. Apply your knowledge of these duties and choose the correct statements.

a. Accountable institutions may keep certain records
b. Accountable institutions may report certain information
c. Accountable institutions must be able to establish and verify the identity of their clients
d. Accountable institutions must implement measures that will assist them in complying with the FICA

I) a and d only
II) a and c only
III) a and b only
IV) c and d only

5. The General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003 Part II General Provisions Section 3 states that a provider must have appropriate procedures and systems in place to -

a. Record such verbal and written communications relating to a financial service rendered to a client as are contemplated in the Act, this Code or any other Code drafted in terms of Section 15 of the Act
b. Store and retrieve such records and any other material documentation relating to the client or financial service rendered to the client
c. Keep such client records and documentation safe from destruction
d. All such records must be kept for a period of five years after termination, to the knowledge of the provider, of the product concerned or, in any other case, after the rendering of the financial service concerned

e. All of the above

6. A conflict of interest includes in its definition any situation in which an FSP or Representative has an actual or potential conflict of interest which would negatively affect the client. Which one of these statements are INCORRECT?

a. When it influences the objective performance of the product supplier
b. When it influences the objective performance of the underlying investments
c. When it influences the objective performance of the FSP or representative

d. When it influences the objective performance of the Registrar

7. A conflict of interest is a situation in which an FSP or a Representative renders a financial service to a client and in rendering that service that could potentially benefit the FSP or Representative. Which statement is INCORRECT and does NOT describe a conflict of interest?

a. When it influences his performance or its obligations to the client
b. When it prevents a Provider or Representative from rendering an unbiased and fair financial service to a client
c. When it prevents the representative/FSP from acting in the interest of a client

d. When the Representative is employed full time by the FSP
8. If a Representative is found guilty of misconduct regarding the Code of Conduct and is no longer Fit and Proper, what restrictions will be imposed? Choose the CORRECT one.

- a. The Representative will be placed under supervision and left on the register
- b. The Representative will be left on the register but with a note that he is not Fit and Proper
- c. The Representative will be removed from the representative register and therefore debarred
- d. All the above

9. John and Joe are family members and work for the same FSP. John is a compliance officer and Joe is a Representative for the FSP. John is aware of suspicious activities in Joe’s department and is concerned that there may be a conflict of interest. Explain to Joe what conflict of interest means in respect of the compliance function.

- 1. One of the qualifying criteria for approval of a compliance officer by the Registrar, is the avoidance of conflict of interests between the duties of compliance officer with the duties of other employees, internal audit and control and functions of Representatives
- 2. Conflict of interest only applies with regard to the independence of the compliance function from internal audit
- 3. If there are conflicts of interests across the functions, the compliance officer will not be able to perform the function objectively, nor be able to identify and report on instances of non-compliance or irregularities
- 4. Conflict of interest for compliance officers means that they are not allowed to accept any gifts or financial interest

10. Apply your knowledge of the concept of conflict of interest and answer the following question: One of the areas where a conflict of interest could emerge is within the structure of the FSP. If the Compliance Officer does not have access to and support from senior management, they will lack the necessary authority required to do their job. Who will be held personally responsible for ensuring the correct channels of Communication are available for the Compliance Officer?

- a. The Compliance Officer
- b. The Key Individual
- c. The Representative
- d. The FSCA (FSB)

11. Analyse the following statements and choose the correct description. An FSP may not offer any financial interest to a representative of that FSP for:

- a. Giving preference to the quantity of business secured for the FSP to the exclusion of the quality of the service rendered to clients
- b. Giving preference to a specific product supplier, where a representative may recommend more than one product supplier to a client
- c. Giving preference to a specific product of a product supplier, where a representative may recommend more than one product of that product supplier to a client
- d. All of the above
12. What is the purpose of disclosures to a client within the FAIS Act? Choose the CORRECT statement.

<p>| | |</p>
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</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>To enable the client to make an informed decision</td>
</tr>
<tr>
<td>b.</td>
<td>To enable the insurer to evaluate the risk</td>
</tr>
<tr>
<td>c.</td>
<td>To be used as an agenda item for a discussion with the client</td>
</tr>
<tr>
<td>d.</td>
<td>To inform the representative of the attitude of the client towards the recommended</td>
</tr>
<tr>
<td>e.</td>
<td>Product of the Registrar</td>
</tr>
</tbody>
</table>

13. There are certain policies regarding disclosure to a client. With whom does the duty of disclosure lie? Choose the CORRECT one.

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<tbody>
<tr>
<td>a.</td>
<td>The intermediary</td>
</tr>
<tr>
<td>b.</td>
<td>The intermediary and insurer</td>
</tr>
<tr>
<td>c.</td>
<td>The insured</td>
</tr>
<tr>
<td>d.</td>
<td>All of the above</td>
</tr>
</tbody>
</table>

14. Where a financial product is being replaced by another financial product held by the client:

<p>| | |</p>
<table>
<thead>
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</thead>
<tbody>
<tr>
<td>a.</td>
<td>Disclosure must be made of the actual and potential financial implications</td>
</tr>
<tr>
<td>b.</td>
<td>Only disclosure of the actual financial implications must be made</td>
</tr>
<tr>
<td>c.</td>
<td>Only disclosure of the costs and consequences of the replacement must be made</td>
</tr>
<tr>
<td>d.</td>
<td>Only disclosure of the potential financial implications must be made</td>
</tr>
</tbody>
</table>

15. The impact of this disclosure on FSPs is that they have to provide documents containing all the relevant disclosures to be used by themselves and their representatives. In addition, they have to ensure that their representatives use these disclosures when rendering financial services to their clients. Which section of the FAIS Act refers to the general disclosure of information of a provider?

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</thead>
<tbody>
<tr>
<td>a.</td>
<td>Section 5</td>
</tr>
<tr>
<td>b.</td>
<td>Section 9</td>
</tr>
<tr>
<td>c.</td>
<td>Section 13</td>
</tr>
<tr>
<td>d.</td>
<td>Section 11</td>
</tr>
</tbody>
</table>

16. The law requires the intermediary to make certain disclosures to his/her clients. Indicate which of the following statements are NOT a disclosure requirement.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>The intermediaries’ relationship with the FSP</td>
</tr>
<tr>
<td>b.</td>
<td>The intermediaries’ marital status</td>
</tr>
<tr>
<td>c.</td>
<td>The product supplier or suppliers that the intermediary represents</td>
</tr>
<tr>
<td>d.</td>
<td>The services and products that the intermediary can offer to the client</td>
</tr>
</tbody>
</table>
17. Raylene will have to maintain records for Anton’s business for at least 5 years in terms of the general Code of Conduct. One of the statements below does NOT apply to the record keeping process. Identify the statement that does not apply:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>Records of complaint received</td>
</tr>
<tr>
<td>b.</td>
<td>Records of continued compliance with the licensing requirements</td>
</tr>
<tr>
<td>c.</td>
<td>Records of instances of compliance with the Act and reasons for such compliance</td>
</tr>
<tr>
<td>d.</td>
<td>Records of continued compliance</td>
</tr>
</tbody>
</table>

18. When giving advice (section 8 of the General Code), representatives/FSPs must ensure that they:

<p>| | |</p>
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<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>Take reasonable steps to seek from the client appropriate and available information regarding the client’s situation</td>
</tr>
<tr>
<td>b.</td>
<td>Conduct an analysis based on the information obtained</td>
</tr>
<tr>
<td>c.</td>
<td>Make adequate disclosures when replacing one product with another (fees, costs, consequences, special terms, etc.)</td>
</tr>
<tr>
<td>d.</td>
<td>Keep a record of advice and provide the client with a copy</td>
</tr>
<tr>
<td>e.</td>
<td>All of the above</td>
</tr>
</tbody>
</table>

19. Section 16 of the FAIS Act requires that the Registrar must draft a Code of Conduct for authorised financial services providers. This has been done and the General Code of Conduct requires that financial service providers and their representatives fulfil the following responsibilities:

