

# **Representative Regulatory Exam Workshop Material (RE5)**



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## Introduction to the material

The following tasks are necessary to know for the RE5 exams (updated April 2018)

**TABLE 4: REGULATORY EXAMINATION: REPRESENTATIVES IN ALL CATEGORIES OF FSPs**

TABLE 4				
Task No	Task	QC	Qualifying Criteria	Knowledge (K) or Skills (S)
1	Demonstrate understanding of the FAIS Act as a regulatory framework	1	Describe the FAIS Act and subordinate legislation.	K
		2	Provide an overview of the financial services and different types of financial products a Representative can deal with.	K
		3	Apply knowledge of the financial products within the financial services environment.	S
		4	Describe the role and functions of a Compliance Officer.	K
2	Contribute towards maintaining an FSP license.	1	Explain the requirements an FSP must meet to maintain an FSP license.	K
		2	Assist in maintaining an FSP license by executing the required actions as a Representative, in terms of the Act.	S
		3	Discuss the requirements around the display of licenses.	K
		4	Explain the implication for a Representative if an accreditation is suspended or withdrawn or lapsed in terms of the Medical Schemes Act, 1998, or any other enabling legislation.	K
		5	Explain what is meant by “undesirable practices.”	K
		6	Check that the execution of duties and actions as a Representative does not constitute as undesirable business practices.	S
		7	Describe the implication for a Representative if the Registrar declares a business practice to be undesirable.	K
		8	Explain the reparation measures available to the Registrar if a Representative continues with undesirable business practices.	K

		<b>9</b>	Describe the offences prescribed by the FAIS Act.	K
3	Define the role of the Key Individual in terms of the FAIS Act.	<b>1</b>	Describe the role and responsibilities of key individuals as defined in the FAIS act.	K
		<b>2</b>	Describe the regulated management and oversight responsibilities of a key individual.	K
		<b>3</b>	Explain the implications for a representative should a key individual no longer meet the good standing, honesty and integrity requirements.	K
4	Code of Conduct	<b>1</b>	Describe the general and specific duties of a provider.	K
		<b>2</b>	Describe what could possibly a conflict of interest.	K
		<b>3</b>	Define the requirements and impact of the disclosure rules on the FSP.	K
		<b>4</b>	Apply the requirements of the General Code of Conduct for FSPs and Representatives	S
		<b>5</b>	Explain the disclosures that need to be made by a Representative before rendering a financial service.	K
		<b>6</b>	Explain disclosures that must be made by a Representative when rendering a financial service.	K
		<b>7</b>	Describe the required disclosures regarding the provider, product supplier and financial service.	K
		<b>8</b>	Explain the specific disclosure requirements regarding fees and commission.	K
		<b>9</b>	Apply disclosure requirements in terms of financial services.	S
		<b>10</b>	Explain the process of advice that should be followed by a Representative.	K
		<b>11</b>	Explain the requirements when a Representative receives custody of financial products and funds.	K
		<b>12</b>	Explain the manner in which complaints are to be handled by a Representative as required by the General Code of Conduct for FSPs and Representatives.	K
		<b>13</b>	Follow the complaints procedures and processes that are in place for Representatives.	S
		<b>14</b>	Explain the requirements of the General Code of Conduct for FSPs and Representatives relating to the termination	K



			of an agreement.	
5	Comply with regulated record keeping requirements	1	Explain the record keeping obligations by a Representative as prescribed by the FAIS and FIC Acts.	K
		2	Carry out the record keeping and retrieval of records functionality correctly.	S
6	Comply with the requirement of the FIC Act and Money Laundering and Terrorist Financing control regulations, as it applies to the FSP.	1	Explain the requirements specific to an FSP prescribed by the FIC Act.	K
		2	Describe how the FIC Act impacts a Representatives' interaction with a client.	K
7	Dealing with complaints that have been submitted to the Ombud for FSPs.	1	Explain the role and authority of the Ombud for FSPs	K
8	Operate as a Representative in terms of the FAIS Act.	1	Describe the role and responsibilities of Representative as defined in the FAIS Act.	K
		2	Apply knowledge of the role of Representatives in terms of the FAIS Act.	S
		3	Explain the fit and proper requirements that apply to Representatives ( good standing, honesty, integrity, qualifications, experience, knowledge tested through regulated examinations and continues professional development)	K
		4	Distinguish between advice and intermediary services in terms of the FAIS Act.	K
		5	Describe the purpose and requirements of the register of Representatives.	K
		6	Explain when a Representative should be under supervision.	K
		7	Explain the disclosure requirements for a Representative under supervision.	K
		8	Describe the implications if a Representative no longer meets the fit and proper requirements.	K
		9	Define the purpose of debarment.	K
		10	Describe when debarment should be considered.	K
		11	Explain the debarment process that should be followed in the event of a possible contravention of the FAIS Act.	K
		12	Explain what recourse a debarred representative may have.	K

For the purposes of the training manual, we did not follow the tasks in chronological order, however, we have designed the material to make it easier to follow and study. A combination of the FAIS Act, subordinate legislation, FSCA communication, tools used by compliance officers, our own knowledge and INSETA material was used to design and develop the material.

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### The History of FAIS – FAIS Act 37 (2002)

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The Financial Services Board was established in 1990, aimed at creating an independent body to supervise and regulate the **non-banking** financial services industry. The **Financial Services Board** (FSB) is the government of South Africa's financial regulatory agency responsible for the non-banking financial services industry in South Africa. It is an independent body that supervises and regulates the financial services industry in the public interest.

In the past, South Africa never had a formal system of regulating financial advisors and intermediary services. The FAIS Act came into law in November 2002, however, drafting of the Act (then still termed a Bill before being enacted) started as early as 1993. The idea behind bringing in new legislation was to:

- Provide consumer protection in terms of financial products; and
- Enhance the integrity of the South African financial services industry.

During the drafting process, several drafts of the Bill were put on the FSB's website, followed by statements in the media inviting comments. In addition to this, and given the fact that the Bill attracted interest from all the different industry players within the financial services sector, a number of workshops, as well as several road shows were hosted by the FSB. These events covered discussions around the contents of the then Bill and its possible impact on the industry.

The purpose of the Financial Advisory and Intermediary Services Act (FAIS Act) is to regulate the activities of all financial service providers who give advice or provide intermediary

services to clients as regards to certain financial products. The Act requires that such providers be licensed and that professional conduct be controlled through a code of conduct and specific enforcement measures. One of the main reasons behind the enactment of FAIS was to create uniform standards that must be adhered to by all applicants and holders of an FSP license.

The FAIS Act applies to anybody that offers financial advice and/or provides an intermediary service to a client on any transaction that has to do with a financial product.

FAIS aims to regulate the giving of advice and rendering of intermediary services to clients, and imposes responsibility by requiring that

- i) the financial needs of the client has to be evaluated,
- ii) appropriate advice - having established the relevant facts – is to be given, and
- iii) clients be assisted to make informed decisions, whilst establishing a complaints resolution mechanism.

The Act requires that competent and qualified persons render services and give advice (so called “fit and proper requirements”) in order for clients to receive sound financial advice, services and products tailored to their individual needs. An untrained representative should never be allowed to give advice, hence the requirement that an advisor be FAIS accredited.

**FAIS Act aims to achieve the following:**

- 1. Professional Conduct**
- 2. Better informed client**
- 3. Professional and responsible sector**

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### **Objectives of the FAIS Act**

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- To regulate the rendering of certain financial advisory and intermediary services to clients
- to repeal or amend certain laws
- to provide for matters incidental thereto

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## Latest updates in the Financial Services Sector

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As from the 1<sup>st</sup> of April 2018, the FSB is now being replaced with FSCA – The Financial Sector Conduct Authority. This is as a result of the Twin Peaks Model of financial sector regulation (regulating both the banking and non-banking financial services sector)

The FSCA's key objectives are to:

- Protect customers by promoting their fair treatment by financial institutions, providing education and promoting financial literacy;
- Enhance and support the efficiency and integrity of financial markets;
- Assist in maintaining financial stability; and
- Support inclusion and transformation in the financial sector.

The FSCA says there won't be a "big bang" approach to the implementation of its mandate, but gradual changes over the course of the year as sections of the FSRA come into operation. "In the main, financial institutions can expect their interactions with us to be business as usual in the short term."

It says there are, however, a few immediate changes:

- All communications, regulatory actions and decisions will now be in the name of the FSCA.
- The new website, [www.fsc.co.za](http://www.fsc.co.za), is live. All the key information that was available on the FSB website is still accessible.
- A Financial Services Tribunal has been established, which any entity aggrieved by an FSCA decision can approach for adjudication. The tribunal replaces the FSB Appeal Board.

In terms of the FSRA (Financial Sector Regulation Act, signed into law on the 21<sup>st</sup> of August 2017), a commissioner and deputy commissioners will make up the executive committee that will lead the FSCA.

The minister published regulations setting out the process whereby the commissioner and deputy commissioners will be appointed, and it is expected that this process will start soon, says the FSCA.

Source: <https://www.iol.co.za/personal-finance/fsb-makes-way-for-fsca-14316164>  
published 9 April 2018

### **The relationship between the FAIS Act and the Financial Sector Regulation Act**

A reference in this Act to the Board or the registrar (now Commissioner) must be read as reference to the Authority.

The powers and duties of the Authority in terms of this Act are in addition to the powers and duties it has in terms of the FSRA (Financial Sector Regulation Act, also known as Twin Peaks).

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### **The FSB – now referred to as FSCA**

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The Financial Services Board (FSB) – now referred to as the FSCA (The Financial Sector Conduct Authority) is an independent institution established by statute to oversee the South African Non-Banking Financial Services Industry in the public interest. Its mission and vision are to promote and maintain a sound financial investment in South Africa.

The FSCA is there to ensure that clients are treated fairly by the financial services providers they deal with, and that they enjoy a safe investment environment. The FSCA prevents many South Africans from losing their hard earned money to illegal money making schemes. A client can confirm with the FSCA whether the entity they are dealing with has a valid FSCA licence because only licensed providers are authorised to sell financial products. It is important to note that the FSCA does not regulate or follow up on pyramid schemes, as the South African Reserve Bank takes on this responsibility.

The Financial Services Board (FSB) oversees the non-banking financial services industry, which includes retirement funds, short-term & long-term insurance, companies, funeral insurance, schemes, collective investment schemes (unit trusts and stock market) and financial advisors and brokers.

The FSCA has the following departments:

- Actuarial
- Capital Markets
- Collective Investment Schemes
- Consumer Education
- Credit Ratings
- FAIS
- Information Centre
- Insurance
- International and Local Affairs Unit
- Legal and Policy
- Market Abuse
- Market Conduct Strategy Unit
- Retirement Funds

Only one department within the FSCA deals with FAIS, which again consists of a further four departments, being:

## **FAIS Division**

FAIS is a division within the FSCA that is set up to administer the Financial Advisory and Intermediary Services Act, 37 of 2002 whose aim is to protect the investors and to professionalise the financial services industry.

They register FSP's after being satisfied that they meet the fit and proper requirements, supervise such providers on an on-going basis to ensure that they comply with the duties imposed by the Act at all times and take the necessary regulatory action against those who do not comply, which include unregistered entities or persons.

## ***FAIS Departments***

### Registration:

- *New licence applications;*
- *profile changes; (amendments to licenses)*
- *updating the central representative register*
- *approval of mandates and application forms for Cat II and III FSP's*
- *liaison with Finance Department of FSCA relating to collection of levies*

### Supervision:

- *lapsing of licenses*
- *receipt and analysis of financial statements and compliance reports*
- *conduct onsite visits to FSP's and compliance officers*
- *liaison with industry relating to changes and subordinate legislation*

### Compliance

- *deals with complaints against FSP's that cannot be referred to FAIS Ombud*
- *investigations into the affairs of FSP's*
- *regulatory action – suspensions and withdrawals of licenses*
- *debarments related to regulatory action*

### Enforcement

- *interaction between the FAIS Division and the FSCA Enforcement Committee*
- *updating debarments on the central representatives register*
- *reinstatement of representatives on the central register*

Source: [www.fsb.co.za](http://www.fsb.co.za)

***Please note that even though the Acts and Board Notices still refer to the FSB and Registrar, we have amended our material with the latest changes and therefore the Registrar is now referred to as the Commissioner, and the FSB is now referred to as the FSCA. The exams have already been updated.***

## Glossary of terms, including the Role Players

Term	Definition from the Act
<b>Representative</b>	These are the persons who render a financial service to clients for or on behalf of an FSP, in terms of any employment or other mandatory agreement. These persons must be Employed or Mandated.
<b>Key Individual</b>	These are natural persons within the FSP who are either managing or overseeing the activities of the FSP relating to financial services. It also includes a corporate or unincorporated body, a trust or a partnership, where the the “natural person” is 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.
<b>Auditor</b>	Means an auditor registered in terms of the Auditing Profession Act, 2005 (Act No. 26 of 2005)
<b>Compliance Officer</b>	Means a compliance officer for an authorised financial services provider referred to in section 17 (which refers to the compliance officers)  This is the person who embeds compliance within the FSP and reports to the FSCA on compliance issues within the FSP. The Compliance Officer could be an internal person or an outsourced function.
<b>Client</b>	Means a specific person or group of persons, <b>excluding</b> the general public, who is or may become the subject to whom a financial service is rendered intentionally, or is the successor in title of such person or the beneficiary of such service. <b>However, very important! For the purposes under section 14 as it pertains to advertising, client includes the general public</b>
<b>Support staff</b>	These are the staff that supports the function of the operational staff within the administrative functions of an FSP. If they do not furnish advice or deal with clients in terms of an intermediary service, they do not have to be FAIS Fit & Proper



Term	Definition from the Act
<p><b>The Registrar</b></p> <p><i>In future to be called the Commissioner</i></p>	<p>The executive officer and deputy executive officer of the Board are respectively the registrar and deputy registrar of financial services providers and have the powers and duties provided for by or under this Act or any other law.</p> <p>The executive officer referred to in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), is the registrar of financial services providers and has the powers and duties provided for by or under this Act and any other law.</p> <p>The deputy executive officer referred to in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), is the deputy registrar of financial services providers.</p> <p>The deputy registrar of financial service providers exercises the powers and duties of the registrar of financial services providers to the extent that such powers and duties have been delegated to the deputy registrar under section 20 of the Financial Services Board Act, 1990 (Act No. 97 of 1990).</p> <p><b><i>In future, a commissioner and deputy commissioners will make up the executive committee that will lead the FSCA.</i></b></p>
<p><b>The FSB</b></p> <p><i>(to be replaced by the FSCA – see below)</i></p>	<p>The FSB is a regulatory body within the financial services industry. They are in essence the “custodians” of the FAIS legislation. They are responsible for the authorisation process; they ensure compliance and act on aspects of non-compliance. It also means the Financial Services Board established by section 2 of the Financial Services Board Act</p>
<p><b>The FSCA</b></p>	<p>The Financial Services Board (FSB) has officially taken up its new mandate as the Financial Sector Conduct Authority (FSCA), effective 1 April 2018. This marks the formal implementation of the Twin Peaks model of financial sector regulation, as envisaged in the Financial Sector Regulation Act 2017 (FSRA). Finance Minister Nhlanhla Nene, has now signed the Commencement Notice for the FSRA, formally establishing both the FSCA and its sister organisation, the Prudential Authority (PA).</p>

<b>Term</b>	<b>Definition from the Act</b>
<b>Authorised FSP's or Providers</b>	Means a person who has been granted an authorisation as a financial services provider by the issue to that person of a licence under section 8
<b>CPD – Continuous Professional Development</b>	Means a process of learning and development with the aim of enabling a financial services provider, key individual, representative or compliance officer to maintain the competency to comply with this Act
<b>Court</b>	Means any court having jurisdiction
<b>Product supplier</b>	Means any person who issues a financial product
<b>Publish</b>	Means any direct or indirect communication transmitted by any medium, or any representation or reference written, inscribed, recorded, encoded upon or embedded within any medium, by means of which a person, other than the registrar, seeks to bring any information to the attention of any other person, or all or part of the public
<b>Employed</b>	Means that there is a service contract that exists between the employer, FSP or Product supplier and the representative
<b>Mandate</b>	Means any authorisation that was given to the representative to act on behalf of the FSP or Product Supplier. This is usually an agency agreement that was signed between the FSP and Rep.
<b>DOFA</b>	Date of First Appointment

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### Registrar vs Commissioner

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As stated earlier in this manual, in terms of In terms of the FSRA (Financial Sector Regulation Act, signed into law on the 21<sup>st</sup> of August 2017) , a commissioner and deputy commissioners will make up the executive committee that will lead the FSCA.

This means that in future, the Registrar of the FSB/FSCA will be referred to as the Commissioner of the FSCA.

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## What is Financial Services

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Financial services, in terms of the Act, refer to:

- Advice and
- Intermediary Services

TIP: Please note that most professions include a certain amount of administration. Do not get caught out in the exam when you see administration or administrative services as one of the options for the Financial Services. It is simple. In terms of the Act, two things and **two things only** make up Financial Services. Advice and Intermediary Services ONLY. It is one, or the other, or both, but nothing but these two!