<p>| | |</p>
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<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>They have to act honestly and fairly, and with due skill, care and diligence, in the interests of the provider and the integrity of the financial services industry</td>
</tr>
<tr>
<td>b.</td>
<td>When representations are made or information provided to a client, it must be factually incorrect; it must be provided in plain language; it should not be misleading; it must be adequate and appropriate given the level of knowledge of the client and it must be provided timeously so as to afford the client reasonably sufficient time to make an informed decision</td>
</tr>
<tr>
<td>c.</td>
<td>They should obtain appropriate and available information regarding clients’ financial situation, financial product experience and objectives in connection with the financial service required</td>
</tr>
</tbody>
</table>

20. The FAIS Act requires that representatives meet specific requirements:

<p>| | |</p>
<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>A representative must confirm to clients (as 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</td>
</tr>
<tr>
<td>b.</td>
<td>A representative must be fit and proper as required by the FAIS Act</td>
</tr>
<tr>
<td>c.</td>
<td>A representative can work under supervision while obtaining the required experience requirements</td>
</tr>
<tr>
<td>d.</td>
<td>All of the above</td>
</tr>
</tbody>
</table>
9.5 Q&As – Chapter 5

Test your knowledge

1. Which of the following statements are TRUE with regard to the record keeping requirements in Section 24 of the FIC Act?

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<table>
<thead>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>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</td>
<td>I) 1, 3 and 4 only</td>
</tr>
<tr>
<td>2.</td>
<td>Outsourcing of the record keeping function to a 3rd party discharges the accountable institution from the record keeping responsibility</td>
<td>II) 1, 2 and 3 only</td>
</tr>
<tr>
<td>3.</td>
<td>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</td>
<td>III) 1 and 3 only</td>
</tr>
<tr>
<td>4.</td>
<td>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 FSCA (FSB)</td>
<td>IV) All of these</td>
</tr>
</tbody>
</table>

2. Which of the following statements are TRUE with regard to the record keeping requirements of the FIC Act?

<p>| | | |</p>
<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>Records can only be kept manually</td>
<td></td>
</tr>
<tr>
<td>b.</td>
<td>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</td>
<td></td>
</tr>
<tr>
<td>c.</td>
<td>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 years from the date on which the business relationship was started</td>
<td></td>
</tr>
<tr>
<td>d.</td>
<td>In terms of Section 24 (1), the record keeping obligation may not be outsourced to a third party</td>
<td></td>
</tr>
</tbody>
</table>
3. A representative receives a large sum of money to invest for a customer. The customer wants to split the money between unit trusts, investment policies, bank investments and fixed property shares, all with the shortest term possible. He does not want to comment on the reason for this choice of production combination. The representative suspects money laundering and he is, therefore, required to:

a. Inform the customer that he has to report the transaction
b. Advise the customer that he is not able to assist him without further information

**c. Report the transaction without informing the customer**
d. Process the request and flag the newly created accounts as suspects

4. You have to advise a new financial services provider on the FAIS requirements for the maintenance and accessibility of records. The financial services provider has limited space in his office and cannot store the hard copy records that have to be kept for five years. What advice would you give him?

a. The financial services provider has to find space in his office as he is obligated to keep the hard copy records on his premises for five years to ensure that it is available for inspection within seven days of the Registrar’s request
b. **The financial services provider may outsource record keeping, but it has to be available for inspection within seven days of the Registrar’s request. The financial services provider may also keep the records in appropriate electronic or recorded format if it is accessible and readily reducible to written or printed format**
c. The financial service provider may not outsource record-keeping and he should, therefore, convert the record into appropriate electronic format, so that it will be available on his premises at all times
d. The financial service provider may outsource record-keeping on condition that the records are stored in appropriate electronic or recorded format, and it should be readily reducible to written or printed format

5. If an accountable institution established a business relationship with a client before the commencement of FICA:

a. The provision of FICA will not apply to the relationship
b. **The identity of the client must still be verified**
c. The identity of the client need only be verified in the event of a suspicious transaction
d. The identity of the client need only be verified in the event of an exceptionally large transaction
6. Interpret the following statement and complete the sentence: The FSP, and by implication it will be part of the management duties of a Key Individual, must ensure that records are kept for:

<p>| | |</p>
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</thead>
<tbody>
<tr>
<td>a.</td>
<td>A minimum of five years except if the Registrar allowed specific exemptions in this regard</td>
</tr>
<tr>
<td>b.</td>
<td>A minimum of fifteen years except if the Registrar allowed specific exemptions in this regard</td>
</tr>
<tr>
<td>c.</td>
<td>A minimum of two years except if the Registrar allowed specific exemptions in this regard</td>
</tr>
</tbody>
</table>

7. Apply your knowledge of record keeping and choose the statement that is CORRECT.

<p>| | |</p>
<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>a.</td>
<td>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 years from the date on which the business relationship was terminated</td>
</tr>
<tr>
<td>b.</td>
<td>The documents used to identify and verify clients as well as records of all transactions must be retained for a period of at least two and a half years from the date on which the business relationship was terminated</td>
</tr>
<tr>
<td>c.</td>
<td>The documents used to identify and verify clients as well as records of only transactions which are regarded important, must be retained for a period of at least five years from the date on which the business relationship commenced</td>
</tr>
<tr>
<td>d.</td>
<td>The documents used to identify and verify clients as well as records of all transactions do not have to be retained</td>
</tr>
</tbody>
</table>

8. Analyse the following statements regarding requirements that have to be met regarding record keeping in terms of the FAIS Act. Which statement is TRUE?

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>The FSP must store all records on its premises</td>
</tr>
<tr>
<td>b.</td>
<td>The FSP must store records off-site only with special permission</td>
</tr>
<tr>
<td>c.</td>
<td>The FSP must store records in an appropriate facility which is safe from destruction</td>
</tr>
<tr>
<td>d.</td>
<td>The FSP must store records in electronic format only with special permission in a facility that cannot be destroyed</td>
</tr>
</tbody>
</table>

9. Once a suspicious transaction has been reported and the authorities have investigated, The FIC must obtain information on the unlawful activities. How would they go about obtaining such information? Choose the INCORRECT statement.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>a.</td>
<td>They can apply for a warrant to access records</td>
</tr>
<tr>
<td>b.</td>
<td>They can apply for a warrant to access records provided that there are reasonable grounds to believe that the records will assist in identifying the proceeds of unlawful activities</td>
</tr>
<tr>
<td>c.</td>
<td>They can only apply for a warrant to access record of a bank</td>
</tr>
<tr>
<td>d.</td>
<td>B and C</td>
</tr>
</tbody>
</table>
10. The Financial Intelligence Centre Act of 2001, (Act 38 of 2001) requires an accountable institution to maintain records of the identity of clients for a period of five years after the date of the institution or termination of the business relationship or last transaction, whichever occurs last in time. Listed below are the records that need to be maintained, choose the CORRECT one.

a. The identity of the client
b. If the client is acting on behalf of another person
c. The documentation with which the identity of the persons was established
d. All of the above
### Test your knowledge

1. **The FICA imposes the following duties on accountable institutions. Which of the following statements are FALSE with regard to these duties?**

<table>
<thead>
<tr>
<th>Statement</th>
<th>Option</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Accountable institutions may keep certain records</td>
<td>I) 1 and 4 only</td>
</tr>
<tr>
<td>2. Accountable institutions may report certain information</td>
<td>II) 1 and 3 only</td>
</tr>
<tr>
<td>3. Accountable institutions must be able to establish and verify the identity of their clients</td>
<td>III) 1 and 2 only</td>
</tr>
<tr>
<td>4. Accountable institutions must implement measures that will assist them in complying with the FICA</td>
<td>IV) 2 and 4 only</td>
</tr>
</tbody>
</table>

2. **You are the manager of an insurance brokerage. One of your new financial advisers asks what is required of your business as an accountable institution in terms of FICA. Which of the following statements provides the most comprehensive answer to him?**

<table>
<thead>
<tr>
<th>Statement</th>
<th>Option</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. To identify clients, verify their residential address and report unusual transactions relating to combating money laundering</td>
<td></td>
</tr>
<tr>
<td>b. To identify clients, verify their residential address and report on activities or transactions relating to the use of offshore funds in South Africa</td>
<td></td>
</tr>
<tr>
<td>c. To follow FICA procedures to report suspicious activities or unusual transactions relating to combating money laundering</td>
<td></td>
</tr>
</tbody>
</table>

3. **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 – there was a period of time granted for compliance with this requirement**

<table>
<thead>
<tr>
<th>Statement</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. True</td>
<td></td>
</tr>
<tr>
<td>b. False</td>
<td></td>
</tr>
</tbody>
</table>
4. In the FIC Act ‘authorised officer’ means any official of -
   a. The South African Police Service authorised by the National Commissioner to act under this Act
   b. The national prosecuting authority authorised by the National Director of Public Prosecutions to act under this Act
   c. An intelligence service authorised by the Director-General of that service to act under this Act; or the South African Revenue Service authorised by the Commissioner for that Service to act under this Act
   d. All of the above

5. Apply your knowledge of accountable Institutions nominated in the FIC Act and choose the correct answer listed below:
   a. Banks, estate agents, attorneys, trust companies, collective investment schemes and long-term insurance companies (including an insurance broker and a representative of an insurer)
   b. Banks, estate agents, collective investment schemes and long-term insurance companies
   c. Banks, estate agents, collective investment schemes and long-term insurance companies
   d. Banks, estate agents, attorneys, trust companies, and long-term insurance companies (including an insurance broker and a representative of an insurer)

6. As a Representative, you need to understand the requirements for compliance with the FICA requirements embedded in the FAIS legislation. Consider the following statements carefully and then choose the statement that is TRUE
   a. One of the objectives of FICA is to introduce control measures to assist the detection and investigation of credit granting activities
   b. In terms of FICA, accountable institutions are required to obtain statements from customers suspected to be laundering money
   c. 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"
   d. FICA empowers the Financial Intelligence Centre to supervise the accountable institutions

7. Section 21 (1) of FICA requires accountable institutions to identify new clients and verify their particulars before any transaction may be concluded or any business relationship is established with them unless, they qualify for Exemption 2. Exemption 2 stipulates that:
   a. 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
   b. Banks are not regarded as accountable institutions in terms of FICA
   c. Each supervisory body is responsible for enforcing compliance with money laundering legislations by the accountable institutions under its regulation or supervision
   d. FICA does not empower the Financial Intelligence Centre to supervise the accountable institutions
8. Interpret the FIC Act and consider the following statement: An employee of an accountable institution that accepts money from a client, which is suspicious. What does the employee have to do according to the FIC Act?

   a. The employee must report the suspicious transaction via his company’s internal procedure.
   b. The employee may not inform the client he has reported the transaction.
   c. The employee has to report the suspicious transaction via the Ombud.
   d. A and B

9. Apply your knowledge of the FIC Act with reference to penalties imposed and choose the penalty/penalties that can be imposed on a staff members or organizations who do not comply with the FIC Act:

   a. A maximum prison sentence of 15 years or a fine not exceeding R1,000,000.00.
   b. A maximum prison sentence of 15 years.
   c. A fine not exceeding R10,000,000.00 and a maximum prison sentence of 15 years.
   d. All of the above.

10. Analyse the statements below and select the statements that apply to the identification and verification of new clients.

   1. 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.
   2. The information obtained from legal persons such as Companies, Close corporations, and Trusts must be verified by comparing it against the founding statements of these legal entities.
   3. Directors, shareholders, members and trustees of legal persons are also subject to identification and verification procedures.
   4. Legal persons include Companies, Close corporations but excludes Trusts

   I) 1 and 3
   II) 1 and 2
   III) 2 and 4
   IV) 1 and 4
9.7 Q&As – Chapter 7

Test your knowledge

1. Which of the following statements are TRUE?

<p>| | | |</p>
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<tr>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>If a case cannot be settled through mediation or conciliation, the FAIS Ombud or the Deputy FAIS Ombud may issue a determination</td>
<td>I) 1, 2 and 3</td>
</tr>
<tr>
<td>2.</td>
<td>In terms of the FAIS Act, the existing voluntary ombudsmen established by the financial services and banking industry enjoy recognition</td>
<td>II) 2, 3 and 4</td>
</tr>
<tr>
<td>3.</td>
<td>The FAIS Ombud can officially accept a complaint for investigation if the complaint relates to a financial service that was rendered on or after 30 September 2004</td>
<td>III) 2 and 4</td>
</tr>
<tr>
<td>4.</td>
<td>A determination has the same legal effect as a judgment of a court</td>
<td>IV) All of these</td>
</tr>
</tbody>
</table>

2. Interpret the following statements and choose which statement reflects all the actions that the FAIS Ombud is entitled to take at his discretion in terms of complaints.

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<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>The Ombud may dismiss a complaint or uphold it</td>
<td></td>
</tr>
<tr>
<td>b.</td>
<td>The Ombud may dismiss a complaint, uphold it or refer it to a court</td>
<td></td>
</tr>
<tr>
<td>c.</td>
<td>The Ombud may dismiss a complaint, uphold it, refer it to a court or decline it if it is received three years after the date of the issue of the complaint</td>
<td></td>
</tr>
<tr>
<td>d.</td>
<td>The Ombud may uphold a complaint or decline it if it is received three years after the date of the issue of the complaint</td>
<td></td>
</tr>
</tbody>
</table>

3. Apply your knowledge of The FAIS Ombud. The FAIS Ombud investigates and adjudicates complaints by clients against FSPs and representatives. When investigating a complaint, which one of the procedures does the Ombud have authority on?

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</thead>
<tbody>
<tr>
<td>a.</td>
<td>The Ombud may not dismiss the complaint, even if he is of the view that the offer made by the FSP is fair</td>
<td></td>
</tr>
<tr>
<td>b.</td>
<td>If the complainant is unhappy with the Ombud’s determination he may appeal to the FSCA (FSB) provided the Ombud gives permission</td>
<td></td>
</tr>
<tr>
<td>c.</td>
<td>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</td>
<td></td>
</tr>
<tr>
<td>d.</td>
<td>All the above</td>
<td></td>
</tr>
</tbody>
</table>
4. Analyse the following statement and choose the most correct answer. When dealing with complaints the Ombud must be independent and impartial. The objective of the Ombud is to consider and dispose of complaints. What is the manner in which the Ombud must deal with a complaint?

<p>| | |</p>
<table>
<thead>
<tr>
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<th></th>
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</thead>
<tbody>
<tr>
<td>a.</td>
<td>In a fair manner</td>
</tr>
<tr>
<td>b.</td>
<td>In an informal manner</td>
</tr>
<tr>
<td>c.</td>
<td>In an economical and expeditious manner</td>
</tr>
<tr>
<td>d.</td>
<td>All of the above</td>
</tr>
</tbody>
</table>

5. Apply your knowledge of the different departments at the Registrar’s office and complete the missing word in the following sentence: Compliance Department: Responsible for dealing with complaints against FSPs that cannot be referred to the FAIS Ombud, investigations into the affairs of FSPs and ___________ (suspension and withdrawal of licenses) and updating debarments on the central representative register as well as reinstatement of representatives on the central register.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>Regulatory Action</td>
</tr>
<tr>
<td>b.</td>
<td>Supervisory Action</td>
</tr>
<tr>
<td>c.</td>
<td>Enforcement Action</td>
</tr>
<tr>
<td>d.</td>
<td>Complaints Action</td>
</tr>
</tbody>
</table>