### What is Advice

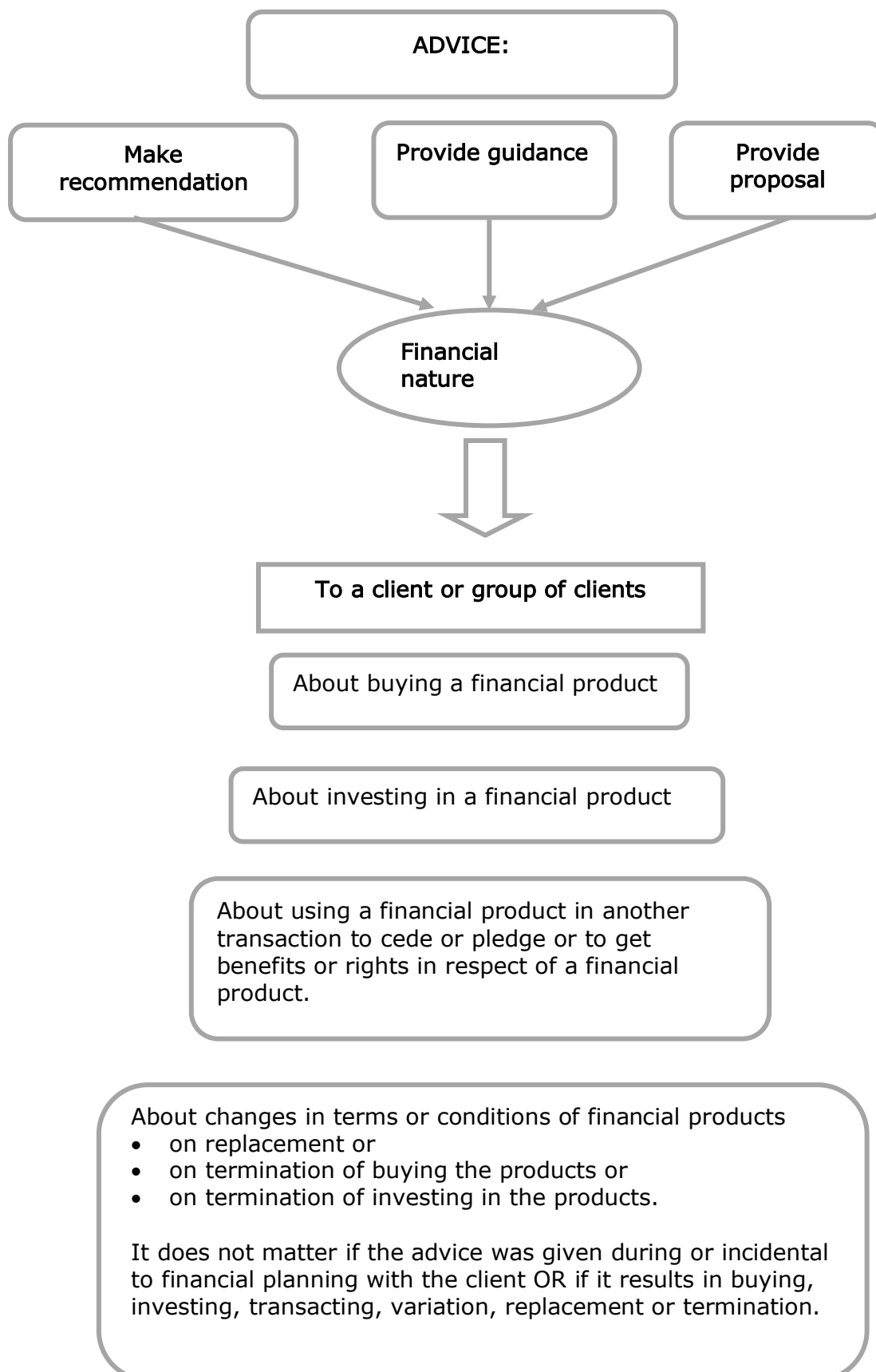
Any **recommendation, guidance or proposal**

- Of a financial nature furnished
- By any means or medium
- To any client or group of clients regarding
  - Purchasing any financial product
  - Investing in any financial product
  - The conclusion of any other transaction (including a loan or transaction aimed at incurring liability OR acquisition of any right or benefit in respect of any financial product)
  - Varying any term or condition (including replacing, terminating or investment in a financial product)
  - Irrespective of whether the advice
    - Is furnished in the course of or incidental to financial planning or
    - Results in purchasing, investing, transacting, varying, replacing or terminating

### *What is automated advice*

Means the furnishing of advice through an electronic medium that uses algorithms and technology without the direct involvement of a natural person

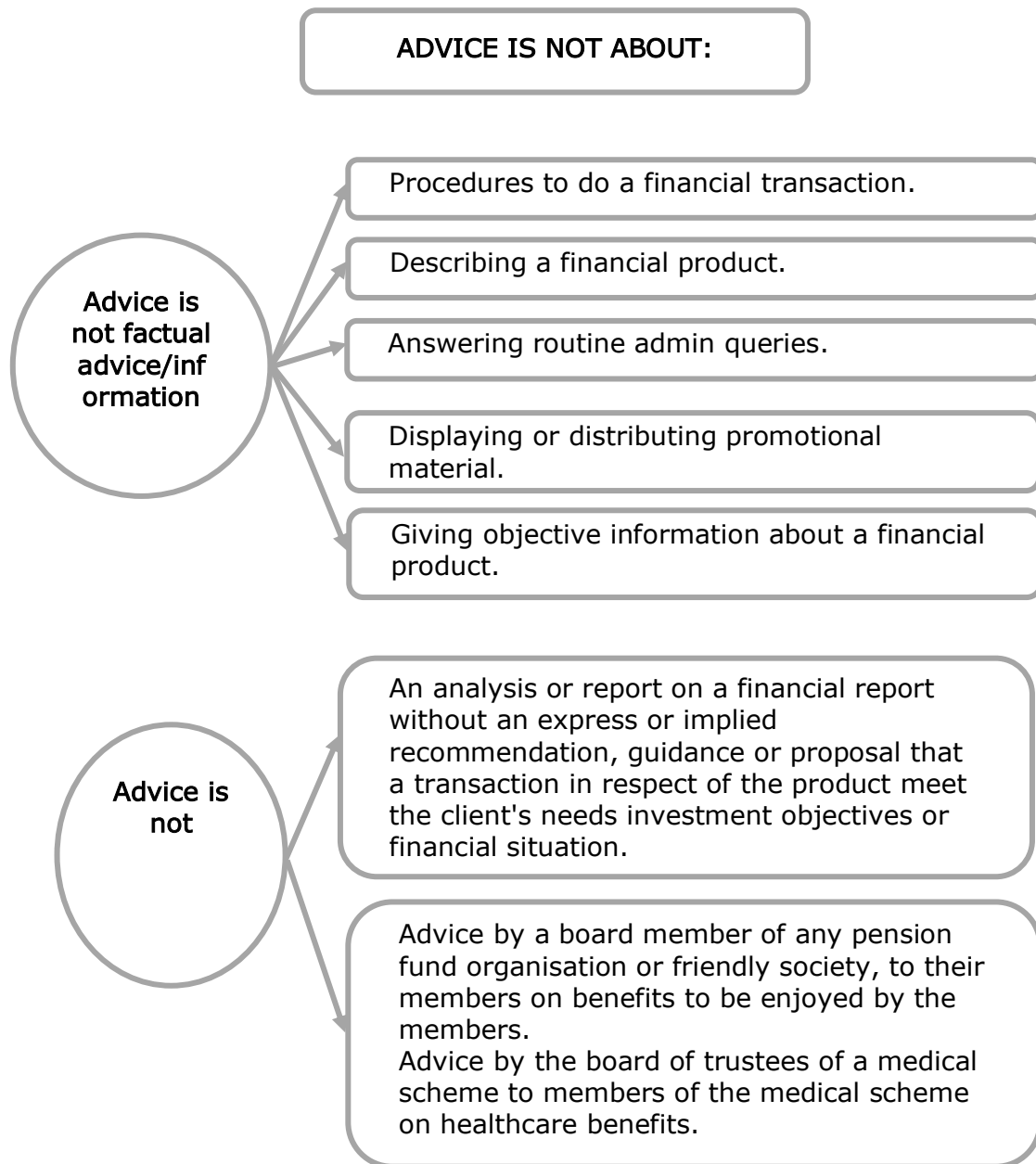
See the illustrations below copied from the INSETA manual to assist you with:



## Advice is not about:

Very important to know!

See the illustrations below copied from the INSETA manual to assist you with



(Source: INSETA Representative Training Material)

## What is Intermediary Services?

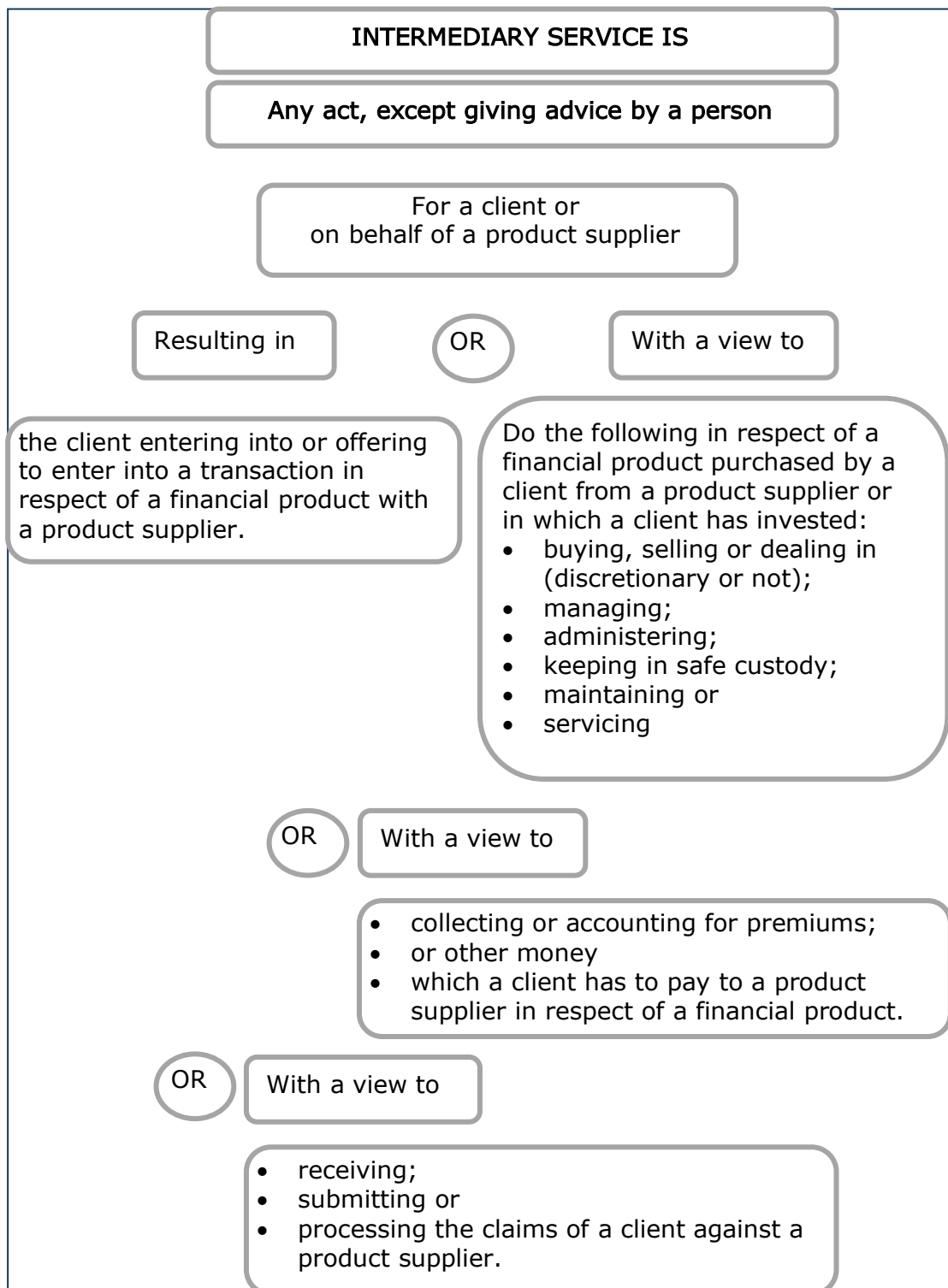
Any act, other than furnishing of advice

- Performed by a person for or on behalf of a client or product supplier
  - ❖ Which results in a client entering, or offers to enter into any transaction in respect of any financial product with a product supplier
  - ❖ With a view to
    - Buy, sell or otherwise deal in, manage, administer, keep in safe custody, maintain or service a financial product purchased or invested in by a client
    - Collect or account from premiums
    - Receive, submit or process client claims against a product supplier

**TIP!** The best way to remember is that as soon as your job entails the following:

- Technical work
- Clerical work
- Administrative work
- Legal work
- Accounting
- or other services in a subsidiary or subordinate capacity
- Then you DO NOT deliver advice, but you are performing intermediary services
- Be careful, however, as soon as you make a **judgement call** (i.e. decide to whether to pay a claim or not), then you are seen as to be a representative and must be registered. Claims staff could possibly be registered as representatives for intermediary services only, not giving advice.

See the illustrations on the following page copied from the INSETA manual to assist you with



(Source: INSETA Representative Training Material)

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## The Representative

---

A representative (Rep) is a person who:

- renders financial services (**advice and/or intermediary services**) to a client
- on behalf of an FSP

A rep must either be employed, or mandated by the FSP to render financial services

- but excludes someone who renders
  - Technical
  - Clerical
  - Administrative
  - Legal
  - Accounting
  - or other services in a subsidiary or subordinate capacity

This service does not require

- Judgment
  - Does not lead a client to any specific transaction in respect of a financial product

### Important note:

1. The rep **must** be employed or mandated and act on behalf of an authorised FSP (unless the FSP is exempted from the Act). If not employed or mandated by an authorised FSP and delivering financial services, they will face the FAIS penalties, which is up to R10 million or 10 years imprisonment or both.
2. If the rep works in a “back office” and does not make judgement calls (settle or reject a claim), they will **NOT** be required to be registered as a rep. **BUT** if they make judgement calls, they will be required to be fit & proper as they need to be registered as a representative.
3. Mandate refers to that there is an “agency agreement / agreement” to act on behalf



of the supplier, FSP etc.

If a Rep was acting as a Rep (mandatory or employed) on behalf of an FSP on the date that the FSP is registered by the FSCA as an authorised FSP, that person will be regarded as a Rep

### Appointment of representatives

An FSP must ensure that where it appoints a (natural) person as a representative as a:

- That the person:
  - has not been declared insolvent or provisionally insolvent
  - has not been placed under liquidation, provisional liquidation or business rescue; and
  - is not subject to any pending proceedings which may lead to an outcome above

Please note, in the 2008 Fit & Proper requirements, it has not been necessary for KI's or Reps to be financially sound, however, with the April 2018 updates, the above now apply. Therefore, financial soundness & operational ability again is now part of the Fit & Proper for Reps, but only insofar it applies to Reps.

- And if a JURISTIC Representative is appointed (not a natural person, i.e. a company), that:
  - sufficient operational ability and financial resources to perform the activities for which it is appointed as a representative; and such appointment does not:
    - materially increase any risk to the FSP or to the fair treatment of its clients;
    - materially impair the quality of the governance framework of the FSP, including the FSP's ability to manage its risks and meet its legal and regulatory obligations;
    - compromise the fair treatment of or continuous and satisfactory service to clients;
    - prevent the FSP from acting in the best interests of its clients;

- result in key decision-making responsibilities being removed from the FSP

Remuneration or fee must be;

- Reasonable and commensurate with actual activities
- May not increase risk of TCF (Treating Customers Fairly)

An FSP must have contingency plans to ensure continued function and service on the event that a rep is terminated.

An FSP may not allow a rep to outsource or sub-delegate an activity relating to any services the rep performs on its behalf.

A rep must have the operational ability to carry out their functions.

A Juristic representative must have a KI responsible for overseeing their services

## Entry level requirement for Reps

When a representative is appointed, **they must have a recognised qualification** as per the Board Notice applicable to the Product Categories they will be registered for.

**UNLESS** – The rep has an **entry level qualification** and will work under **SUPERVISION** until the qualification is obtained (a maximum period of 6 years from first date of appointment at the FSCA as a representative)

*The following entry-level qualifications will be accepted:*

- Reps working under subcategories 1.1 (Long Term Cat A – Assistance Business) & 1.19 (Friendly Society Benefits) must have the following:
  - ABET Level 1 (Grade 3 / Standard 1)
  - **Or** (not and) the proven ability to read, write and calculate to the satisfaction of the FSP
- Category I FSP's – Execution of Sales
  - Reps only require a Grade 10

- or an academic achievement equivalent to a Grade 10
- All other FSP's
  - Matric, or
  - Grade 12, or
  - An appropriate certificate at NQF Level 4

## Recruiting Reps



Recruitment checks need to include:

1. Entry level qualification
2. Class of business training (must be completed within 12 months from DOFA)
3. Product specific training (if not completed, must be done before advice is given)
4. Experience
5. Relevant recognised qualification
6. Regulatory exams (also referred to as examinations determined by the Commissioner)
7. Honesty, integrity & good standing
8. Whether the person has been debarred
9. Financial soundness as it relates to representatives (not insolvent, not under liquidation or business rescue)
10. Operational ability as it related to representatives

To be registered as a Health Schemes Representative, a person must be accredited by the Council of Medical Schemes as a broker or, if working under supervision, an apprentice broker.

If the Rep does not meet the following requirements, they can be employed, but need to work under supervision:

- Experience
- Relevant recognised qualification
- Regulatory exams (also referred to as examinations determined by the Commissioner)

#### **Due dates on Product & Class of Business training:**

**Product Training must be completed BEFORE they are allowed to render advice, even if advice will be rendered under supervision.**

**Class of Business Training must be completed within 12 months of DOFA.**

Recruitment decisions need to be made very carefully or declined if evidence of the following turned up:

- Compromised honesty, integrity and good standing
- Person has been debarred

FSP's and Key Individuals need to confirm that there are enough role-players, either KI's or Reps that meet the criteria and can act as supervisors.

## **Supervision of Reps**

### ***What does it mean when a rep works under supervision***

It means that the rep is rendering services under guidance, instruction and supervision

### ***Selection of Supervisor***

FSP must ensure that there is a normal working relationship between the Supervisor and Supervisee to allow the Supervisor to oversee the activities of the Supervisee

- There must be regular contact to enable
  - Transfer of skills
    - Which could include face to face and / or
    - Contact via electronic means

### *Supervision agreement*

- Must be a written agreement detailing procedure regarding rendering services under supervision

### *Supervisor responsibilities*

- FSP to ensure that supervisees are supervised at all times when executing duties
- Supervisor to ensure that supervisee has a good understanding and exposure to the Categories & Subcategories providing services in
- Supervisor must observe selected meetings between the supervisee and customers
- The frequency will depend on
  - Complexity of service provided
  - Complexity of products offered
  - Experience of supervisee
  - Qualifications of supervisee
- FSP must ensure that supervisor is able to provide evidence of supervision (available to Commissioner if requested)
- Supervisor must review the Record of Advice and assess the advice given
- Supervisor and supervisee must have properly documented evidence of supervision
  - Method followed
  - Frequency thereof

If working under supervision, the representative is responsible for the following:

## *Representative under supervision (supervisee)'s responsibilities*



- Adhere to requirements of the supervision contract
- Provide the supervisor with records and documents regarding financial services provided
- **Disclose to clients that s/he is acting under supervision**
- Undertake the relevant product training, complete the qualification in the period provided and
- Request guidance from the supervisor when in doubt

### **The requirements of a Rep**

- The rep must provide **certified proof** (certified by the **FSP**) that an employment or mandate agreement exists (service contract)
- This certified proof must also include that the FSP will accept responsibility for the Rep (Section 13 certificate)
- Rep cannot act if s/he is debarred
  - When debarred, a Rep can only be reappointed if s/he meets all of the requirements to be reinstated (please refer to the debarment and reinstatement of representatives)
- Rep may not render financial services on behalf of any person who is not an authorised FSP (unless the FSP is exempted from the Act)
- Must be Fit & Proper (Competence, Good Standing, Honesty & Integrity and Financially Sound with Operational Ability insofar as it applies to a Representative)

- May work under supervision, whilst obtaining the relevant competence requirements (but must disclose to clients that he/she is working under supervision, and remember, Product Specific Training must be completed PRIOR to giving of advice, even if under supervision)
- Must comply with the FAIS Act **and** any other relevant laws
  - Important to note here that a Rep does **not only have** to adhere to the regulations as set out by FAIS, but they all need to adhere any other law that is applicable to them (Consumer Protection Act, POPI, FICA, OHSA etc...)

## The roles and responsibilities of a Rep

### In terms of the General Code of Conduct

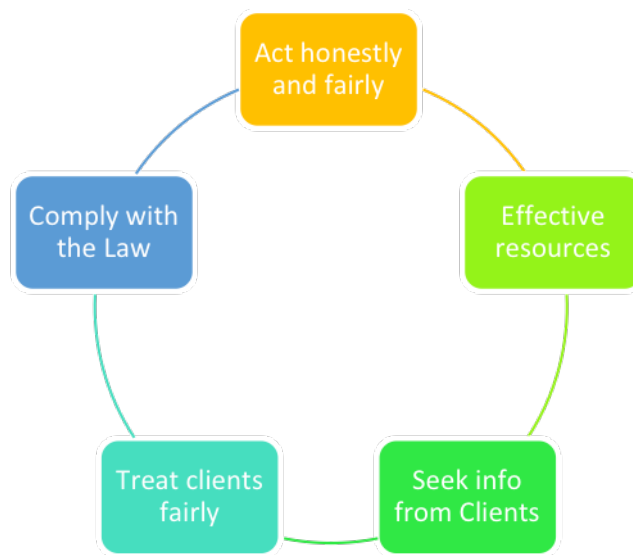
- Act honestly and fairly, and with due skill, care and diligence in the interest of clients
- Information provided must be:
  - Factually correct
  - Provided in plain language
  - Must be adequate and appropriate, taking into consideration the level of knowledge of the client
  - Must be provided timeously to afford the client to make an informed decision
- Have and effectively use the resources, appropriate technological systems and processes to properly perform their activities professionally
- Obtain the necessary information (known as a **Financial Needs Analysis - FNA**).

This now applies to all FSP's, even direct marketers. The FNA includes:

- Financial Product **Experience** (what does the client know and what products did they have, if any) - *their past*
- Financial **Situation** (what is their current financial situation, which products do they have, if any – *their present situation*, and
- Their **objectives** in connection with the financial service required (what they want, what their needs are) – *the future*
  - The type of information to be taken into consideration before giving advice now also includes the affordability of the client, their ability to

bear the risk, the extent to which they understand risks and also extends to employee benefits/group schemes where the advisor must consider the collective needs and circumstances of the members

- Treat clients fairly in a situation of conflicting interest
- Comply with all applicable statutory and common law requirements



The purpose of the Code of Conduct is to ensure that Clients are able to make informed decisions and that their financial needs will be satisfied appropriately and suitably

The Code of Conduct must make provision for (each of these will be discussed later on in detail)

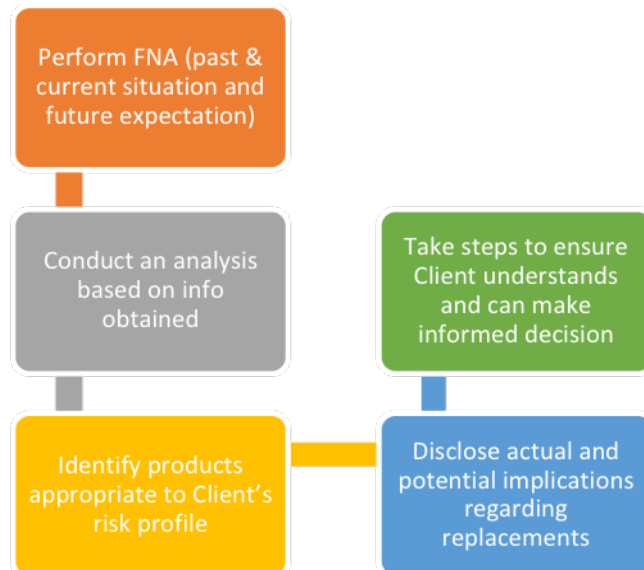
- Making adequate disclosures of relevant information, including own interests (actual or potential)
- Keeping adequate and appropriate records
- Avoiding fraudulent and misleading advertising
- Keeping documents and funds from clients safe and separate
- Suitable guarantees, Professional Indemnity cover or Fidelity Insurance
- Controlling, or prohibiting incentives given, or accepted, by the Provider
- Any other matter which is necessary or expedient to be regulated to better achieve the objects of the Act

Other codes of conduct may be drafted for different financial products. Currently, over and above the GCoC, there are four other Codes of Conduct.



## When a Rep provides advice

### *Steps to be taken when providing advice to the client:*



A provider (except a direct marketer), PRIOR to providing advice to a client, must:

- Take reasonable steps to seek from clients appropriate and available information regarding the client's (See above page 31 & 32)
  - Financial situation
  - Financial product experience
  - Objectives
    - *In other words, conduct a detailed FNA*
- To enable the provider to provide the client with appropriate advice
- Identify the financial product or products that will be appropriate to the client's risk profile and financial needs
- Make adequate disclosures
- Take all reasonable steps to ensure that the client understands the advice, and is able to make an informed decision
- Keep a record of advice (ROA)
- When replacing another product wholly or partially (when a client adds another risk on cover, or when a client accepts a new policy), fully disclose to the client the
  - Actual and potential financial implications
  - Costs and consequences of the replacements

- Including, details of:
  - Fees and charges
  - Terms and conditions
  - Exclusions of liabilities
  - Waiting periods
  - Loadings
  - Penalties
  - Excesses
  - Restrictions or circumstances in which benefits will not be provided
  - In case of an insurance product, impact of age and health changes on the premium payable
  - Differences between tax implications
  - Material differences between investment risk
  - Penalties or unrecovered expenses deductible or payable due to termination
  - To what extent the replacement product is readily realisable
  - Vested rights, minimum guaranteed benefits or other guarantees or benefits which will be lost
- When the advice is to replace a long term insurance contract, the issuer of the current policy, must be notified

## When a client receives advice from a rep

### *Incomplete or no FNA*

- Previously, if a client did not give an advisor enough time or information to conduct an analysis, the advisor had to meet certain obligations, such as warning the client about the limitations of the advice. There is no longer any reference to being *“unable to conduct such an analysis”* – the amendments to the General Code of Conduct clarify that when performing an analysis there may be circumstances that vary the extent or depth of the information needed to provide appropriate advice and that these circumstances can be taken into consideration. It goes further to

require that where an analysis is performed in any of the circumstances set out in the amendments, the client must be warned of the limitations in the advice in light of these circumstances and take care to ensure that it is appropriate, particularly any aspects that were not considered in light of the circumstances.

### Choosing a different product

If the client chooses another product that differs from which has been recommended to the client, the rep or provider must inform the client

- As soon as reasonably possible
- Of the clear existence of any risk to the client
- And advise the client to take care to consider whether the product is appropriate to the client's needs, objectives and circumstances

### The Fit & Proper Requirements that apply to Representatives

**Please note that the Fit & proper requirements are ongoing – i.e. must be complied with at all times, it is not a once off event or occurrence**

- Honesty, Integrity & Good Standing
- Competence
  - Experience (differs depending on product category, but in most cases 1 year from DOFA)
  - Qualification (within 6 years from DOFA)
  - Regulatory Exams (within 2 years from DOFA)
  - Class of business training (within 1 year from DOFA) & Product specific training (Before rendering any financial service)
- CPD
- Operational Ability (in so far as it applies to representatives)
- Financial Soundness (in so far as it applies to representatives)

(remember – **DOFA** is Date Of First Appointment with the FSCA as a Rep/KI)

### *What does Honesty and Integrity refer to?*

- All FSP's, KI's and Reps must have honesty and integrity
- A person referred to as per above must be a person who:
  - Honest and has integrity, and
  - Of good standing
- When the Commissioner determines whether a person adheres to the requirements of Honesty and Integrity, the Commissioner may refer to any information in possession of the Commissioner or brought to the Commissioner's attention

### *What does it mean when a person needs to be of good standing*

There are several aspects (prima facie evidence) that would be evidence that a person is not in good standing. The **time that has passed** and **circumstances** could be considered, but is not limited to:

- Any previous judgements that has not been rescinded (withdrawn), includes criminal (found guilty) and civil matters (found liable)
  - Includes, but is not limited to:
  - Theft, fraud, forgery, uttering a forged document, perjury or an offence involving dishonesty, breach of fiduciary duty, misrepresentation, or negligent, dishonourable or unprofessional conduct
  - An offence under a law relating to the regulation or supervision of a financial institution as defined as a Financial Institution or a corresponding offence under the law of a foreign country
  - An offense under the Prevention of Corruption Act, Corruption Act or the Prevention and Combating of Corruption Activities Act, or a corresponding offence under the law of a foreign country.
- Lack of compliance with Regulatory deadlines, been the subject of frequent regulatory actions (frequent or material preventative, remedial or enforcement actions by the Commissioner or a regulatory authority)

- Demonstrated lack of willingness to comply with legal, regulatory or professional requirements
- Refusal or withdrawal of membership of professional bodies
- Offences relating to financial institutions
- Been disciplined by a professional or regulatory body
- Has been removed from an office of trust for theft, fraud, forgery, uttering a forged document, misrepresentation, dishonesty, breach of fiduciary duty or business conduct
- Has breached a fiduciary duty
- Has been suspended, dismissed or disqualified from acting as a director, managing executive, public officer, auditor or statutory actuary (or his or her alternate) under any law or any action to achieve one of the above-mentioned outcomes has been instituted against the person,
- Has been refused a registration, approval, authorisation or license to carry out a trade, business or profession, or has had that registration, approval, authorisation or license suspended, revoked, withdrawn or terminated by a regulatory authority
- Has been denied membership of any professional body or has had that registration or membership revoked, withdrawn or terminated by a professional body because of matters relating to honesty, integrity or business conduct
- Has been disciplined, reprimanded, disqualified, or removed in relation to matters relating to honesty, integrity, incompetence or business conduct by a
  - Professional body
  - Regulatory authority
  - Or any action to achieve one of the aforementioned outcomes has been instituted against the person
- Has knowingly been untruthful or provided false or misleading information to, or been uncooperative in any dealing with the Commissioner or a regulatory authority
- Has demonstrated a lack of readiness and willingness to comply with legal, regulatory or professional requirements and standards

- Has been found not to be fit and proper by the Commissioner or a regulatory authority in any previous assessments of fitness and propriety and the reason for being found not fit and proper have not been remedied
- Has been involved or is involved as a director, trustee, member, partner, controlling shareholder or managing executive, or is concerned in the management, of a business that has been:
  - The subject of any matter referred to above
  - Placed in liquidation or business rescue
  - Whilst that person has been connected with that organisation or within one year of that connection, or
- Has failed to disclose information required to be disclosed in terms of the Act, including a failure to disclose information relating to honesty, integrity and good standing

*The Commissioner must, in assessing whether a person meet the requirements have due regard to:*

- The **seriousness** of a person's conduct, whether by commission or omission, or behaviour and surrounding circumstances that has or could potentially have a negative impact on a person's compliance with honesty, integrity, and of good standing
- The **relevance** of such conduct or behaviour that has or could potentially have a negative impact on the person's compliance with honesty, integrity, and good standing, to the duties that are or are to be performed and the responsibilities that are or are to be assumed by that person
- The **passage of time** since the occurrence of the conduct or behaviour that had a negative impact on the person's compliance with honesty, integrity, and good standing

*Disclosure of information to honesty, integrity, and good standing*

- An FSP and Key Individual must disclose to the Commissioner,

- and a representative must disclose to its FSP,
  - promptly and on own initiative,
  - fully and accurately,
  - all information, not limited to information in relation to matters referred to above (incidents when a person lack honesty, integrity, and good standing)
  - which may be relevant in determining whether a person complies or continues to comply with the requirements relating to honesty, integrity, and good standing.

### *CPD*

Applies to all FSPs, KIs and Reps and comes into effect from 1 June 2018

Except for those working only with;

- Long Term Insurance Subcategory A
- Friendly Society Benefits
- Cat I reps rendering financial services for Tier 2 financial products
- Cat 1 reps rendering Tier 1 intermediary services

A KI, Representative and FSP must comply with the CPD requirements

*The CPD Activities undertaken must;*

- Be approved by a Professional Body that confirmed that the activity is verifiable
- Be relevant and appropriate to what they work with
- Contribute to their knowledge , skill, ethical standards, expertise
- Address identified needs or gaps in knowledge, generic understanding of product and laws
- Takes into account changing conditions relevant to product
- An FSP must establish procedures and policies that ensure how the FSP, KI and reps will maintain, update and develop new, relevant knowledge

- Plans must be implemented for each CPD cycle to obtain the requirement

#### *Record keeping and reporting requirements of CPD*

KI & Reps to supply the FSP, within **15 days** of expiry of each CPD cycle,

- With evidence of CPD activities completed

FSP must, within 30 days of expiry of each cycle,

- record the activities of the FSP, KI and reps in the competency register
- record the dates of CPD activities completed
- Note any reductions (if absent due to maternity, paternity or adoption leave; long term disability or illness or absence due to caring for a loved one with a long term illness or disability)
  - Reduction due to the above only allowed for 3 consecutive CPD cycles
- Obtain relevant supporting evidence
- Retain the evidence for at least five years after every cycle

#### *Recognised CPD Activities:*

- MUST be accredited and tracked by a Professional Body, recognised by SAQA, that confirmed that the activity is verifiable
- EXCLUDES an activity performed towards a qualification and product specific training

#### *CPD Cycles*

The CPD Cycle refers to a period of **12 months**, commencing from 01 June and ending 31 May in the following year

#### *Minimum CPD hours*

FSP's, Representatives and KI's must complete the following number of hours of CPD activities relevant and appropriate to their class(es) of product categories



- Single sub-class of business within single class of business = 6 hours
- More than one sub-class of business within a single class of business = 12 hours
- More than one class of business = 18 hours

A KI, rep or FSP authorised or appointed for less than 12 months may pro rate their hours

### ***COMPETENCE:***

Competence must be maintained on an ongoing basis and consists of;

- Skills, knowledge and expertise
- Comply with Experience, Qualifications. RE exams, Class of Business Training, Product Specific Training and CPD

#### *Recognised Qualifications*

- The Commissioner will publish a list of recognised qualifications on the official website, where anyone will be able to check if their qualification will be recognised by the FSCA.
- The Commissioner, on application or on own initiative may recognise a qualification as appropriate for:
  - each of the categories of FSPs;
  - representatives of FSPs in each of the categories of FSPs;
  - key individuals in each of the categories of FSPs
  - different types of financial services and financial products.