6. Ryan has instituted civil action against FSP Renown Deals and is claiming for R900 000 damages due to poor advice given to him. He has just heard about the FAIS Ombud, and that he can institute action at no cost (rather than fat lawyer's bills) and wants to open a complaint at the Ombud as well. He reckons he should cover his bets and that one way or the other, he has a better chance of winning his case. He wants to claim the full R900 000.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>Ryan cannot institute proceedings in the office of the Ombud and civilly at the same time, and the Ombud only has jurisdiction up to R800 000, so he will have to choose to go civil for the R900 000 or Ombud for R800 000</td>
</tr>
<tr>
<td>b.</td>
<td>Ryan may do this, but will have to pay his lawyer to represent him with the FAIS Ombud as well</td>
</tr>
<tr>
<td>c.</td>
<td>Ryan can do both at no extra charge</td>
</tr>
</tbody>
</table>
7. Within the FSCA (FSB) there are three departments that a Key Individual need to be aware of. These three departments are the Registration Department, the Supervision Department and the Enforcement Department. Key Individuals will liaise with each FAIS division in the execution of their duties. Which of the following is incorrect? The departments are responsible for the following:

a. The Registration Department is responsible for new licence applications, profile changes, updating the central Representative register, approval of mandates and application forms for discretionary FSPs and administrative FSPs, lapsing of licences, queries on licence status and collection of levies together with the FSCA (FSB) Finance Department.

b. The Supervision Department is responsible for new licence applications, profile changes, updating the central Representative register, approval of mandates and application forms for discretionary FSPs and administrative FSPs, lapsing of licences, queries on licence status and collection of levies together with the FSCA (FSB) Finance Department.

c. The Supervision Department is responsible for the implementation of a risk-based approach to supervision of Financial Service Providers, analysis of financial statements and compliance reports, conducting onsite visits to FSPs and Compliance Officers and liaising with the industry relating to changes in legislation.

d. The Enforcement Department is responsible for dealing with complaints against FSPs that cannot be referred to the FAIS Ombud, and conducting onsite visits to FSPs and Compliance Officers.

8. Select the correct answer:

a. The Ombud must act on all complaints received after the implementation of the act in 2002.

b. The Ombud must decline to act on a complaint the occurrence of which is older than one year.

c. The Ombud must decline to act on a complaint the occurrence of which is older than three years. Note - the three years starts from when the complainant first became aware or should have become aware of the problem.

9. Select the incorrect answer:

a. Official receipt of a complaint by the Ombud suspends the running of prescription in terms of the Prescription Act, 1969 (Act No. 68 of 1969), for the period after such receipt of the complaint until the complaint has either been withdrawn, or determined by the Ombud or the board of appeal.

b. Official receipt of a complaint by the Ombud does not suspend the running of prescription in terms of the Prescription Act, 1969 (Act no. 68 of 1969,) for the period after such receipt of the complaint until the complaint has been withdrawn, or determined by the Ombud or the Board of Appeal.
10. The FAIS Ombud investigates and adjudicates complaints by clients against FSPs and representatives. When investigating a complaint, which one of the procedures may he rule on? Choose the CORRECT one.

a. The Ombud may not dismiss the complaint, even if he is of the view that the offer made by the FSP is fair

b. If the complainant is unhappy with the Ombud’s determination he may appeal to the FSCA (FSB) provided the Ombud gives permission

c. 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

d. All the above
## Test your knowledge

### 1. As a Representative, you need to ensure that the following requirements are met with regard to the confidentiality of client information:

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>An FSP may not disclose any confidential information acquired or obtained from a client unless the client consented in writing after the disclosure</td>
<td>I) 1 and 4</td>
</tr>
<tr>
<td>An FSP may not disclose any confidential information acquired or obtained from a client unless the client consented in writing beforehand</td>
<td>II) 1 and 3</td>
</tr>
<tr>
<td>An FSP may not disclose any confidential information acquired or obtained from a client unless disclosure of the information is required in the Registrar’s interest</td>
<td>III) 2 and 4</td>
</tr>
<tr>
<td>An FSP may not disclose any confidential information acquired or obtained from a client unless disclosure is required in terms of any law</td>
<td>IV) 1 and 2</td>
</tr>
</tbody>
</table>

### 2. Apply your knowledge of disclosure requirements as a representative about product information. Which of the following disclosures must be made?

<table>
<thead>
<tr>
<th>Disclosure</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>A written statement to the client, at least once a month, which identifies the products and states the ongoing monetary obligations of the client, amongst other things</td>
<td>I) 3 and 4</td>
</tr>
<tr>
<td>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</td>
<td>II) 2 and 3</td>
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<td>Material tax considerations and whether cooling off rights are offered and, if so, procedures for the exercise of such rights</td>
<td>III) 2 and 4</td>
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<tr>
<td>Amounts of insurance premium increases of an insurance product for the first five years and thereafter on a five-yearly basis, but not exceeding 20 years</td>
<td>IV) 2, 3 and 4</td>
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3. Analyse the following statements and choose which ones apply to Representatives who give advice and/or render intermediary services in respect of multiple license categories or product subcategories.

1. The relevant minimum and maximum periods of supervision start on the date that the Representative is appointed to render services in a particular license category or product subcategory

2. They can gain the experience at the same time and will remain under supervision until the most onerous experience requirement is met

3. They must gain the experience separately for the different categories and will remain under supervision until the most onerous experience requirement is met

4. Any significant interruption, being eight consecutive weeks or longer, must be compensated for by arranging an additional period under supervision, equal to the interrupted period

   I) 2 and 3  
   II) 1 and 2
   III) 2 and 3  
   IV) 3 and 4

4. Interpret the following scenario and choose the correct answer:

   South Financial Services is looking to appoint a Category III Representative. Which of the following individuals meet the general and specific experience requirements?

   a. Joan worked in various categories within financial services intermittently for the last ten years in the USA and New Zealand

   b. John worked in England in Category III for eight years and returned to South Africa four years ago to start his own insurance business

   C. Anne worked for one year in Australia and two and a half years in South Africa providing Category III services

   d. Moses has worked at a company offering Category III financial services for the last five years in various roles including office management and graphic design

   e. b and c

5. If a Representative does not meet one or more of the competence requirements by the cutoff date:

   a. The FSP should give him a written warning and leave him on the rep register

   b. He can continue to render financial services until he meets the requirements but must be supervised

   C. He is not fit and proper and must be removed from the rep register

   d. He can continue to render intermediary services only
6. Representatives need not be licensed under FAIS. However, due to the fact that they work for an FSP who is licensed, they need to comply with the Fit and Proper requirements and be listed in the FSP’s Representative Register. Which of the following statements is FALSE with regard to the fit and proper requirements, which a Representative need to meet?

a. Honesty and integrity
b. Competence
c. Relevant qualification
d. **5 years management experience**

7. Interpret the Fit and proper requirements for a representative and look at the below mentioned requirements and advise which one does not apply to Representatives?

a. Honesty and integrity
b. Competence
c. Experience
d. **Financial Soundness**

8. Apply your knowledge of the Regulatory Examinations and choose the Correct Exam that a Representatives needs to pass before the representative can assume his/her role

a. Regulatory Examination Level 1 is not compulsory for Representatives
b. Representatives must first obtain the required qualifications before completing Regulatory Examination Level 1
c. Regulatory Examination Level 2 applies to Key Individuals only
d. **Regulatory Examination Level 1 is compulsory for Representatives**

9. Interpret the following statement and choose that option which is true. There are certain timelines that have to be met for successful completion of the experience, qualifications, regulatory examinations and CPD requirements. Failure by a Representative to meet the competency requirements by the relevant date means that the FSP is required to take appropriate action.

a. Ensure ongoing compliance with continuous professional development (CPD) requirements
b. Ensure compliance within a time period of two years from application
c. Ensure compliance within a time frame of three years
d. None of the above

10. The concept of financial service consists of the following alternatives:

a. Giving advice
b. Giving advice and providing an intermediary service
c. Providing an intermediary service
d. Providing managerial services

| a) 1, 3 and 4 | b) 1, 2 and 3 | c) 1 and 4 | d) 1 and 4 |
11. Prior to providing advice to a client, the FSP or its Representative must take reasonable steps to obtain from the client certain information to be able to advise the client correctly. Which statement is TRUE?