### Minimum Qualifications:

#### Does NOT apply to;

Cat I FSP, KI's or reps working only with

- Long Term Insurance subcategory A
- Friendly Society benefits

Reps working only with;

- Cat I Execution of Sales

Provided that ;

#### **Execution of sales;**

Reps working only with execution of sales must have;

- Grade 10 or equivalent

#### Requirements

- The execution of sales is only by script
- There is direct oversight of a KI
- All calls are recorded
- There are controls to ensure no advice given
- Process will not result in unfair outcomes
- Recordings are reviewed on a regular basis
- Monitored to ensure no deviation
- Reviews adequacy of controls from script
- Reviews script for appropriateness and compliance

### Regulatory Examinations

Applies to all FSPs, KIs and Reps, except;

#### *Does not apply to;*

Cat I FSP, KI's reps working only with

- Long Term Insurance sub-category A
- Friendly Society benefits

Reps working only with

- Execution of Sales for CAT I Tier 1 reps
- CAT I reps rendering financial services for Tier 2 financial products

**Representatives have 2 years from their DOFA date to pass the 1<sup>st</sup> level regulatory exam (RE5)**

Table A					
	Column A Category I	Column B Category II	Column C Category IIA	Column D Category III	Column E Category IV
<b>FSP</b>	RE 1	RE 1 & RE 3	RE 1 & RE 3	RE 1 & RE 4	RE 1
<b>Key Individual</b>	RE 1	RE 1 & RE 3	RE 1 & RE 3	RE 1 & RE 4	RE 1
<b>Representative</b>	RE 5	RE 5	RE 5	RE 5	RE 5

Regulatory exams may be set and delivered by the examination bodies

CLASS OF BUSINESS and PRODUCT SPECIFIC TRAINING

Applies to all FSPs, KIs and Reps

Except;

Cat I FSP, KI's reps working only with

- Long Term Insurance sub-category A
- Friendly Society benefits

Reps working only with

- Execution of Sales for Cat I Tier 1 reps
- Cat I reps rendering financial services for Tier 2 financial products

Product specific training does not apply to

- Cat II, CAT IIA, Cat III FSP or its reps
- KI's for all Cats provided they comply with sec 12 – General Competence requirements

Class of business training applies to KI's only for the classes of business they are actually registered for.

BEFORE rendering any financial service, an FSP and Rep must complete Product Specific training for the products they are authorised to render services .

A KI must have completed the Class of Business and Product Specific training for training before overseeing or managing the relevant product.

An FSP must ensure its KI and Reps are proficient, and have completed training in, their particular products.

*Class of Business training to include ;*

- Range of products
- General; characteristics, terms, features
- Typical fee structures, charges and other costs
- General risks
- Investment and risk principles
- Appropriateness of product
- Typical role players and markets
- Impact of legislation incl. tax
- Impact of environmental and economic factors
- Inter-relationship between classes of business
- Industry standards and relevant codes of conduct

*Product Specific training to include;*

- Characteristics, terms and features

- Any specific complexities
- Material differentiation
- Nature and complexity or any underlying component
- How the underlying components are structured and priced
- Fee structure, charges and any other costs
- Nature of any guarantee
- Risks
- Tax impact
- Potential impact of abnormal market conditions
- Investment strategies
- Flexible benefit or service options
- Accessibility of benefits or funds
- Level of liquidity of product and underlying components
- Intended target market
- Identity of product supplier and intended outcomes delivery
- Identity of product suppliers and providers of underlying components
- Particular disclosures, prescribed or not
- Lock-in periods and relevant termination conditions
- Expected outcomes for clients

**Class of Business training may be separate or with;**

- **Product Specific training**
- Or**
- **Recognised qualification**

Where a financial product incorporates one or more other underlying financial products, the training and assessment referred to above must include class of business and product

specific training in respect of the underlying products and the class or classes of business in which the underlying product falls.

#### *Record keeping and reporting requirements of training*

- Training must be recorded within **15 days** of the Class of Business or Product Specific training
- Records must be kept in the competence register for at least **5 years** after;
  - KI has ceased to oversee or manage that product
  - FSP, Rep have ceased to render services for that product
- Must be able to provide the confirmation to
  - product supplier
  - former KI, or Repwithin a reasonable time

### ***Experience requirements for Reps***

#### *Experience must meet specific financial product and particular category requirements*

- Category I Reps must meet the minimum experience applicable to the subcategories
- The experience must be practical experience gained in the rendering of financial services in respect of Category I and the subcategories concerned.
- The practical experience must
  - Have involved the active and ongoing gaining of knowledge, skills and expertise required by the Act
  - The experience must have been obtained through the active involvement in the rendering of Financial Services
  - This experience could have been gained under supervision
  - The experience could have been gained in or outside the RSA
  - The experience gained lapses when the FSP or rep has NOT rendered the applicable financial service for **5 consecutive** years

- The experience could have been gained simultaneously in multiple subcategories
  - Provided that proof can be provided

**Experience applies to all FSP's, KI's and Reps**

**Experience lapses for an FSP, KI or rep if particular service for particular financial product not worked with for 5 years**

### *Operational requirements for Reps*

- A representative of an FSP must have the operational ability to effectively function as a representative of the FSP for which that person was appointed.

<b>Fit &amp; Proper</b>	<b>Reps</b>	<b>K.I.'s</b>	<b>Sole Proprietor</b>	<b>FSP</b>	<b>Compliance officer</b>
Honesty, Integrity & Good Standing	Yes	Yes	Yes	Yes	Yes
Competence: Experience	Yes	Yes	Yes	Yes	Yes
Competence: Qualification	Yes	Yes	Yes – Exemptions apply to Cat I	Yes – Exemptions apply to Cat I	Yes
Competence: Knowledge exams	Yes	Yes – excluding C.o.B and PS training	Yes – Exemptions apply to Cat I - III	Yes – Exemptions apply to Cat I - III	Yes
Operational Ability	Limited to being able to function effectively, solvency & risk to FSP	Yes	Yes	Yes	Yes
Financial Soundness	No	No	Yes	Yes	Limited to solvency
CPD	Yes	Yes	Yes – Exemptions apply to Cat I	Yes – Exemptions apply to Cat I	Yes

## Representative Register

An FSP must:

- Maintain a register of representatives and key individuals of the representatives
- Which must regularly be updated and available to the Commissioner
- When the FSP changes their authorised products with respect to Short Term Personal Lines A1, Long-Term Insurance B1A & Long-Term Insurance B2A, the FSP must update the Rep Register with these new subcategories of products within 3 months– [This is due to the additional sub-categories of products introduced on 1 April 2018](#)

### *What information must be contained in the Representative Register?*

Contain the Rep and KI's:

- Name
- Business address
- Whether the Rep is employed by the FSP, or acts mandatory
- The categories in which the Rep is competent to render financial services
- Whether the Rep is working under supervision

### *What is the purpose of the Rep Register?*

In order for the Commissioner to have a:

- Maintained
- And continuously updated
- Central register of all representatives and key individuals

The Commissioner may publish the Rep Register in any appropriate media

**The Key Individual needs to verify that the FSP maintains a register of Reps in accordance with the FAIS requirements**



## Debarring a Representative

### *When the FSP debars a Rep*

The FSP needs to ensure that any Rep who no longer complies with the qualification and licensing requirements, or contravened or failed to comply with the Act:

- Is prohibited from rendering service
- By withdrawing authority to act on behalf of the FSP (which means debarment)
- The Rep's name (and that of the Representative's KI) must be removed from the Rep Register
- The FSP must ensure that the debarment does not prejudice the interest of any clients
- All un-concluded business must properly be concluded
- The FSP must share the information with the Commissioner regarding the conduct or reason for debarment of the rep
  - This information must be supplied to the Commissioner in writing
  - The Commissioner may publish in the appropriate media
- The FSP must update the rep register within **15 days** after the removal of the names from the register

### *When the Commissioner debars a Rep*

The Commissioner may debar a Rep on the basis of available facts and information that the person:

- Does not meet, or no longer meets, the requirements to be licensed
- Has contravened, or failed to comply with the Act

### *Process to be followed when the Commissioner debars a Rep*

- Name of debarred person is then placed on the central register of debarred persons
- Person's name is flagged on the FSCA's website for public viewing
- Period of debarment depends on the severity of the transgression, usually between **2 – 5 years**

- If the person is an FSP, regulatory action will ensue
- Inform the FSP to update the rep register within **5 days**
- If the debarred person is linked to **other** FSP's, the Commissioner will inform the other provider to remove the name of the person from its register within **15 days**

### *Right of appeal*

Any person who feels aggrieved by any decision by the

- Commissioner or
- Ombudsman

May appeal to the Board of Appeal (FSCA Board of Appeal)

The FSB Board of Appeal will from now on be known as the **Financial Services**

**Tribunal** (effective 1 April 2018)

**Very Important – You may now also appeal a definition made by the FSP. Previously, debarred representatives that had been debarred by the FSP could not appeal to the FSB, but it is now possible for a rep to appeal a decision made by an FSP, at the Financial Services Tribunal.**

### *Process of Appeal*

- An appeal must be lodged within **30 days** becoming aware of the decision
- In the manner prescribed by the Minister
- Fees must be paid prescribed by the Minister
- The appeal lodged does not suspend any decision pending the outcome of appeal
  - Unless the chairperson or deputy chairperson directs otherwise

### *Reappointment of debarred reps*

On the date of reappointment, the applicant must comply with the following:

- A period of at least **12 months** since the debarment date must have elapsed

- Unless the debarment was due to the fact that the Rep was not Competent in terms of the Fit & Proper requirements.
  - In this instance, the Rep can be reappointed as soon as the Competence requirements have been met
- All un-concluded business has been properly concluded
  - All complaints or legal proceedings or
  - Other administrative or legal proceedings
  - Arising out of any acts or omissions have been properly resolved or concluded
- All fit & proper requirements are complied with
- FSP must ensure that all requirements for the reappointment of a debarred rep is complied with as determined by the Commissioner and published in the Gazette or official website or other appropriate media

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## Key Individuals

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### A Key Individual is someone who

- Is a natural person (cannot be a juristic person)
- Who manages or oversees the activities of the FSP (financial services)
- A KI can be a sole proprietor

### Responsibilities of a KI

- Must be able to have (implement) and maintain the operational ability of the FSP
- To fulfil the responsibilities imposed by the Act
- Which includes overseeing the activities of the FSP (rendering of financial services)
- A KI must have the operational ability to carry out their functions
  - This must be able to be demonstrated in the form and manner to be determined by the Commissioner

- The FSP must regularly assess the operational ability of the KI to adequately and effectively carry out their functions taking into account the scale, range and complexity of the business.
- Taking into account whether they are reps or KI's of any other FSP
- A juristic representative must at all times have at least one key individual responsible for managing or overseeing the financial services rendered by the representative.

### **Fit and Proper Requirements that apply to KI's**

**All Fit & Proper requirements that relate to Reps, also relate to Key Individuals. Over and above that, KI's need the following –**

#### *Qualification requirements*

- If the FSP is a Sole Proprietor
  - In respect of Category I or IV
  - S/he must have a recognised qualification applicable to the categories or subcategories that it is authorised for
- A KI of a Category I FSP
  - Must at approval have
  - A recognised qualification applicable to the categories or subcategories that it is authorised for

Please note!

A Rep may be appointed under supervision while they complete their qualification. A KI will not be approved by the FSCA unless they already have an appropriate recognised qualification

## Experience requirements relating to KI's

This is over and above the experience requirements as detailed under Fit & Proper for Reps

- KI's must have at least **1 year's** practical experience managing or overseeing activities of the business (or a part thereof)
- Provided that the experience:
  - Could have been gained in or outside the RSA
  - May have been gained in the management or oversight of services similar to, or corresponding to the financial services rendered by the FSP
- The experience gained by a KI lapses when the KI has not managed or overseen the rendering of a particular financial service in respect of a particular category of FSP for a period of **5 consecutive years**

## Management Responsibilities of the KI

An FSP must be able to maintain the operational ability to fulfil the responsibilities imposed by the Act, including but not limited to:

- A fixed business address
- Adequate access to communication facilities including (at least)
  - A fulltime telephone or cell phone service
  - Typing and document duplication facilities
- Adequate storage and filing systems
  - For safe keeping of records
  - Business communication
  - And correspondence
- An account with a registered bank
  - And where required, a separate bank account for client funds
- Where the FSP is an accountable institutions in terms of FICA
  - It must have all of the procedures, systems and policies in place to comply with the that Act and other applicable anti-money laundering or terrorist financing legislation

If an FSP uses a 3<sup>rd</sup> party to render administrative or system functions in relation to the rendering of financial services on its behalf,

- There must be a service level agreement in place, specifying
  - Agreed services
  - Time standards
  - Roles and responsibilities
  - Any applicable penalties
  
- An FSP must ensure that internal control structures, procedures and controls are in place which at least includes the following:
  - Segregating duties, roles and responsibilities from an operational risk mitigation perspective
  - Applying logical access security
  - Access rights and data security on electronic data
  - Physical security of the FSP's assets and records
  - Documentation relating to business processes, policies and controls
  - System application testing
  - Disaster recovery and back-up procedures
  - Training for Reps and KI's on the Act and rendering financial services / giving advice
  - A business continuity plan
  
- An FSP must ensure that the necessary system controls and compliance measures are in place to manage and monitor systems in use
- An FSP must record all financial and system procedures to ensure that the FSP is able to report in terms of applicable accounting requirements
- An FSP must have general administration processing, accounting transactions and risk control measurements in place to ensure accurate, complete and timeous processing of data, information reporting and the assurance of data integrity
- The FSP must maintain in force suitable guarantees or professional indemnity insurance or fidelity insurance cover to cover the risks of losses due to fraud, dishonesty or negligence

- The KI, in respect of the FSP, must have and be able to maintain the operational ability to fulfil the responsibilities imposed by the Act, including overseeing the financial services provided by the Reps

**The Key Individual needs to verify that the FSP maintains a register of Reps in accordance with the FAIS requirements**

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## The Financial Services Provider

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### Responsibilities of the FSP

**An FSP must ensure that:**

- All KI's and Reps are competent to act, and
- Comply with
  - Fit & Proper requirements
  - Any other requirements contemplated
- That Reps comply with the Code of Conduct & any other applicable laws regulating business conduct
- That KI's and Reps are trained on the requirements of the Act
- KI's and Reps are trained on the giving of advice and/or rendering of intermediary services
- Need to implement and maintain a competence register
- Establish policies, monitoring and controls to comply with Competence requirements
- Adhere to CPD requirements
- Assess whether products are appropriate for existing competence and skills

Establish evaluation and review records of;

- KI's and reps ability to meet requirements
- Training records

- CPD records

Records to include evaluation of;

- Technical knowledge
- Skills and expertise
- Changes in financial markets, products and legislation

Competence register to be compiled for reps and KI of;

- Qualifications
- RE exams
- Product specific training
- Class of Business training
- CPD

Provide records to the Commissioner in format prescribed

The requirements prescribed are minimum requirements

### **Fit & Proper Requirements that apply to FSP's**

**All Fit & Proper requirements that relate to Reps and Key Individuals, also apply to FSP's.**

**Over and above that, FSP's need the following –**

#### ***Operational Ability***

- A key individual must have the operational ability to effectively manage and oversee the financial services related activities of the FSP or juristic representative and the financial services in relation to the financial product for which the key individual was approved or appointed
- A key individual, must be able to demonstrate to the Commissioner, in a form and manner which may be determined by the Commissioner, that he or she has the required operational ability to effectively and adequately manage or oversee the financial services related activities of all the FSP's or juristic representatives for which the key individual was approved or appointed, where he or she is



- approved or appointed as a key individual of more than one FSP or juristic representative; or
- approved or appointed as a key individual of an FSP or juristic representative and appointed as a representative of an FSP other than the first mentioned FSP,
- An FSP must, on a regular basis, assess the operational ability of its key individuals to adequately and effectively perform their functions taking into account individual circumstances, the nature, scale, range and complexity of the FSP's financial services related activities and whether the key individuals are approved as key individuals or appointed as representatives of other FSPs

### *Financial Soundness*

The fit and proper requirements relating to financial soundness apply to:

- All FSPs; and
- Juristic representatives

Financial Soundness does not apply to

- Key individuals
- Representatives that is a natural person; and
- An FSP who is a registered Bank as defined in the Banks Act, or a registered insurer as defined in sections 1 of the Short-term Insurance Act and Long-term Insurance Act, provided that the FSP complies with the financial soundness requirements prescribed by those Acts

○ Apart from the aspects mentioned on page 26

### *General requirements of Financial Soundness*

- An FSP and a juristic representative must at all times maintain financial resources that are adequate both as to amount and quality to carry out their activities and supervisory arrangements and to ensure that there is no risk that its liabilities cannot be met as they fall due
- The assets of the FSP and a juristic representative must at all times exceed the liabilities of the FSP and juristic representative respectively.