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<tbody>
<tr>
<td>a.</td>
<td>Financial situation</td>
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<td>b.</td>
<td>Financial product experience</td>
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<td>c.</td>
<td>Financial objectives</td>
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<tr>
<td>d.</td>
<td>All of the above</td>
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12. Apply your knowledge of Advice and scrutinize the following scenario and choose the correct option: Jonathan has been requested to provide Adrian with advice with regard to short term deposit options. Adrian is very busy and in meetings and so cannot meet with Jonathan to provide information on his financial situation or objectives. Adrian advises Jonathan to make a decision on his behalf. Jonathan has a duty to:

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<td>1.</td>
<td>Choose a product that Jonathan thinks is suitable, complete the record of advice and send it to Adrian within 30 days as Adrian has given him full discretion to do so</td>
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<td>2.</td>
<td>Advise Adrian that a full needs analysis was not done and there might be limitations to the advice provided</td>
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<td>3.</td>
<td>Advise Adrian to consider by himself, whether the advice provided is appropriate to his needs</td>
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<td>4.</td>
<td>Assist Adrian in every way he can and to do as Adrian requested</td>
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1. Choose a product that Jonathan thinks is suitable, complete the record of advice and send it to Adrian within 30 days as Adrian has given him full discretion to do so

12. Which of the following statements is FALSE in respect of the Representatives register?

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<tr>
<td>a.</td>
<td>The FSP must have a register of all Representatives and Key Individuals employed or mandated by the FSP</td>
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<tr>
<td>b.</td>
<td>The Representatives register must be updated every 30 days and sent to the FSCA (FSB)</td>
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<tr>
<td>c.</td>
<td>Updates to the Representatives register include any changes in the fit and proper circumstances of either a Representative or Key Individual and these changes are reflected on the register</td>
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<td>d.</td>
<td>If a Representative or Key Individual is no longer employed by an FSP then the individual must be removed from the list completely</td>
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13. Which of the following statements is FALSE in respect of the Representatives register?

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14. How often should the Representative register be updated?

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<td>a.</td>
<td>Every month</td>
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<td>b.</td>
<td>Bi-annually</td>
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<td>c.</td>
<td>Within 15 days of any changes to the Representative’s fit and proper circumstances</td>
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<tr>
<td>d.</td>
<td>As soon as there are any changes to the Representative’s fit and proper circumstances</td>
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15. Apply your knowledge of the process to be followed in terms of the removal of a Representative’s name from the Register. What is the time period in which this must be done? Choose the CORRECT statement.

a. Within 5 days of the removal of the Representative’s name
b. Within 30 days of the removal of the Representative’s name
c. Within 10 days of the removal of the Representative’s name
d. Within 15 days of the removal of the Representative’s name

16. Analyse the following Statements and select the correct Statement:

a. The Registration Department is responsible for new license applications, profile changes, updating the central Representative register, approval of mandates and application forms for discretionary FSPs and administrative FSPs, lapsing of licenses, queries on license status and collection of levies together with the FSCA (FSB) Finance Department
b. The Supervision Department is responsible for new license applications, profile changes, updating the central Representative register, approval of mandates and application forms for discretionary FSPs and administrative FSPs, lapsing of licenses, queries on license status and collection of levies together with the FSCA (FSB) Finance Department

c. The Supervision Department is responsible for the implementation of a risk-based approach to supervision of Financial Service Providers, analysis of financial statements and compliance reports, conducting onsite visits to FSPs and Compliance Officers and liaising with the industry relating to changes in legislation

d. The Enforcement Department is responsible for dealing with complaints against FSPs that cannot be referred to the FAIS Ombud, and conducting onsite visits to FSPs and Compliance Officers

17. If there is a significant interruption while the Representative is gaining experience of six consecutive weeks (or longer) then an additional period under supervision must be arranged equal to the length of the interruption. What is this statement an example of?

a. Responsibilities of an FSP in terms of services under supervision
b. What is included in and expected of supervision
c. Requirements of a Key Individual
d. Conditions, which must apply to the period under supervision

18. Which of the following statements is TRUE? The following applies to the Regulatory Examinations for Representatives.

a. Regulatory Examination Level 2 applies to Representatives and Key Individuals
b. Regulatory Examination Level 1 is not compulsory for Representatives

c. 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
d. Representatives must first obtain the required qualifications before completing Regulatory Examination Level 1
19. Analyse the specific supervision conditions that apply to Categories II, IIA and III and select one such condition:

- a. Conduct sample checks on a weekly basis to ensure that the supervisee did not deviate from the relevant mandate or investment team meetings.
- b. Supervision also includes any other activity, which enables the supervisor to scrutinise the activities of the supervisee in respect of financial services being provided by the supervisee.
- c. Supervisor must do appropriate post-transaction sampling on a daily basis.
- d. Conduct sample checks on a monthly basis to ensure that the supervisee does not deviate from the relevant mandate or investment team meetings.

20. Apply your knowledge of Advice and scrutinize the following scenario and choose the correct option: Respond to the following scenario and indicate which criteria is applicable. Bridgette is a Representative for Sanlam and was appointed in June 2010. She does not meet the full qualifications criteria for Categories I and IV and can only be exempted if the following criteria are met:

1. Bridgette must have had Matric or Grade 12 or an appropriate certificate at NQF level 4 when she was appointed and work under supervision until the full qualification is obtained.
2. Bridgette must have completed a skills programme and an appropriate certificate at NQF level 4 when she was appointed.
3. If Bridgette works in subcategory 1.17 Long – term deposits, she must have had ABET level 1; or the proven ability to read, write and calculate to the satisfaction of Sanlam when she was appointed.
4. If Bridgette works in subcategory 1.1 Long – term Insurance Category A, she must have had ABET level 1; or the proven ability to read, write and calculate to the satisfaction of Sanlam when she was appointed.

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Purpose

Money laundering is one of the biggest challenges facing governments throughout the world today as a result of terrorism and organised crime. Both are real threats to civilisation as we know it. Money laundering has been used by terrorist organisations to fund their activities. The original purely criminal focus of anti-money laundering measures has been broadened in recent years to cover terrorism and organised crime as well.

In South Africa, this led to the implementation of the Prevention of Organised Crime Act (POCA), the Financial Intelligence Centre Act (FICA) and the Protection of Constitutional Democracy Against Terrorism and Related Activities Act, known by its clumsy acronym as POCDATARA.

The purpose of this chapter is to provide you with insight and a good knowledge of the implications of these Acts on your work in the financial services industry. Most importantly, you need to know the requirements that these Acts impose on FSPs and representatives so that you can comply with it on a daily basis. Non-compliance may lead to harsh penalties.

8.1 INTRODUCTION

In this chapter you are going to learn how to comply with the requirements of FICA and other relevant anti-money laundering legislation, as it applies to the FSP and yourself. There are two very important underlying concepts with regard to FICA that you have to understand before you can continue with this chapter. These concepts are money-laundering and unlawful activities. Let’s discover the meaning of these terms.

8.1.1 The concepts of money laundering and unlawful activities

What is a money-laundering activity?

Definition:
A money laundering activity is any activity that has, or is likely to have, the effect of concealing or disguising the nature, source, location, disposition or movement of the proceeds of unlawful activities. By definition, any interest
which anyone has in such proceeds as listed above is also guilty of money laundering and includes any activity which constitutes an offence in terms of Section 64 of the Financial Intelligence Centre Act, 38 Of 2001 (FICA) or Section 4, 5 or 6 of the Prevention of Organised Crime Act 1989 (known as POCA).

Money laundering is a three-stage process. The process can be illustrated as follows:

1. The first stage is placement, where the origin of illegal money is usually mixed with the origin of legitimate money. The proceeds of unlawful business are in the form of cash, making it relatively simple to get the illegal money back into the financial system by mixing it with the proceeds of a cash business.

This "dirty" money is therefore disguised and the illegal funds avoid detection. A further aim is to convert the nature of the profits, usually cash, into some other asset, such as property, or certain financial instruments, such as life assurance investments or travellers’ cheques.