- An FSP, other than a Category I FSP that does not hold or receive monies in respect of a financial product, and a juristic representative of such FSP must have sound, effective and comprehensive strategies, processes and systems to assess and maintain, on an ongoing basis, the amounts, types and distribution of financial resources that it considers adequate to cover:
  - the nature and level of the risks to which it is, or might be, exposed;
  - the risk that the FSP or juristic representative might not be able to meet the obligations of financial soundness in the future.
- No person may become or continue as an FSP or juristic representative if
  - They are an unrehabilitated insolvent
  - placed under liquidation or provisional liquidation
- No person may become an FSP or a juristic representative if business rescue proceedings have commenced
- If a representative who is a natural person is sequestered AFTER the appointment, they may only be allowed to continue to act on behalf of the FSP if the FSP implements appropriate measures to mitigate any risks that may arise as a result of the rep being sequestered

## Application requirements to become an FSP

Please note:

- FSP's apply to the FSCA for a license
- Key Individuals apply to the FSCA to be appointed as Key Individuals
- The manner of an KI applying to the FSCA is similar as that of an FSP applying for a licence
- When a KI is added or replaced, they (the FSP) need to apply to the FSCA for a new KI to be added
- Reps are not appointed by the FSCA, they are appointed and approved by the FSP according the provisions in the Act. However, the FSCA (Commissioner) may debar a Rep, although the FSP appointed them

- An application for an authorisation by the FSP must be submitted to the Commissioner
- The information that needs to be supplied to satisfy the Commissioner that the applicant complies with the requirements for fit and proper, will include:
  1. The applicant's financial soundness
  2. Personal character qualities of honesty and integrity and good standing
  3. Operational ability of the applicant to fulfil the responsibilities imposed by this Act; and
  4. Competence requirements
- The applicant must, in addition, also satisfy the Commissioner that any Key Individual in respect of the applicant is Fit & Proper and can fulfil the responsibilities of an KI as prescribed in the Act
- The Commissioner may require additional information from the Applicant
  - Require information to be verified
  - Take other info into consideration regarding the applicant
  - From any source, including the
    - Ombud
    - Any regulatory or supervisory authority
      - Info obtained must be disclosed to the applicant
      - Applicant must be given reasonable opportunity to respond
- Commissioner then
  - Grants the application if satisfied that applicant complies with the Act
  - or
  - Refuses the application if not satisfied
    - If the application is refused:
      - Notify the applicant
      - Give reasons for the refusal

### *Changes that must be reported to the FSCA*

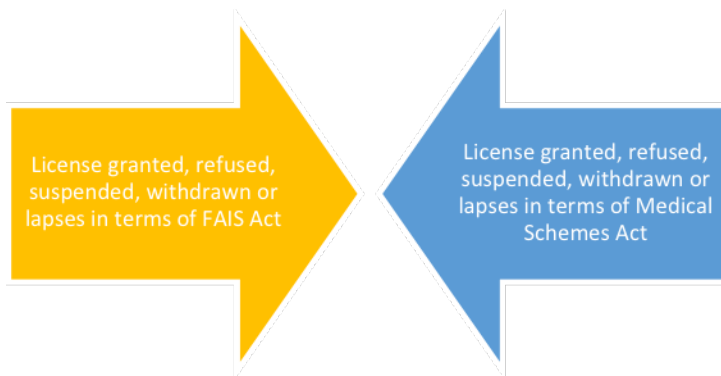
- Reporting changes in the FSP
  - Changes to Directors or Members for instance
- Reporting changes regarding KI's
- Submitting a Rep register
  - Changes in Reps or qualification details
- Reporting a change of business name and financial year end if granted by another authority such as
  - Type of business – CC, Sole Proprietor, Company or Partnership
  - Change the name of the business or trading name of the business or nominee company
  - Business contact details
  - Contact person at the FSP
  - Financial year end (if authorised by another authority – must be changed within **14 days**)
  - Banking details
  - Change in shareholders
  - Change in auditor or compliance officer
- Changes to financial products
  - Change in foreign clearing firm or foreign forex service provider involved

**WITHIN 15 DAYS (all of them would be**

### **Licenses granted by the Commissioner**

- A Sole Proprietor FSP must meet the
  - minimum experience and all
  - applicable qualification requirements and
  - must have completed the relevant RE's
    - as required for an FSP and KI per Category & subcategory
  - BEFORE a license will be granted
- If granted, the Commissioner will issue to the applicant

- A license to act as an authorised FSP
- Number of certified copies as required by applicant
- If a provider is granted accreditation under the Medical Schemes Act, it must be granted authority to act as an authorised FSP
- The Commissioner must be satisfied that the FSP and KI are Fit & Proper
- Any authorised FSP and KI are subject to the provisions in the Act



#### *Medical Schemes Act*

- If a license is
  - Refused
  - Suspended
  - Withdrawn
  - Lapses

By the Commissioner (FSCA), it is deemed to have been refused, suspended, withdrawn or lapsed in terms of the Medical Schemes Act, and visa versa

#### **After granting the license, the Commissioner may:**

- Withdraw or amend any condition
  - As long as notice is given to licensee
  - Clients will not be prejudiced
- Impose new conditions
  - When a new KI is appointed
  - KI's personal circumstances change
- Commissioner may direct an FSP or Rep to furnish the Commissioner with information and documents as required

## Displaying and disclosing the FSP License

The licensee must

- Display a certified **(what)** copy of the license in a prominent and durable **(how)** manner within **(where)** every business premises of the licensee
- Disclose the fact that the license is held in **all** business documentation, advertisements and other promotional material
- Provide a copy of the license to any person requesting proof of licensed status
- The license may not be used when it has been
  - Suspended (provisionally or final)
  - Withdrawn
  - Lapsed

## Responsibilities of the FSP to ensure the KI's Fit and Proper Status

The FSP must

- Be satisfied that every director, member, trustee or partner who is not a KI, is honest and has integrity (personal character requirements)
- Inform the Commissioner within **15 days** of the appointment of a new director, member, trustee or partner
  - And provide the Commissioner with info that is required

If the Commissioner is satisfied that the director, member, trustee or partner does not comply, the FSP's license may be withdrawn by the Commissioner

## What must a Financial Services Provider (FSP) do?

### *Control measures required by the FSP relating to Risk Management*

#### *How Risk Management relates to the FSP:*

A provider must at all times

- Have and effectively employ the

- resources,
- procedures
- and appropriate technological systems that can be expected to eliminate as far as 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

A provider must structure the internal control procedures concerned so to provide reasonable assurance that the

- business can be carried on in an orderly and efficient manner
- financial and other information will be reliable
- all applicable laws are complied with

An FSP must ensure that any remuneration or fee paid in respect of an activity or function for which a person is appointed as a representative:

- is reasonable and commensurate with the actual function or activity; and
- is not structured in a manner that may increase the risk of unfair treatment of clients.

An FSP must develop appropriate contingency plans to ensure the continued function of the FSP's business and continued service to its clients in the event that the appointment of the representative is terminated or becomes ineffective.

An FSP may not permit a representative to outsource or sub-delegate any activity or part thereof relating to the rendering of financial services that that representative performs on behalf of the FSP.

### *FSP's Governance Framework*

FSP's must adhere to good corporate governance requirements. Directors (or the persons that control the FSP's) and the Key Individuals must display personal ethical behaviour.

Governance framework is based on -

- Effective, adequate systems of corporate governance, risk management and internal controls including;
  - Business plan : aims strategies, scope
  - Setting the risk level tolerance
  - Effective procedures and systems
  - FIC risk management requirements
  - Ensuring compliance
  - Ability to detect risk of compliance failure
  - Provide for corrective actions
  - Provide for safeguarding the security, integrity and confidentiality of information
  - Back-ups and security measures
  - Physical security of assets
  - Disaster Recovery Plan
  - Accounting policies and procedures
  - Ability to report to Commissioner timeously
  - Sound and sustainable remuneration policies
  - Business continuity plan



- Provide for regular monitoring and evaluation of all systems, processes , policies and procedures
- Appropriate segregation of duties

Please note:

Although many of the above may be delegated to Key Individuals and Compliance Officers, the FSP ultimately remains responsible and accountable for compliance with the Act

### **Additional requirements applicable to FSPs that provide automated advice**

In addition to the requirements an FSP that provides automated advice must:

- Have adequate HR resources to understand the technology and algorithms
- Understanding of the logic embedded in the algorithms
- Understand the preferences or biases
- Understand the risks and rules behind the algorithms
- Understand the risk to clients from automated advice
- Monitor and review the suitability and quality of the automated advice given
- Establish, implement and maintain adequate policies and procedures to test and review the auto advice
- Ensure clients whom the advice is not suited to are filtered out
- Have appropriate system design documents
- Have procedures for managing changes
- Review and update algorithms when there are market or legislative changes
- Be able to suspend the provision of advice if an error is detected
- Be able to maintain client records
- Protect confidentiality
- Meet current and future operational needs and capacity

## OUTSOURCING

### *Outsourcing of functions to a person other than a representative of the FSP*

Due care skill and diligence to be exercised when outsourcing any function that is integral to the business

An FSP must ensure that the person to whom the activity or function is outsourced ;

- Has the ability and capacity required by law
- The FSP must have assessment procedures in place to ensure standards of performance are assessed
- Have a written contract providing;
  - rights, responsibilities
  - Provide for access to information by FSP and Commissioner
  - Address sub-outsourcing and
  - Confidentiality
- Properly supervise the outsourcing
- Manage the risks
- Retain expertise to supervise outsourced functions
- Be able to terminate without affecting the continuity and quality of service to clients
- Establish, implement and maintain a disaster recovery plan and testing processes
- Have effective access to data and premises
- Ensure the outsourcing does not compromise the fair treatment of clients, or continuous service or result in key decision making being removed from FSP

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## Maintaining a license

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### Undesirable Business Practice

#### This is regulatory action taken by the Commissioner (FSCA)

- The Commissioner may declare a business practice undesirable
- If the practice, directly or indirectly could
  - Harm the relations between authorised FSP's, clients or the general public
  - Unreasonably prejudice any client
  - Deceive any client
  - Unfairly affect any client
- And if the practice is allowed to continue, one or more objects of the Act will or is likely to be defeated
- Firstly, the Commissioner may publish (at any time)
  - in the official website, or Gazette, that he is of the intention to declare a business practice undesirable,
  - and interested persons may make written representations to the Commissioner
  - within **21 days** (after publication)
- An FSP may not carry on business from the date of publication of the notice (this refers to the actual declaration, not the intention to declare)
- If the FSP continues with the same practise after the Commissioner has published that it is an undesirable business practice, they will have **60 days** to rectify to the satisfaction of the Commissioner anything which was caused by or arose out of the carrying on of the business practice concerned
- If not rectified, they will face the same penalties (R10 million fine and / or imprisonment of 10 years)

- The Commissioner may apply to a Court for a restraining order restraining the FSP/Person from continuing to commit any such act or omission or from committing it in future

## Suspension or Withdrawal of License

### This is regulatory action taken by the Commissioner (FSCA)

- The Commissioner may at **ANY** time suspend or withdraw any license if satisfied, based on available facts and information, that the licensee –
  - No longer meets the licensing requirements or licensee/key individual does not meet fit & proper requirements
  - Did not, during application for the license, make full disclosures of all relevant information to the Commissioner, or furnished false or misleading information
  - Failed to comply with any provisions of the Act
  - Is liable for payment of a levy (section 15A of Financial Services Board Act), a penalty (civil remedy) (section 41) or administrative sanction (undesirable practice) (section 6D) of the Financial Institutions (Protection of Funds) Act 28 of 2001 of
  - Does not have an approved key individual
  - Has failed to comply with any directive issued under this Act
  - Has failed to comply with any condition or restriction imposed under this Act

### *Process to be followed when suspending or withdrawing the license*

Before suspending or withdrawing the license, the Commissioner

- May consult any regulatory authority
- Must inform the licensee of
  - the intention to suspend or withdraw
  - the grounds therefore

- and give the licensee opportunity to make a submission in response thereto
- Where the Commissioner contemplates suspension of the license, the Commissioner must inform the licensee of:
  - The intended period to suspend
  - Terms attached to the suspension, including
    - Prohibition on concluding new business
    - Terms to lift the suspension
- The Commissioner must consider the response received
  - And may decide to suspend or withdraw
  - Or not to suspend or withdraw the license
  - And notify the licensee
- If suspended or withdrawn, reasons will be made known by notice on the official web site and may make such information known by any other appropriate media
- Reinstatement of a license

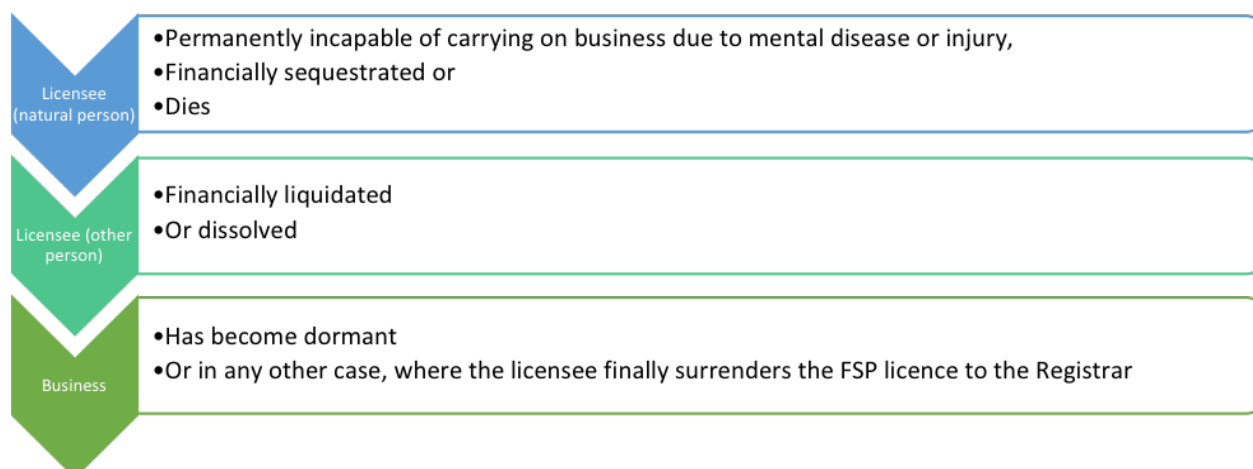
The Commissioner must, after receiving a response from the licensee, decide to

- Lift the provisional suspension or withdrawal
- Or render the suspension or withdrawal final
  - And inform the licensee accordingly

The Commissioner must publish on the official website (and other appropriate media if necessary) the terms and reasons for the final suspension or withdrawal, or the lifting thereof

## Lapsing a license

### This is action taken by the FSP



A license lapses where:

- The Licensee, being a natural person,
  - Becomes permanently incapable of carrying on any business due to physical or mental disease or serious injury
  - Is financially sequestrated
  - Dies
- The Licensee, being any other person, is
  - Finally liquidated or dissolved
- Where the business of the licensee has become dormant
- In any other case, where the licensee finally surrenders the license to the Commissioner

### *Process to be followed when lapsing a license*

The Commissioner must be advised in writing

- By the licensee,
- Any KI or
- Person in control of the licensee's affairs
  - of the lapsing of the license
  - reasons therefore

The Commissioner may publish in the official website, Gazette, or other appropriate media, the details regarding the lapsing of the license

## **Format of communication with the Regulator**

In writing (fax or any electronic medium)

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### **General Code of Conduct**

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## **The purpose of the Code of Conduct**

The purpose of the Code of Conduct is to ensure that Clients are able to make informed decisions and that their financial needs will be satisfied appropriately and suitably

## **The Code of Conduct must make provision for**

- Making adequate disclosures of relevant information, including own interests (actual or potential)
- Keeping adequate and appropriate records
- Avoiding fraudulent and misleading advertising
- Keeping documents and funds from clients safe and separate
- Suitable guarantees, Professional Indemnity cover or Fidelity Insurance
- Controlling, or prohibiting incentives given, or accepted, by the Provider
- Any other matter which is necessary or expedient to be regulated to better achieve the objects of the Act

## Disclosure requirements:

### *When rendering financial services to clients,*

Providers must ensure that representations made and information provided to clients

- Are factually correct
- Provided in plain language
- Must be adequate and appropriate, taking into consideration the assumed level of knowledge of the client
- Must be provided timeously to afford the client to make an informed decision
- May be provided orally and confirmed in writing if the client requests it
- Must be in a clear and readable print size
- All amounts, sums, charges, values, fees, remuneration or monetary obligations must be reflected in specific monetary terms, or if not possible, the calculation thereof
- It does not need to be duplicated, unless material or significant changes take place
- The FSP must disclose any personal interest or circumstance that could give rise to a conflict of interest
- The client must be treated fairly
- The FSP must disclose any non-cash incentives offered or other indirect considerations payable by another provider
- The service must be rendered according to the contractual relationship, as soon as possible in the best interest of the client
- Client transactions must be accounted for
- The provider must not deal with any product for own benefit, account or interest

### *When dealing with a client:*

- When contacting a client, always act honourably, professionally and with due regard to the convenience of the client



- At the commencement of the contract, explain the purpose of the visit or call and provide all of the disclosure requirements to the client
- Where the provider is able to offer the client with a choice of product suppliers' products, the provider must do so in the interest of the client, and exercise judgment objectively
- When dealing with a client, a provider may not compare different financial products, product suppliers, providers or reps, unless the differing characteristics
  - ❖ Are made clear
  - ❖ And no inaccurate, unfair, or unsubstantiated criticism may be made
- When advertising, the same principles apply
  - ❖ Ensure that you only compare products or services that are similar in characteristic, ensuring that not only price but also benefits are compared, being careful not to focus on price to the exclusion of suitability or delivery on client expectations, using current, complete and accurate information

#### *Procedures and systems to be in place*

#### *FSP to ensure there are procedures, policies and systems in place to:*

- To record verbal and written communications
- Store and retrieve records
- Keep client records safe from destruction
- The **nature, extent and frequency** of any incentive, remuneration, consideration, commission, fee or brokerages (**valuable consideration**) that the provider will be paid or become eligible for from any product supplier, and the identity of the product supplier must be disclosed
- There should be a written agreement (where feasible) between the client and the provider which deals with the specifics relating to the client's monetary obligations in terms of amount, frequency, payment method, services to be provided, termination arrangements etc. This section took effect on 26 December 2020.  
Details of the services that are to be provided by the FSP in exchange for the amount

payable by the client, and the client's rights related to terminating the obligations which includes the consequences of termination or failing to meet the obligations

### *What information needs to be disclosed?*

#### A provider must disclose:

A provider (except direct marketers) must disclose to clients the following information:

#### *Details of the **product supplier**:*

- Name, address, postal and telephone contact details of the product supplier
- The contractual relationship with the Product Supplier (PS)
- Names and contact details of the relevant compliance and complaints departments of the PS
- If any conditions or restrictions are imposed by the PS
- Where applicable, the fact that the provider
  - ❖ Directly or indirectly holds more than 10% of the PS' shares (or equivalent substantial financial interest)
  - ❖ Received more than 30% of its total remuneration, including commission, from the PS
- When a PS enters into a contract with an intermediary, it must provide the provider with the details to enable the provider to comply with the Disclosure requirements

If done orally, it must be provided in writing within **30 days**

#### *Details of the **provider (FSP)**:*

- Full business and trade names
- Registration number
- Postal and physical addresses
- Telephone and where applicable, cell phone numbers
- Internet and e-mail addresses
- Names and contact details of the appropriate contact persons or offices

- Details of legal and contractual status of the provider
- Names and contact details of the compliance department
- Details of the financial service that the provider provides, and any conditions or restrictions applicable
- Whether the provider holds guarantees or PI or Fidelity insurance cover, or not
- Whether the Rep renders services under supervision
- Any exemptions granted by the Commissioner

## Ethical conduct

What does it mean when we say that advisors need to operate ethically within the financial services environment?

- Complies with the Fit and Proper requirements
- Complies with the GCoC by:
  - Managing conflicts of interest
  - Making relevant disclosures
  - Creating an environment in which clients can make informed decisions

## Termination

Subject to the Act, the GCoC and the procedures and systems relating to Conflict of Interest

- A provider must allow a client that wants to terminate any agreement, to do so
- Where the client does so based on the advice provided, the provider must ensure that the client fully understands the implications of terminating the product

### *A provider that ceases to operate must*

- Immediately notify all affected clients
- Take steps to ensure that outstanding business is completed or transferred to another provider

### *Where a representative ceases to operate, the provider must*

- Immediately take steps to notify all affected clients
- Ensure that outstanding business is completed or transferred to another rep

## Record of advice

A provider must maintain a record of advice furnished to the client which must reflect

- A brief summary of the information
- The financial products considered
- The financial products recommended with an explanation of why the product or products were selected

This only needs to be kept, if to the knowledge of the provider, the transaction was concluded based on the advice provided

- A copy of the record of advice must be provided to the client (except direct marketers)

The FSCA is now able to determine the format of a record of advice. For now, this only provides the FSCA with the power to do this – no prescribed format has been issued as yet.

## Client confidentiality and access to records

A provider may not

- Disclose any confidential information acquired or obtained from
  - a client, or
  - Product supplier
- Unless written consent of the client or product supplier has been obtained
- Or disclosure of the information is required in the public interest or under any law (i.e. FICA)

## FSP's who receive or hold client funds or products

The FSP must account for client's products or funds properly and promptly

- When documents of title (deeds) are lodged, the FSP must immediately provide a receipt containing a description of the documents that was received

- When a provider receives funds into safe custody (without a bank) it must issue a written receipt when it is received
- Take all reasonable steps to safeguard the products or funds
- Ensure that funds or products are strictly dealt with in accordance with the mandate given
- Client funds or products must be readily discernible from the provider's assets
- Depending on the contract, the client must have access to their funds paid into the bank account, less the charges and fees that need to be paid by law
- If the transaction was dealt with in writing, the client must receive the original agreement
- The FSP must open and maintain a separate bank account
  - Pay all clients funds into account within **one business day**
  - This account may only contain client funds (no provider funds)
  - Pay all bank charges (except deposit and withdrawal funds for the client's account)
  - Interest earned is payable to the owner of the funds /client
- The opening and maintaining of a separate not applicable to:
  - Providers that holds or deals with premiums under a short term reinsurance policy
  - Subject to section 45 of the STIA, 1998 (IGF)

## Conflict of Interest

### *What does conflict of interest refer to?*

Conflict of interest means

- Any situation in which a provider or rep has
- An actual or potential
- Interest that may, when rendering service to a client
  - Influence the objective performance of his/her obligations to the client

- Prevent a provider or rep from rendering unbiased and fair financial services to the client
- Which includes, but is not limited to
  - A financial interest
  - An ownership interest
  - Any relation with a 3<sup>rd</sup> party

***Ensuring transparency and manage conflict of interest:***

*Financial interest and conflict of interest management policy:*

A provider or its reps may only

- Receive or offer
- The following financial interest from or to a 3<sup>rd</sup> party
  - Commission (authorised under the Long Term, Short Term or Medical Schemes Act)
  - Fees authorised (under the Long Term, Short Term or Medical Schemes Act)
  - Fees for rendering financial services (if the above is not paid)
    - If agreed with the client
    - Client may stop the charging of the fee
  - Reasonable fees or remuneration for rendering services to a 3<sup>rd</sup> party
  - An immaterial financial interest
  - Any other financial interest

*A provider may not*

- Offer any financial interest to a Rep for
  - Giving preference to the quantity of business to the exclusion of the quality of service rendered to clients
  - Giving preference to a specific product supplier
  - Giving preference to a specific product of a product supplier

A provider must adopt, maintain, and implement a conflict of interest management policy that complies with the Act

**The conflict of interest management policy must**

Provide for the management of conflict of interest and

- Mechanisms to identify conflict of interest
- Measures to avoid conflict of interest
- Processes, procedures and internal controls to facilitate compliance with the policy
- Consequences of non-compliance
- Specify the type and basis on which a Rep will qualify for a financial interest that the provider offers
- Include a list of all associates
- Include the names of any 3<sup>rd</sup> parties in which the provider holds ownership
- Include the names of any 3<sup>rd</sup> parties that holds an ownership interest in the provider
- Include the nature and extent of ownership interest
- Drafted in an easily comprehensible manner
- And must also be adopted by the sole proprietor
- The provider must ensure that its employees, reps (and associates) are aware of the contents of the policy and provide for training and educational material in this regard
- Provider must monitor compliance
- Provider must conduct an annual review of the policy
- Provider must publish the policy in the appropriate media (easily available for public inspection)
- Compliance with this section cannot be avoided using an arrangement with an associate
- The Compliance Officer must include a report to the Commissioner on the policy
- This report must at least report on the
  - Implementation of the policy
  - Monitoring of the policy
  - Compliance with the policy

Based on the amended General Code of Conduct, there have been some enhancements to ensure that clients fully understand and agree to fees payable and the services they can expect in return for those fees. The financial interests which can be offered by an FSP to its representative have also been expanded to incorporate measurements relating to fair customer outcomes. It is important that FSP's re-look at their Conflict of Management Policy, the way they remunerate representatives and any fee arrangements with clients, to ensure that these are aligned with the amendments. This came into effect on 26 December 2020.

## Complaints handling

The person who submits a complaint is referred to as the complainant and includes

- The client
- A person nominated by the client to be the beneficiary of the policy, or successor in title
- The person whose life is insured in an insurance policy
- The person that pays the premium
- A member (member of a pension fund, friendly benefit society, medical scheme or group scheme as defined in the respective acts governing these products, including the Policyholder Protection Rules)
- The person who is dissatisfied about the approach, soliciting marketing or advertising material or an ad about an FSP, their services or product

A complaint could arise from

- The FSP or its service supplier contravened or failed to comply with an agreement, law, rule or code of conduct
- The FSP or its service supplier's maladministration or wilful or negligent action or failure to act has caused a person harm, prejudice, distress or substantial inconvenience
- The FSP or its service supplier has treated a person unfairly
- Information provided to clients
- Advice
- The financial product or service performance



### Compensation means

- Payment, either monetary or in the form of a benefit or service by a provider to a client to compensate for a proven or estimated financial loss due to the FSP's contravention, non-compliance, failure to act, action or unfair treatment which forms the basis of the complaint, where the provider accepts liability, including interest on late payment, however it excludes
  - Goodwill payment
  - Payment contractually due to the complainant
  - Refund that was contractually due to the client

### When a client wants to complain, the provider must

- Request the client to lodge the complaint in writing
- Maintain a record of complaints for a period of **5 years**
- Handle complaints in a timely and fair manner (a period of **5 days** is prescribed)
- Takes steps to investigate and respond promptly to complaints
- When the complaint is not resolved to the satisfaction of the client, advise the client of any further steps which may be available to the client in terms of the Act or any other law

### *Internal Complaints resolution system*

A provider must establish, maintain and operate an adequate and effective internal complaint resolution system based on the following (the updated Code of Conduct refers to the establishing of a complaints management framework) to ensure the effective resolution of complaints and the fair treatment of complainants that

- Is proportionate to the nature, scale and complexity of the FSP's business and risks
- Is appropriate for the business model, policies, services and clients of the FSP
- Treat clients fairly and enables that complaints can be considered, taking all reasonable steps to gather and investigate all relevant and appropriate information and circumstances
- And does not impose unreasonable barriers to complainants
- The FSP must regularly review the framework and document changes thereto

The complaints management framework must at least provide for

- Proper allocation of responsibilities for dealing with complaints across the business of the provider, relevant objections and key principles
- Performance standards, remuneration and reward strategies must be provided for to ensure objectivity and impartiality
- Documented procedures to manage and categorise complaints, including expected timeframes and the circumstances of when the timeframes may be extended, as well as clearly defined procedures regarding escalation, decision-making, monitoring and oversight to review processes
- Records must be kept, and complaints must be analysed, monitored and reported on to executive management, the board of directors and other relevant committee to identify risks, trends and actions taken in response thereto and to ensure the effectiveness of the complaints management framework
- Appropriate communication with complainants and persons representing complainants
- Appropriate engagement between FSP and the relevant Ombud
- Meeting requirements for reporting to the Authority and public reporting
- A process for managing complaints related to the provider's representatives and service suppliers when complaints related to the FSP's products or services to ensure that the representative or services supplier has an adequate complaints management process to ensure fair treatment of complainants (appropriately informed of the process and outcome of complaint) and provide for monitoring and analysis by the provider of aggregated complaints data including effective referral processes

**The board of directors / governing body and KI's (key individuals) is responsible for effective complaints management and must approve and oversee the effectiveness of the framework**

- Maintenance of a policy outlining the provider's commitment, system and procedures for the internal resolution of complaints
- Transparency and visibility – ensuring that clients have full knowledge of the procedures for resolution of their complaints
- Accessibility – easy access to procedures at any office or branch of the provider open to clients, or through post, fax, telephone or electronic helpdesk support
- Fairness – ensuring the resolution of a complaint can be effected which is fair to the client, the provider and its staff
- Any person responsible for making decisions or recommendations in respect of complaints must be adequately trained, have appropriate experience, knowledge and skills in handling complaints, fair treatment of customers, the subject of the complaints and relevant and regulatory matters, not be subject to conflict of interest and adequately empowered to make impartial decisions or recommendations

Complaints must be categorised according to the following minimum categories

Complaints relating to:

- Design of a financial product, financial service or related service including the
  - Fees
  - Premiums
  - Other charges related to product or service
  - Service of clients, including complaints relating to the premium or investment contribution collection and lapsing of product
  - Accessibility, changes or switches of the product, including complaints relating to investments and redemptions
  - Complaints handling
  - Insurance risk claims, including non-payment of claims
  - And other complaints
  - Any other categories that relates to the FSP's model, product, services and client base

Complaints must be categorised, recorded and reported on in terms of the most related category

### ***Complaints escalation and review process***

An FSP must establish and maintain an appropriate internal complaints escalation and review process which should:

- Follow a balanced approach, bearing in mind the legitimate interests of all parties
- Provide for an internal escalation of complex or unusual complaints at the instance of the initial complaint handler
- Provide for complainants to escalate complaints not resolved to their satisfaction
- Be allocated to an impartial, senior person for managing the escalation or review process

### ***Decision relating to complaints***

Where a complaint is upheld (the complaint is wholly or partially in favour of the complainant and the complainant has explicitly accepted that the matter is resolved, or the FSP can reasonably assume that the complainants has accepted and all undertakings made by the FSP, has been met), any commitment by the FSP to award compensation, must be carried out without undue delay and within agreed timelines

Where a complaint is rejected, the complainant must be provided with clear and adequate reasons and must be informed of any applicable escalation or review processes, how to use them and relevant time limits

### ***Record keeping, monitoring and analysis of complaints***

A provider must ensure accurate, efficient and secure recording of complaints and complaints-related information

The following must be recorded in respect of a reportable complaint:

- All relevant details of the complainants and subject matter of complaint
- Copies of all relevant evidence, correspondence and decisions
- The complaint categorisation

- Progress and status of the complaint, including whether such progress is within or outside any set timelines

The FSP must maintain data, categorised in accordance with the categories stated, on an ongoing basis

- Number of complaints received
- Number of complaints upheld
- Number of rejected complaints, with reasons
- Number of complaints escalated by complainants to the internal complaints escalation process
- Number of complaints referred to an Ombud and their outcome
- Number and amounts of compensation payments made
- Number and amounts of goodwill payments made
- Total number of complaints outstanding

These records must be scrutinised and analysed by the FSP on an ongoing basis and utilised to manage conduct risks and effect improved outcomes and processes for clients, and to prevent recurrences of poor outcomes and errors, as well as establish processes for reporting this information to its governing body or executive management

### ***Communication with complainants***

- A provider must ensure that its processes and procedures are transparent, visible and accessible through channels that are appropriate to their clients
- An FPS may not impose any charge for a complainant to make use of the processes and procedures
- All communication with a complainants must be in plain language
- Where possible, a complainant should be given a single point contact to submit complaints
- An FSP must disclose to the client –
  - The type of information required from the complainant
  - Where, how and to whom a complaint and related information must be submitted
  - Expected turnaround times

- Any other relevant responsibilities of the complainant
- The FSP must within a reasonable time after receipt, acknowledge receipts thereof and promptly inform the complainant of the process to be followed, including
  - Contact details of person/department handling the complaint
  - Timelines for addressing the complaint
  - Details of the internal complaints escalation and review process if the complainant is not satisfied with the outcome
  - Details of escalation of complaints to the office of the relevant Ombud and applicable timelines
  - Details of the duties of the FSP and rights of the complainant as set out in the rules of the relevant Ombud
- Complainants must be kept adequately informed of
  - The progress of the complaint
  - Causes of any delay in the finalisation and revised timelines
  - The decision of the FSP

### ***Engagement with Ombud and reporting***

A FSP must

- Have appropriate processes in place to engage with the relevant Ombud in relation to its complaints
- Clearly and transparently communicate the availability & contact details of the relevant Ombud services at all relevant stages of the relationship, including at the start of the relationship and in relevant periodic communications
- Display / make available info regarding availability and contact details of the relevant Ombud services at premises of FSP and/or their website
- Maintain specific records and analyse complaints referred to them by the Ombud, as well as the outcomes of the complaints
- Monitor determinations, publications and guidance issued by relevant Ombudsmen to identify failings and risks in their own policies, services and practices
- Maintain open and honest communication and co-operation between itself and any Ombud with who it deals

- Endeavour to resolve a complaint prior to final determination or ruling by an Ombud without delaying a complainant's access to an Ombud
- Have the appropriate processes to ensure compliance with any prescribed requirements for reporting complaints information to the relevant designated authority or to the public, as may be required by the Commissioner

## Advertising

These principles, requirements and standards apply to all advertisements, regardless of the medium used to publish an advertisement.