Example – Mr Naidoo

Mr. Naidoo has illegitimate funds offshore. He transfers this money to South Africa where he purchases a property. (Disguising the illegal money)

2. In the second stage, money launderers try to achieve four main objectives:
   - Disguise the ownership;
   - Disguise the origin;
   - Disguise the audit trail; and
   - Disguise the profit and source of crime.

This is achieved by conducting layers of complicated financial transactions, usually using electronic transactions. Transactions include dealing with shares, commodity and futures brokers.
Example – Mr Naidoo

A couple of months later he registers a bond over the property and withdraws the maximum capital amount from the bond. He is now able to show a legitimate source of funds, namely the bond registered on his property.

3. The third stage consists of a series of complex transactions involving a number of legal entities in many jurisdictions, designed to conceal the true source of the funds. By this stage, the money already appears "legal".

More examples of money-laundering:

1. Mr Johnson has received the proceeds of an illegal activity. In order to legitimise the money, he invests in a single-premium endowment policy with life insurer A. Four months later he surrenders the policy and receives the full surrender value. He is now able to show a legitimate source of the funds.

2. Mrs Botha has received the cash proceeds of an illegal activity. She pays cash for a brand-new Mercedes Benz. Two months later she sells the car and receives the proceeds of the sale in her bank account. She is now able to show a legitimate source to the bank, namely the sale of her car.

Money laundering has a negative effect on legitimate business and economic development and is often strongest in the weakest economies.

What are unlawful activities?

Any conduct that constitutes a crime or which contravenes any law, whether the conduct occurred before or after the commencement of the South African legislation, or in SA or elsewhere constitutes unlawful activity.

Examples:

Tax evasion, drug trafficking, theft, robbery, fraud, abduction, extortion.

Proceeds of unlawful activities are defined as any property or service, advantage, benefit or reward which was derived, received or retained, directly
or indirectly, in South Africa or elsewhere, at any time, before or after the commencement of the Act from unlawful activities.

8.2 BACKGROUND TO ANTI-MONEY LAUNDERING LEGISLATION

Money laundering is often not included in official economic statistics, making it difficult to judge its precise extent. The fact that it is considered to be the third biggest industry in the world gives one an understanding of the extent of the problem.

Governments of the world have therefore united in the fight against these scourges with an international agreement setting up the Financial Action Task Force ("FATF").

FATF was founded in 1989 by the countries with the world’s largest economies, known as the G7 countries (there were originally seven) to combat money laundering. Its activities now cover combating money laundering for criminal and terrorist purposes. Today FATF members represent most countries around the world and generally these members have money-laundering legislation in place in their countries, or are in the process of introducing it or refining it.

FATF has issued 40 recommendations for action against money laundering that form the basis for legislation in many countries. These recommendations are constantly being reviewed and updated, as is legislation worldwide to keep it on track.

International pressure on countries to adopt measures that met with FATF requirements led to the Financial Intelligence Centre Act 2001 (FICA). FICA added to POCA and repealed certain parts of POCA, meaning the two Acts have to be read in conjunction with each other. POCDATARA was added in 2004.

8.3 THE MONEY-LAUNDERING LEGISLATION

The first thing to understand about money laundering legislation is that it does not act upon the crime itself that has brought about illegal money, for example drug dealing. It deals with the proceeds of that crime.
The three main laws dealing with money laundering in South Africa, in chronological order, are the Prevention of Organised Crime Act 1989, 121 of 1998, (POCA), the Financial Intelligence Centre Act, 38 of 2001 (FICA), and the Protection of Constitutional Democracy Against Terrorism and Related Activities Act, 2004 (POCDATARA).

Let’s investigate what each of these Acts govern and require.

8.3.1 The Prevention of Organised Crime Act (POCA)

The purpose of POCA is to introduce measures to combat organised crime, money laundering and criminal gang activities.

The 1998 Prevention of Organised Crime Act (POCA) defines offences relating to proceeds of unlawful activities that are punishable. This includes money laundering, assisting another to benefit from the proceeds of unlawful activities and the acquisition, possession or use of proceeds of unlawful activities. Provision is also made for the confiscation and forfeiture of assets.

Section 4 of the Prevention of Organised Crime Act (POCA) makes it an offence for a person to knowingly launder the proceeds of unlawful activities.

Section 5 makes it an offence for a person knowingly to assist another person to benefit from the proceeds of unlawful activities.

Section 6 makes it an offence to acquire, use or possess property that one knows are the proceeds of unlawful activities.

Penalties can be as stiff as a maximum fine of R100 million or imprisonment for 30 years.

8.3.2 The Financial Intelligence Centre Act (FICA)

FICA's purpose is to combat money laundering activities and the financing of terrorist and related activities.

The 2001 FICA Act creates the requirements to ensure that money laundering is controlled. It is aimed at identifying suspicious transactions so that the people who engage in money laundering activities can be charged under POCA.

Suspicious transactions must be reported under FICA, which now provides the infrastructure to curb money-laundering activities.
The Act also requires “accountable institutions” that could serve as a conduit for "dirty money" to comply with certain legal duties relating to combating money laundering.

**Accountable Institutions**

The main purpose of FICA is requiring a long list of accountable institutions (defined in the Act) to follow certain procedures and report suspicious activities or unusual transactions relating to combating money laundering.

The essential characteristic of an accountable institution is its possible use for money laundering. Accountable institutions themselves are not necessarily statutory bodies, but include people and institutions that can be used for money-laundering purposes.

The list of accountable institutions defined in FICA includes, amongst others, banks, estate agents, attorneys, trust companies, collective investment schemes and long-term insurance companies (including an insurance broker and a representative of an insurer).

**FICA provides for a Financial Intelligence Centre (FIC) (lending its name to the Act) and a Money laundering Advisory Council to help combat money laundering.**

**Financial Intelligence Centre**

The principal objective of the FIC is to assist in the identification of the proceeds of unlawful activities and the combating of money laundering activities. All accountable institutions are required by the Act to report all information regarding money-laundering activities to the FIC, where it is handed over to the appropriate authorities for further recourse.

**Other objectives of the Centre include:**

- To make information collected by it available to investigating authorities, the intelligence services and the South African Revenue Services to facilitate the administration and enforcement of the laws of the Republic
- To exchange information with similar bodies in other countries regarding money-laundering activities and similar offences.
Money Laundering Advisory Council

Section 17 of FICA establishes the Money-laundering Advisory Council, an advisory body on combating money laundering. It advises the Minister of Finance on policies and best practices to combat money laundering and to identify the proceeds of unlawful activities. It also acts as a forum in which associations representing categories of accountable institutions, organs of State and supervisory bodies that report to the Financial Intelligence Centre can consult one another. The Council should also advise the Financial Intelligence Centre on the performance of its functions.

In simple terms, FICA requires the creation of a paper trail, with detailed records of the origins of money placed with an accountable institution and the people involved. Internationally, this paper trail makes it more difficult to launder money.

8.3.3 The Protection of Constitutional Democracy Against Terrorism and Related Activities Act (POCDATARA)

Money laundering has also been used by terrorist organisations to fund their activities. The original purely criminal focus of anti-money laundering measures has been broadened in recent years to cover this as well. In South Africa, this led to the 2004 Protection of Constitutional Democracy Against Terrorism and Related Activities, known by its clumsy acronym as POCDATARA.

It introduced a new Section 28A of FICA which requires the reporting of any property associated with terrorist and related activity to the Financial Intelligence Centre.

The aim of POCDATARA is therefore to introduce an obligation to report certain offences linked to terrorist activities, including terrorist financing.

8.3.4 What is the relationship between POCA and FICA?

FICA added to POCA and repealed certain parts of POCA. This means that the two Acts have to be read in conjunction with each other. The relationship between FICA and POCA can best be described by looking at an example:
Example:

Mr du Toit is involved in perlemoen smuggling. He has an amount of cash that he needs to legitimise. He contacts his financial adviser, Mr Samuels, to investigate the possibilities of investing in a single premium endowment policy. While talking to Mr Samuels, he inquires about the possible surrender of such a policy after a number of months.