The FSP (other than a provider that is a natural person and representative) must have a documented process and procedure for the approval of advertisements by a key person or appropriate senior person with delegated approval.

All advertisements, prior to publishing, must be consistent with the documented process and requirements as per the General Code of Conduct pertaining to advertisements.

If an FSP becomes aware that an advertisement is not consistent with this section, they must correct or withdraw the advertisement as soon as possible and notify persons who they are aware that have relied on the advertisement.

An advertisement by any provider must:

- Be factually correct, provide a balanced presentation of key information and not be misleading
- Must use plain language
- Terms must be defined or explained if the average client could not reasonably be expected to understand them
- The medium to be used to publish must be appropriate, relating to the complexity of the features of the financial product or service or other information being communicated
- Not be misleading or obscure information

- May not make inaccurate, unfair or unsubstantiated criticisms about any financial product
- Not contain any untrue or misleading statement, forecast or promise
- If it contains:
  - Performance data - references to their **source and date** must be included
  - illustrations, forecasts or hypothetical data
    - it must contain support in the form of clearly stated basic assumptions that should be achievable if current circumstances prevail
    - make it clear that it is not guaranteed
    - if it is dependent on market conditions or underlying assets, clear indications must be made of such dependence and may only be used to show the benefits of savings generally
    - Clearly show what effect fees and costs may have on actual returns or benefits
  - a warning statement about risks involved, this warning statement must be prominently be displayed and not be inconsistent with other content in the advertisement and have sufficient prominence to effectively convey the information
  - information about past performances, it must contain a warning that past performances are not necessarily indicative of future performances and all information must be accurate and must be provided in the correct context. The provider must be able to substantiate all claims made
  - If tax advantages are referenced, it must be explained and any restrictions, penalties and mitigating circumstances must be disclosed
- if the investment value is not guaranteed, contain a warning that no guarantees are provided
- If there are guaranteed elements or features, it must indicate whether that is conditional upon any requirements



- Where the product forms part of a collective investment scheme, the ad must also comply with the requirements as per the Collective Schemes Control Act No 45 of 2002
- Advertisements that reference an award or achievements must identify the grantor of the award and make it clear if award is granted by an associate of the provider or product supplier.
- Advertisements that refers to premiums or other periodic amounts must
  - In the case where the premium or amount will escalate automatically, indicate the escalation rate or basis
  - In the case of an insurance policy, where the premium may change at a future date, indicate the period for which the premium is guaranteed
- Descriptions in advertisements must not
  - Give benefits or returns undue prominence compared with risks
  - Exaggerate benefits or returns or create expectations regarding financial product or financial service performance or the performance related services that the provider does not reasonably expect to achieve
- Descriptions in an advertisement must include limitations, exclusions, risks and charges, which must be clearly explained and must not be worded positively to imply a benefit
- References to a fee or cost must give a realistic impression of the overall level of fees or costs a person is likely to pay, including any indirect fees or costs
- If, due to the nature of the ad, it is not possible to list all limitations, exclusions, risks, charges etc., it must clearly indicate where and how the additional information may be accessed
- Advertisements must not be constructed in such a way as to lead the average targeted client to any false conclusions that they may reasonably rely on
- It may not obscure any information
- A provider must consider the conclusion that clients are likely to make
- It may not exaggerate the need for urgency which could encourage the average targeted client to make unduly hasty decisions
- The product supplier or provider must clearly and prominently be identified

- A group or parent company name or the name of an associate of a product supplier or provider, or the name of another person cannot be used in an advertisement to create the impression that any other person, other than the product supplier or provider, is liable in relation to any product or service or to mislead or deceive as to who the product provider or supplier is
- Advertisements relation to a financial product that is subject to a white labelling arrangement must clearly identify the product supplier, unless the product supplier is part of the same group of companies, if it uses the brand of the product supplier or when the rules of “Prominence” is adhered to (see
- No offer may be marketed that unless the client explicitly declines it, it would automatically come into existence, referred to as negative option marketing
- When a provider advertises by means of phone, voice or text message or any other electronic communication, clients must be allowed to demand that the provider does not contact the client again through these mediums, free of charge (may not charge the client a fee to opt out)
- Surveys undertaken to inform a comparative advertisement, must be done by an independent person and that that which is compared, is similar, not only price can be compared, one must also compare it with other services and benefits offered, and when it applies to insurance, ensure that terms and conditions, insured perils, cover levels, exclusions, waiting periods and other key features are compared too and needs to be current, complete and accurate
- When using a 3<sup>rd</sup> person endorsement and testimonials, the person must be genuine and report on actual experience, may use a pseudonym (not their real name), provided it is stated in the advertisement and if they have received payment (compensated), other than for the cost of the endorsement, this must be disclosed in the advertisement
- Advertisements that refer to loyalty benefits such as cash or premium back bonuses, must clearly define how one is eligible for it, whether it is optional, express the cost (including the impact of the cost in premium/investment) and identify the grantor of the benefit or bonus. It must clearly state whether the availability of the benefit is dependent on actions of the client (not claiming, only

payable on premiums paid, etc.) or any factors not in the client's control. Further, it may not create the impression that is guaranteed or likely to materialise than the FSP expects for the average targeted client.

- How prominently information must be disclosed (referred to as Prominence) depends on the target audience, their needs, in the context of the ad as a whole, positioning of text and audibility and speed of speech, duration of displaying of key information, the background, colour and font size. Statements or information will not be regarded as prominent if it is obscured by illustrations and other text, difficult to read, likely to be overlooked due to its position, superimposed over a coloured or patterned background or difficult to hear or understand

### *When a provider advertises by telephone*

- The provider must maintain an electronic, voice logged record of all communications (must be recorded) and must have the appropriate systems and policies in place to retrieve the recordings
- the Commissioner must be provided with a copy within **7 days** from the Commissioner's request
- An FSP must, when requested by the client, make the recording of a telephone discussion available to the client
- All of the info required in terms of disclosures (physical details, conditions of restrictions and compliance department) not provided in the call must be provided to the client in writing as soon as possible, within **30 days**

### **Record keeping**

An FSP must the following records for a minimum of **5 years after termination** of the following:

- Known premature cancellations
- Complaints received (and whether they were resolved)
- Continued compliance with the licensing requirements

- Cases of non-compliance, and reasons therefore
- Continued compliance by representatives with the qualification requirements

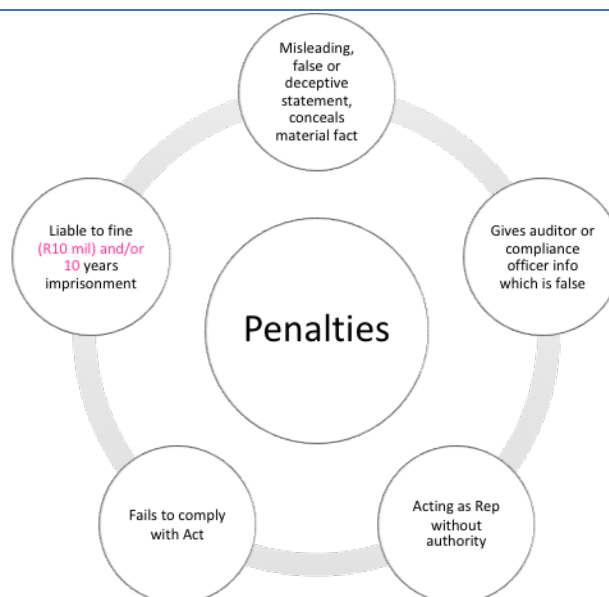
Records **MAY** be kept in an appropriate electronic and recorded format, provided that it can be reduced to written or printed form

- An FSP does not have to keep their own records, but must ensure that it is available within **7 days** of the Commissioner's request
- All records (written and verbal communications) must be kept for a period of **5 years** after termination (to the knowledge of the provider) of the
  - Product concerned
  - Or after the rendering of the financial service
- An FSP must ensure that internal control structures, procedures and controls are in place which at least includes the following:
  - Segregating duties, roles and responsibilities from an operational risk mitigation perspective
  - Applying logical access security
  - Access rights and data security on electronic data
  - Physical security of the FSP's assets and records
  - Documentation relating to business processes, policies and controls
  - System application testing
  - Disaster recovery and back-up procedures
  - Training for Reps and KI's on the Act and rendering financial services / giving advice
  - A business continuity plan

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## Penalties in terms of the Act

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- Any person who makes a misleading, false or deceptive statement, or conceals a material fact
- Any person who gives an appointed auditor or compliance officer information which is false, misleading or conceals any material fact
- Any person who is not a Rep mandated or employed by an authorised FSP, and who declares, pretends, gives out, maintains or professes to be authorised to render financial services
- Any person who fails to comply with the Act in terms of
  - Section 7 (May not act as an FSP without a license)
  - Section 8 (Displaying of the license)
  - Section 13 (Rep may not work for an unauthorised FSP and must give certified proof that s/he is employed or mandated and that the FSP takes responsibility and that adequate insurance is in place and the FSP must ensure that Reps and KI's are competent to act and abide with the Code of Conduct)
  - Section 14 (FSP to debar a Rep that do not comply with the Act)
  - Section 17 (Compliance officer, or FSP who does not need to appoint a CO, must submit reports to the Commissioner)
  - Section 18 (Maintaining records)

- Section 19 (Auditing of Financial Statements and Reporting Irregularities)
- Section 34 (Undesirable business practices)

Is guilty of an offence and is on conviction liable to a fine not exceeding **R10 000 000 or to imprisonment for a period not exceeding 10 years**, or both fine and imprisonment

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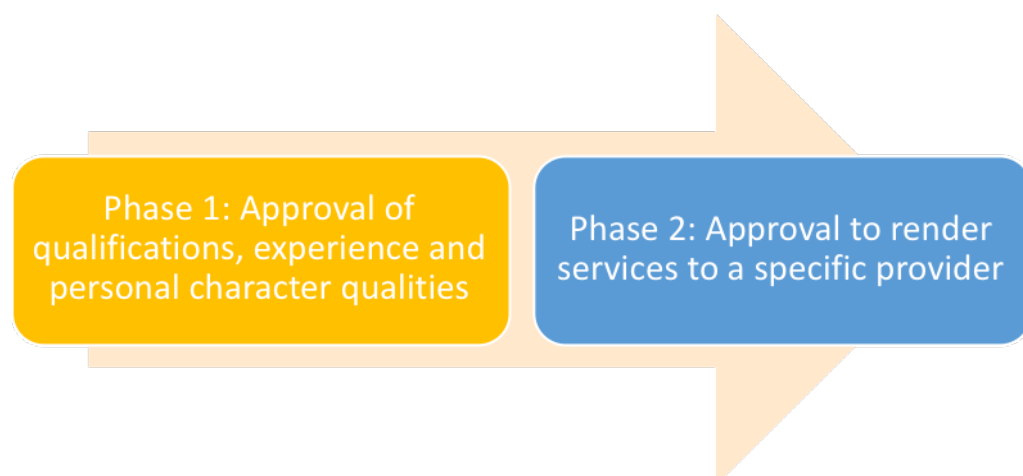
## The Compliance Officer:

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### Roles and functions of a Compliance officer

- Any FSP with more than 1 KI or more than 1 Rep must appoint a Compliance officer
- A Compliance Officer must have the suitable qualifications and experience
- Compliance Officers must, just as an auditor of an FSP, report irregularities or suspected irregularities to the Commissioner
- The Commissioner must approve the appointment of the Compliance Officer
- The Commissioner may withdraw the approval if satisfied on the basis of available facts and information that the Compliance Officer:
  - Has contravened or failed to comply with any provisions of the Act, or
  - No longer complies with the criteria and guidelines determined by the Commissioner
- FSP's that only consist of one KI or without a Rep does not have to appoint a Compliance Officer, but must establish compliance procedures and submit reports
- An FSP must ensure that a compliance function exists or is established as part of the risk management framework of the business supervised by an approved compliance officer
- The compliance function must be exercised with diligence and care
- The Compliance Officer must provide the FSP with
  - written reports on the course of, and
  - progress achieved with compliance monitoring duties
  - and make recommendations

## Approval of a Compliance Officer by the Commissioner



### *Phase 1 approval*

- Means the approval by the Commissioner of an applicant's qualifications, experience and personal character qualities of honesty and integrity

### *Phase 2 approval*

- Means the approval granted by the Commissioner to an applicant to render compliance services to a specific provider

### Criteria for Phase I approval

An applicant must:

- Hold a qualification on the list of recognised compliance qualifications
- Passed the regulatory exam
- Have **3 years'** experience in performing risk management or compliance function
- Comply with the personal characteristics of honesty and integrity
- Have **1 years'** experience in performing a compliance risk management function in respect of the category of providers the applicant seeks to obtain approval to render compliance services
- Not be an un-rehabilitated insolvent, entered into a compromise with creditors or been provisionally sequestrated or liquidated

- Have adequate access to communication facilities

### Criteria for Phase II approval

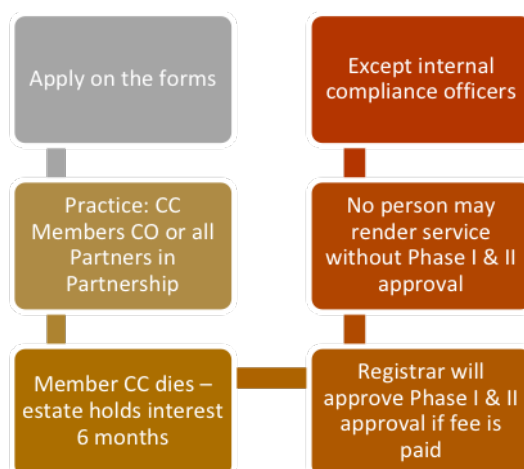
Applicant or practice must have phase 1 approval

- Commissioner must be satisfied that an applicant and practice have
  - Adequate resources available to ensure the efficient rendering of compliance services and
  - Direct access to, and demonstrable support from, senior management of the provider
- Commissioner must be satisfied that an applicant and practice will be able to
  - Render compliance services independently and objectively
  - Avoid conflict of interest in rendering compliance services
  - Keep records and supporting documentation of activities undertaken in the course of compliance reviews, visits or monitoring
  - Assist the provider in the compilation of an appropriate risk management strategy
  - Liaise with the Commissioner
  - Conduct regular reviews of financial services rendered by the FSP and Reps
- The Commissioner must be satisfied that the applicant and practice who apply for **external** compliance officers are able, in respect of
  - Category I and IV providers, to conduct regular visits to the branches/premises/business units of the provider
    - Not less than **once a quarter** and in respect of Reps, **twice a year**
  - Category II, IIA and III providers, to conduct regular visits to the branches/premises/business units of the provider and reps
    - not less than **once a month**
- The Commissioner must be satisfied that the applicant and practice who apply for an **internal** compliance officers are able, in respect of



- Category I and IV providers, to conduct regular visits to the branches/premises/business units of the provider and any Reps
  - Not less than **once a year**
- Category II, IIA and III providers, to conduct regular visits to the branches/premises/business units of the provider and reps
  - not less than **once a quarter**
- Applicant & compliance practice must ensure that the number of clients allocated to any applicant or compliance officer, are at all times sufficient to ensure proper compliance services being rendered
- The Commissioner will approve phase 1 & 2 approval if the fee is paid
- No Compliance officer may render services without phase 1 & 2 approval, **except** if the Compliance Officer is an internal compliance officer, who sourced the function to a Compliance Practise

## Application as an Officer or Practice



- An applicant or compliance practice must apply on the application forms
- To apply for approval of a Compliance Practice:
  - Partnership where all the partners are natural persons and compliance officers
  - A Company or Close Corporation and the Directors or Members are compliance officers with Phase 1 approval
- Where a member of a CC dies, the estate of the member may hold the interest for **6 months**, or longer if the Commissioner approves it
- If the Commissioner is satisfied that the applicant or practice complies with the criteria for –
  - Phase I approval
    - The Commissioner may grant Phase 1 approval and issue an approval number on payment of the prescribed fee
  - Phase II approval
    - The Commissioner must grant Phase 2 approval on payment of the prescribed fee
- No person may render compliance services without having obtained Phase I and Phase II approvals, **except Internal Compliance Officers**

## Reportable Irregularities

- The auditor of an FSP must report to and inform the Commissioner in writing of any irregularity or suspected irregularity in the
  - Conduct or
  - Affairs of the FSP
  - Which is material
- The compliance officer has the same responsibility

## Responsibilities of the Compliance Officer and FSP

- The FSP must establish and maintain procedures to be followed by the provider and Reps to ensure compliance with the Act
- The compliance officer (or FSP responsible for own compliance) must
  - Submit reports to the Commissioner
  - In the manner and regarding matters
  - Determined by the Commissioner
  - In future the Compliance Reports will be replaced with Conduct of Business Reports (CBR), which is currently being developed by the FSCA
- An approved Compliance Officer must provide an FSP with written reports on
  - The course of and
  - Progress achieved with
  - Compliance monitoring duties and
  - Make recommendations to the provider
- The compliance function must be exercised with diligence and care

## Withdrawal of approval

- The Commissioner may withdraw the approval if satisfied on the basis of available facts and information that the Compliance Officer:
  - Has contravened or failed to comply with any provisions of the Act, or
  - No longer complies with the criteria and guidelines determined by the Commissioner

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## The FAIS Ombudsman

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The Ombud is known as the Ombud for FSP's (FSP Ombud) or the FSCA Ombud. The FAIS / FSCA Ombud is different from the Long Term / Short Term insurance Ombud, as they deal with the relevant terms and conditions of an insurance policy (i.e. claims that have been rejected by the Underwriter/Insurer), whereas the FAIS Ombud will deal with any complaints relating to advice and or intermediary services with the relevant FSP or provisions in the FAIS Act.