Mr Samuels is suspicious, partly because he knows that Mr du Toit often visits Gansbaai and the greater Hermanus area over weekends for “business” – which could be illegal perlemoen smuggling. However, he decides that he values Mr du Toit’s business and that he will therefore not report the transaction.

If caught, Mr du Toit will be guilty under POCA, Section 4, as he knowingly laundered the proceeds of unlawful activities. Mr Samuels, on the other hand, will be guilty under FICA, Section 29, as he did not report a suspicious transaction.

Example:

Mr Coetzee is a licensed financial services provider and he is also a silent partner in a local night club. His partner in this business, Mr Daniels, has been earning extra money in drug trafficking in the club. He always uses the proceeds of these activities to purchase insurance policies with Mr Coetzee, who then earns commission on the large cash transactions. Mr Coetzee is well aware of the origins of the money invested, but since he is earning a good living off this scheme, he has no intention of ever reporting any of these deals.

If caught, both Mr Coetzee and Mr Daniels will be charged under POCA. Mr Daniels has knowingly laundered the proceeds of unlawful activities. Mr Coetzee has contravened the same section of POCA in that he proceeded with selling a client an insurance policy with the knowledge that the money for such policy has been derived from the proceeds of a crime. Mr Daniels has also contravened the provisions of FICA, since he did not report his suspicions.
8.4 THE IMPACT OF FICA ON FSPs

The impact of FICA on financial services providers and representatives (in their role as accountable institutions) is determined by the additional duties that it imposes on them. The main duties of accountable institutions, including those that are FSPs and representatives, as described in FICA, include:

- Identifying and verifying clients
- Reporting suspicious transactions
- Keeping records
- Training staff
- Reporting cash transactions
- Formulating and implementing internal rules

Let's look at each of these duties in depth so that you can understand what FSPs and representatives have to do to be compliant with this legislation.

8.4.1 The duties of an FSP relating to its employees in terms of FICA

The two duties that FICA imposes on an FSP (as an accountable institution) relating to its employees are the training of staff and the formulation and implementation of internal rules. Let's investigate how these duties impact on the FSP.

1. **Training staff**
   
   FSPs have to ensure that staff are suitably trained. In addition, they have to put in place a reporting of suspicious transactions procedure. Harsh penalties are set out, either for the individual who does not comply or for the organisation that does not comply, namely maximum imprisonment for a period not exceeding 15 years or a fine not exceeding R10 000 000.

2. **Formulating and implementing internal rules**
   
   The Act requires that the FSP formulate and implement internal rules relating to:
   - The identification and verification of a person’s identity
   - The record-keeping requirements prescribed in the Act
   - Steps to be taken to decide whether a transaction is reportable or not.
These internal rules must be made available to all employees and the FIC.

In addition to the above, an FSP (as an accountable institution) also needs to be aware of the obligations created in the following:

- The common law
- Industry-specific and sector-specific legislation
- The 40 FATF recommendations as changed from time to time
- International best practices within the industry.

8.4.2 The duty of the identification and verification of clients

Some of the duties listed that FICA imposes on FSPs also become your duties when you work for the FSP as a representative.

Getting to know the client is an essential element in combating money laundering. This is expressed simply and effectively as “know your client” (KYC).

The term “client” can be regarded as anyone who uses the services of an accountable institution. Client categories include natural persons, companies, close corporations, trusts, partnerships and the like.

An FSP or its representatives may not establish a business relationship or conclude a single transaction with a client unless the necessary steps have been taken to identify and verify the identity of the client.

The accountable institution has to obtain the client’s full names, date of birth, ID number, income tax number (where applicable) and address. If the client is represented by another person, the identity of the other person as well as the authority of that person to act on behalf of the client need to be established.

It is important to note that the Act requires an accountable institution to identify and verify clients not only when a single transaction is about to be concluded, but also when the accountable institution and the client intend to establish an ongoing business relationship.

Business relationship means an arrangement between a client and an accountable institution for the purpose of concluding transactions on a regular basis. If the accountable institution established a business relationship before the commencement of FICA, it has to take steps to verify and identify clients before a new transaction is entered into in terms of the relationship.
There are, therefore, guidance notes as to what constitutes knowledge of your client – for example: copy of the ID book, copy of a utility bill to prove residential address, a copy of tax form showing tax registration number, copy of payslip, which gives you an idea of how onerous the legislation is and how serious South Africa is about money laundering.

Documentation used for identification and verification of clients differs slightly for natural persons and legal entities. A further distinction is also made between South African citizens, residents and legal entities (such as companies, trusts and close corporations) on the one hand, and foreign nationals and legal entities on the other.

Documents required for identification and verification:

- **For a natural person** (RSA citizen), a copy of the ID document will serve as verification of his identity. Residential address verification can be obtained from a utility bill, a bank statement from another bank reflecting the name and address, a municipal rates and taxes invoice, a telephone or cellphone account reflecting the name and residential address of the person, etc.

- **A foreign national** may be identified from an identity document or passport, in addition to a letter of confirmation from a person in authority (for example from the relevant embassy) which confirms authenticity of that person’s identity document.

- **For a private company** the following may be used: Registered name and registration number, address, registered trade name and address, documentation to verify tax and VAT number (any SARS document), personal details of manager/CEO or both, details of shareholders holding 25% or more voting rights, mandate authorising person acting on behalf of company in entering into business relationships, most recent version of certificate of incorporation (CM1), notice of registration of office and postal address (CM22).

- **For a company listed on the JSE**, only a registration number and the name of the company are required.

- **For a close corporation** the following may be required: Registered name and registration number, address, registered trade name and address, documentation to verify tax and VAT number, most recent version of the founding statement (CK1), notice of registration of office and postal address (CM22), the member’s agreement, a resolution authorising the person to act, personal details of each member of the CC.
- For a trust the following are required: The identifying name and number of the trust, the address of the Master where it is registered, the trust deed or other founding document, letter of authority from the Master of the High Court in SA, the income tax registration number, trustees’ resolution authorising person to act, personal details of each trustee, each beneficiary referred to by name in the trust deed, the founder and the person authorised to act.


Exemptions

FICA provides for certain exemptions in terms of circumstances where accountable institutions do not have to identify and verify clients.

There are general exemptions that apply to certain accountable institutions, where a business relationship/single transaction is established or concluded with a second accountable institution after the primary institution has identified and verified the client.

There are also specific exemptions:

- Any long-term insurance policy which provides benefits only upon the death, disability, sickness or injury of the life insured

Example:

Financial adviser K does not have to verify and identify his client when he sells a pure life-cover policy to the client.

- Any long-term insurance policy, unit trust or linked product in respect of which recurring premiums/contributions are paid, which will amount to an annual total not exceeding R25 000, subject to the condition that the client will have to be identified and verified if:
  - The recurring premium is increased so that the R25 000 p.a. is exceeded
  - The policy/investment is surrendered/liquidated within three years
  - A loan is granted against the policy within three years.
Example:

Client X is about to invest R300 per month in a recurring premium endowment policy. His financial adviser does not have to follow the rules of identification and verification.

- Any long-term insurance policy, unit trust or linked product in respect of which a single premium/contribution not exceeding R50 000 is payable, subject to the condition that the client will have to be identified and verified if:
  - The policy/investment is surrendered/liquidated within 3 years after its commencement
  - A loan is granted against the security of such a policy within 3 years after its commencement.

Example:

Client Y invests R50 000 in a single-premium sinking fund with Company X. The financial adviser will have to identify and verify the client in this scenario, as the single premium is more than R50 000.

- Any other long-term policy where the surrender value of the policy does not exceed 20% of the value of the premiums paid in respect of the policy within the first 3 years of the policy.

8.4.3 The recording function

FICA requires the following records to be kept:

- The identity of the client
- The identity and authority of a person acting on behalf of a client
- The identity and authority of a client acting on behalf of another person
- The manner in which the identity was established
- The nature of the business relationship or transaction
- The name of the person who obtained the information on behalf of the accountable institution
- Documents used to identify and verify the client or the other person.

The records mentioned above may be kept in electronic form. Records which relate to the establishment of a business relationship should be kept for five
years from the date on which the business relationship is terminated. Records which relate to transactions should be kept for at least five years from conclusion of the transaction.

FICA also allows for third parties to keep records on behalf of the accountable institution, provided that the accountable institution has free and easy access to the records. Should the third party fail to keep proper records, the accountable institution is liable for that failure. If an accountable institution decides to make use of a third party to keep records, the particulars of such third party needs to be provided to the Financial Intelligence Centre.

Accessibility of information

An authorised representative of the Financial Intelligence Centre has access to records kept by an accountable institution during ordinary working hours and may examine, make extracts or make copies of such records. Where such records are not available to the general public, a warrant issued by a judge or magistrate of the region in which the accountable institution conducts business is required by the representative of the FIC. Such a warrant will only be issued if there are reasonable grounds to believe that the records will assist in identifying the proceeds of unlawful activities. An accountable institution which fails to provide this assistance, is guilty of an offence, punishable with imprisonment for a period not exceeding 15 years, or a fine not exceeding R10 million.

Example:

Let’s assume that the authorities have been investigating client X in terms of unlawful activities. The Financial Intelligence Centre can obtain a warrant to access records kept by an accountable institution such as a long-term insurer, provided that there are reasonable grounds to believe that the records will assist in identifying the proceeds of unlawful activities. The insurer will be obliged to provide all necessary assistance to FIC in this process.

8.4.4 The duty to report cash and suspicious transactions

A person liaising with a client on behalf of the business is required to report any suspicion on his part of receiving proceeds of unlawful activities from a client. A person who has reported a suspicious transaction may not inform the client that such a report has been made (so-called “tipping off”). In practice,
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this process is mostly handled by the money-laundering reporting officer of an institution.

The role of the money laundering officer

The employees of the institution will report suspicious or unusual transactions to the Money Laundering Reporting Officer in that institution. The procedure for making the report must be laid down in the internal rules that the institution has put in place to ensure compliance with FICA.

The Reporting Officer will investigate the transaction to determine whether in fact it was suspicious and/or unusual. If so, the Money Laundering Reporting Officer must report the transaction to the Financial Intelligence Centre within 15 working days of learning of it or from when the suspicion arose. The FIC may ask for additional information on the matter.

Reporting cash and suspicious transactions

The Act requires accountable institutions to report cash transactions above a prescribed limit. This section is, however, not operational yet and the limits have not been prescribed (for more info see www.fic.gov.za). This reporting duty is applicable where the accountable institution receives the cash amount from a client, as well as where the accountable institution pays a cash amount above the prescribed limit to the client.

Example:

Client Y wants to deposit R100 000 cash at Bank A. In terms of FICA, Bank A, as an accountable institution, is obliged to report the transaction to the Financial Intelligence Centre. The cashier will report it to Bank A’s reporting officer/department, who in turn will report it to the Financial Intelligence Centre.

Possible indicators of a suspicious transaction

The following are examples of possible suspicious or unusual transactions – they may be perfectly legitimate, but they are often used to cover money laundering:
Payments to be made to third parties
Transfer of funds to other product providers
Constant movement of money among different business entities
Transactions that have no apparent business purpose
Transactions involving large cash amounts
Surrendering of policies and second-hand (traded) policies shortly after they have been purchased
Loans against new-generation products (loans can then be repaid with “dirty” money in order to “clean” the money)

Suspicious transaction may not always be easy to spot. The Financial Intelligence Centre (www.fic.gov.za) has published guidelines to assist banks with the verification and identification process. In this document, the following are some of the high risk factors listed in terms of suspicious clients:

- A client appears to have bank accounts with several banks in the area
- A client makes cash deposits to a general account of a foreign correspondent bank
- A client wishes to have credit and debit cards sent to destinations other than his address
- A client has numerous accounts and makes or receives cash deposits in each of them amounting to a large aggregated amount
- A client frequently exchanges currencies
- A client wishes to have unusual access to safe-deposit facilities
- A client’s account shows virtually no normal business-related activities, but is used to receive or disburse large sums
- A client has accounts that have a large volume of deposits in bank cheques, postal orders or electronic funds transfers
- A client is reluctant to provide complete information regarding these activities
- A client’s financial statements differ noticeably from those of similar businesses
- A client makes a large volume of cash deposits from a business that is not normally cash-intensive

The following case studies were taken from the Financial Action Task Force reports on money laundering typologies (www.fatf-gafi.org).
Case Study 1

A company director from Company W, Mr H, set up a money laundering scheme involving two companies, each one established under two different legal systems. Both of the entities were to provide financial services and providing financial guarantees for which he would act as director.

These companies wired the sum of $1.1 million to the accounts of Mr H in country S. It is likely that the funds originated in some sort of criminal activity and had already been introduced in some way into the financial system. Mr H also received transfers from country C.

Funds were transferred from one account to another (several types of accounts were involved, including both current and savings accounts). Through one of these transfers, the funds were transferred to country U from a current account in order to make payments on life insurance policies. The investment in these policies was the main mechanism in the scheme of laundering the funds. The premiums paid for the life insurance policies in country U amounted to some $1.2 million and represented the last step in the laundering operation.

Case Study 2

A person (later arrested for drug trafficking) made a financial investment (life insurance) of R250 000 through an insurance broker. He acted as follows: he contacted the broker and delivered an amount of R250 000 in three cash instalments. The insurance broker did not report the delivery of that amount and deposited the three instalments in the bank. These actions raised no suspicion at the bank, since the broker was known to them as being connected to the insurance branch. The broker delivered, afterwards, to the insurance company responsible for making the investment, three cheques from a bank account under his name, totalling R250 000, thus avoiding raising suspicion with the insurance company.

In this case, it is clear that the insurance broker should have reported the transaction as suspicious, due to the fact that the amount was delivered in cash. Furthermore, once the section on reporting cash transactions became effective (see below), the bank employee would also have to report the transaction if it was in excess of the prescribed cash limit.
8.5 THE CONSEQUENCES OF NON-COMPLIANCE

In terms of FICA, the following (amongst others) are declared to be an offence, punishable by a maximum of 15 years’ imprisonment, or a maximum fine of R10 million:

- Failure to identify persons
- Failure to keep records
- Destroying or tampering with records
- Failure to give assistance to the FIC
- Failure to report cash transactions as prescribed (when operational)
- Failure to report suspicious or unusual transactions
- Failure to train staff or to appoint a compliance officer, or to implement internal rules

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).
Summary

The activity of money laundering is defined as an activity which has, or is likely to have, the effect of concealing or disguising the nature, source, location, disposition or movement of the proceeds of unlawful activities. This includes any interest accrued to these amounts which anyone has in such proceeds and includes any activity which constitutes an offence in terms of Section 64 of this Act or Section 4, 5 or 6 of the Prevention of Organised Crime Act.

The Financial Intelligence Centre Act, 38 of 2001 is aimed at establishing a Financial Intelligence Centre and a Money Laundering Advisory Council in order to combat money-laundering activities. Further, the Act is used to impose certain duties on accountable institutions and other persons who might be used for money laundering purposes.

FICA determines that accountable institutions need to:

- Identify and verify their clients
- Report suspicious transactions
- Keep records
- Train staff and put reporting procedures in place
- Report cash transactions over a prescribed limit


The original purely criminal focus of anti-money laundering measures has been broadened in recent years to cover money laundering used by terrorist organisations to fund their activities. In South Africa, this led to the 2004 Protection of Constitutional Democracy Against Terrorism and Related Activities Act (POCDATARA). This Act requires the reporting to the Financial Intelligence Centre of any property associated with terrorist and related activity.

The introduction of these Acts has gone a long way in aligning South African with the rest of the international community in the fight against money-laundering.