### Roles and powers of the Ombud

- To consider and dispose of complaints
- in a procedurally fair, informal, economical and expeditious manner
- with due regard to
  - the contractual arrangement or other legal relationship between the complainant and any other party to the complainant and
  - the provisions of the Act
- The Ombud is independent and must be impartial

### Submission of a complaint to the Ombud

The Ombud must

- determine whether the “rights of complainants” requirements have been complied with
- In the case of non-compliance, act in accordance with the rules applicable to that section
- Otherwise officially receive the complaint if it qualifies as a complaint

## Instances of when the FAIS Ombud will not accept the complaint

- The act or omission occurred before 01 October 2004
- You have instituted legal action against the FSP and / or representative
- The amount claimed is more than R800, 000, however if you agree to abandon the amount that exceeds R800, 000, the Ombud might consider the complaint

## Prescription period

- Only complaints that relates to an act or omission which occurred within the last **3 years** must be accepted
- If the complainant only became aware of the act or omission within the last **3 years**, even though the act or omission occurred more than **3 years** ago, the complaint may be received by the Ombud (the person ought to reasonably have become aware)
- If the act or omission occurred before the FAIS Act was enacted, the Ombud will refuse the case

## Decline to investigate

- The Ombud must decline to investigate a complaint if proceedings have been instituted in any Court by the complainant
- Where proceedings are instituted during investigation by the Ombud, the Ombud will not proceed
- The Ombud may decide that the matter be dealt with by a Court, or another dispute resolution process, and decline to entertain the complaint

## Investigation of the complaint

The Ombud must not proceed with a complaint unless:

- All interested parties have been informed
- Is satisfied that all interested parties have been provided with the particulars to enable them to respond
- Has provided all parties the opportunity to respond

- The Ombud may follow and implement any procedure (including mediation) which the Ombud deems appropriate, and may allow any party legal representation
- The Ombud must firstly explore any prospect to resolve the matter by a conciliated settlement acceptable to all parties
- May make a recommendation to the parties
  - ❖ Requiring them to confirm whether they accept the recommendation, or not
- Where the recommendation is not accepted,
  - ❖ Requiring that party to provide reasons for not accepting it
- May delineate (portray precisely) functions of investigations and determinations between various functionaries of the Office
- May mandate any person or tribunal to perform any functions

### **Matters not settled or not accepted by all parties**

The Ombud could

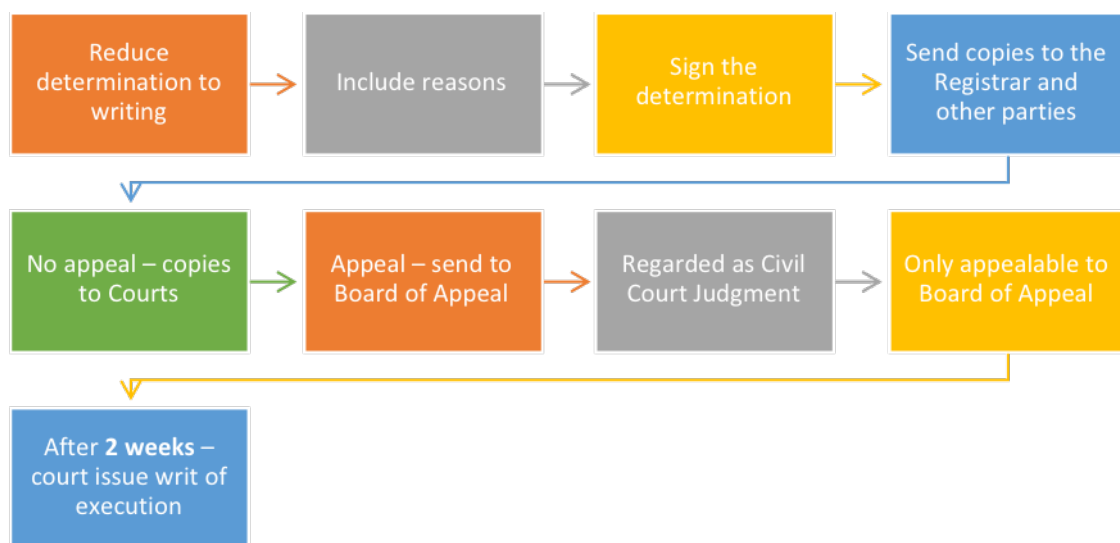
- Dismiss the complaint
- Uphold the complaint, wholly or partially
  - Award the complainant an amount as fair compensation for financial prejudice or damages suffered
  - Issue a direction against the FSP, Rep or other party concerned
  - May make any order which a Court may make

### **Monetary awards**

- Monetary awards may bear interest as determined by the Ombud
- The Board may determine
  - The maximum monetary award for a particular kind of prejudice or damage
  - Different maximum monetary awards for different categories of complaints
  - The granting of costs against a complainant in favour of the respondent, if in the opinion of the Ombud
    - The conduct of the complainant was improper or unreasonable

- The complainant was responsible for an unreasonable delay in the finalisation of the investigation
- The monetary award may not exceed the rate which a Court would have entitled an award

### The determination by the Ombud



- The Ombud will reduce the determination to writing
- Including the reasons therefore
- Sign the determination
- Send copies to the Commissioner and all other concerned parties
- If no appeal is lodged in the specified time period, the Ombud will send a copy to the clerk or Commissioner of court which would have had jurisdiction if the matter had been heard in court
- Where a notice of appeal is lodged, the Ombud must send a copy of the final decision of the Financial Services Tribunal (old Board of Appeal) to the clerk or Commissioner
- The determination by the Ombud or Financial Services Tribunal (old Board of Appeal) is regarded as a civil court judgment of a Court
- It is only appealable to the Board of Appeal with the leave of the Ombud, after considering
  - The complexity of the matter

- The likelihood that the Board of Appeal (BoA) may reach a different conclusion
- With the permission of the chairperson of the BoA, the Ombud may refuse the leave to appeal
- After **two weeks** following the determination by the Ombud or BoA, the clerk or Commissioner of the Court may issue a writ of execution which may be executed by the sheriff of the Court

### Rules of proceedings by the office of the Ombud

- The Ombud may grant costs against the respondent, or complainant, in favour to one another or in favour of the Office
- The costs awarded must be quantified by the Ombud with due regard to
  - Nature of the complaint
  - Time spent on the complaints
  - Expense and inconvenience caused to the other party
  - The conduct of a party
  - Any other factor deemed appropriate by the Ombud
- The Ombud can award costs and interest
- Please note that the non-refundable case fee payable to the Ombud (of R1 000) has been discontinued and therefore it is not payable any longer

### Penalties

- Any person who commits any act in respect of the investigation, if it were committed in a court would have constituted contempt of court, is guilty of an offence and liable for a penalty

Any person who wilfully interrupts any proceedings, is guilty of an offence and liable on conviction of to a fine, not exceeding **1 year**



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## Schedule 1 – Laws amended or repealed by the FAIS Act:

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- Financial Services Board Act, 1990
- Stock Exchanges Control Act, 1985
- Financial Markets Control Act, 1989
- Drugs and Drug Trafficking Act, 1992

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## Product Categories

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### The product categories in FAIS

Each authorised FSP is licensed to sell certain FAIS products.

FSPs may have various licenses in respect of different product categories. The product Category may also have different products falling in the main Category and these are called product sub-categories. The Category descriptions in the FAIS Act are as follows:

- **“Category I”**, in relation to a financial services provider, means all persons, other than persons referred to in Categories II, IIA, III and IV, who are authorised to render the financial services (other than financial services mentioned in Categories II, IIA, III and IV) as set out in the relevant application;
- **“Category II”**, in relation to a financial services provider, means all persons who are authorized as **discretionary FSPs** as set out in the relevant application;
  - You will note that all products that fall into Category I also falls into Category II EXCEPT:
    - Long Term Insurance Category A (Funeral)
    - Short Term Insurance Personal and Commercial Lines – all subcategories
    - Health Service benefits
    - Friendly Society benefits

- The reason being that the nature of these products are not investment based and therefore action is only taken on them when requested so by the client.

The client does not give the intermediary/representative a mandate to move funds around to increase profits etc.

- **“Category IIA”**, in relation to a financial services provider, means all persons who are authorized as **hedge fund FSPs** as set out in the relevant application;
- **“Category III”**, in relation to a financial services provider, means all persons who are authorized as **administrative FSPs** as set out in the relevant application;
- **“Category IV”**, in relation to a financial services provider, means all persons who require licences as Assistance Business FSP.

#### Product Sub-categories in Category I, II, IIA, III, IV

	Financial Product	Explanation	TABLE A: CATEGORY I EXPERIENCE REQUIREMENTS FOR AN FSP AND REPRESENTATIVE	
1	CATEGORY 1		Advice: Min Experience	Intermediary Services: Min. Exp.
1.1	Long-term Insurance subcategory A	Listed as an “Assistance” Policy in the Long term Insurance Act.  It covers long term policies that provide up to R30, 000 in total benefits. It has no investment value (Funeral Products)	6 months	2 months
1.2	Short-term Insurance Personal Lines	The insurance of possessions owned and used for personal use	1 year	6 months
1.3	Long-term Insurance subcategory B1	Risk policies which provide cover in respect of death,	1 year	6 months

	Financial Product	Explanation	TABLE A: CATEGORY I EXPERIENCE REQUIREMENTS FOR AN FSP AND REPRESENTATIVE	
<b>1</b>	<b>CATEGORY 1</b>		<b>Advice: Min Experience</b>	<b>Intermediary Services: Min. Exp.</b>
		disability and health events, and do not have any investment or growth <i>Example: Credit Life Policy</i>		
1.4	Long-term Insurance subcategory C	All other Long Term Insurance policies. <i>Example: Life &amp; Dreaded disease policy when an FNA was performed (determined future risk requirements etc.)</i>	1 year	6 months
1.5	Retail Pension Benefits	Pension, Provident or Preservation fund policies that are sold to <b>individuals</b>	1 year	6 months
1.6	Short-term Insurance Commercial Lines	The insurance of things owned and used for Commercial purposes	1 year	6 months
1.7	Pension Fund Benefits (excluding retail pension benefits)	Pension and Provident funds that are designed for groups of people. The group then benefits as a whole from the investments of the	1 year	6 months

	Financial Product	Explanation	TABLE A: CATEGORY I EXPERIENCE REQUIREMENTS FOR AN FSP AND REPRESENTATIVE	
1	CATEGORY 1		Advice: Min Experience	Intermediary Services: Min. Exp.
		premiums paid in.		
1.8	Securities and Instruments: Shares	A person can buy shares in a business and will benefit by being paid out on a regular basis from the profits made by the company – called “Dividends”.  There is no guaranteed pay out so this can be risky.  The company may be listed on a securities exchange (JSE) or can sell shares privately if not listed.	2 years	1 year
1.9	Securities and Instruments: Money market instruments	This is a bank deposit account where the Banks use the money to do short term investments and loans. The interest received depends on the success of the Bank’s investment and short term loan strategy.  There is a high minimum balance required and	2 years	1 year

	Financial Product	Explanation	TABLE A: CATEGORY I EXPERIENCE REQUIREMENTS FOR AN FSP AND REPRESENTATIVE	
1	CATEGORY 1		Advice: Min Experience	Intermediary Services: Min. Exp.
		generally a restriction on withdrawals.		
1.10	Securities and Instruments: Debentures and securitised debt	<p>Debentures are used when a business or the government needs to borrow money over a long time without having any security or collateral. A simple explanation is that they borrow money and give the lender an IOU. This type of instrument depends on the integrity of the borrower as to whether people will lend the money. Securitised debt is when a business borrows money which is guaranteed by an asset that the company owns.</p> <p><i>Example</i> a clothing store may have a book of customers which owes them money over 6</p>	2 years	1 year

	Financial Product	Explanation	TABLE A: CATEGORY I EXPERIENCE REQUIREMENTS FOR AN FSP AND REPRESENTATIVE	
<b>1</b>	<b>CATEGORY 1</b>		<b>Advice: Min Experience</b>	<b>Intermediary Services: Min. Exp.</b>
		months. The company may need all that money immediately to buy more stock so will borrow the money based on the value of the money that they should receive over the next 6 months.		
1.11	Securities and Instruments: Warrants, certificates and other instruments	A Warrant is when a person pays for the right to buy stock or commodities at some future date at a pre-determined price. They may or may not exercise this option.  This warrant can be sold to somebody else before the due date.	2 years	1 year
1.12	Securities and Instruments: Bonds	When the government or large corporate wants to borrow a large sum of money for a particular project and repay it over a long term they will sell	2 years	1 year

	Financial Product	Explanation	TABLE A: CATEGORY I EXPERIENCE REQUIREMENTS FOR AN FSP AND REPRESENTATIVE	
1	CATEGORY 1		Advice: Min Experience	Intermediary Services: Min. Exp.
		<p>"bonds". The buyer will get a guaranteed rate of interest until a maturity date when they can withdraw the original capital (money paid in the beginning).</p> <p><i>Some of the stadiums for the Soccer World Cup were financed by Bonds.</i></p>		
1.13	Securities and Instruments: Derivative instruments excluding warrants	<p>Buying an asset which will only have a value at a future date.</p> <p><i>Example:</i> a person wants to be able to buy a harvest of sunflowers to make cooking oil. He will pay the farmer for the harvest even before the flowers have started growing. He will then be guaranteed that he will have seeds to make oil when the flowers are harvested. However, he can</p>	2 years	1 year

	Financial Product	Explanation	TABLE A: CATEGORY I EXPERIENCE REQUIREMENTS FOR AN FSP AND REPRESENTATIVE	
1	CATEGORY 1		Advice: Min Experience	Intermediary Services: Min. Exp.
		sell the instrument before then if he realises it would be more profitable to sell the derivative instrument rather than make the oil.		
1.14	Participatory Interests in Collective Investment Schemes	Often referred to as “Unit Trusts”  Shares can be very expensive to buy and many people want to share in the possibilities of investment on a Securities Exchange (e.g. JSE). Collective Schemes mean that many people can pay a small amount to an intermediary (Discretionary FSP) sometimes called an investment manager who will then invest the total large sums of money in expensive shares.  The interest or dividends paid out will depend on the	1 year	1 year



	Financial Product	Explanation	TABLE A: CATEGORY I EXPERIENCE REQUIREMENTS FOR AN FSP AND REPRESENTATIVE	
<b>1</b>	<b>CATEGORY 1</b>		<b>Advice: Min Experience</b>	<b>Intermediary Services: Min. Exp.</b>
		type of securities invested in and the performance of these.		
1.15	Forex Investment Business	Forex is short for Foreign Exchange. This is investment in Foreign denominated currencies. A person may wish to invest in Dollars US in the hope that they go up in value and the SA Rand goes down in value. They would then sell the Dollars US for SA Rands and get more SA Rands than they had before.	2 years	1 year
1.16	Health Service Benefits	This is Medical Aids. A person may only have this if they are also accredited with the Council for Medical Schemes as a Health Schemes Broker. If the Health Schemes Broker accreditation lapses or is withdrawn then the FSP	2 years	2 years

	Financial Product	Explanation	TABLE A: CATEGORY I EXPERIENCE REQUIREMENTS FOR AN FSP AND REPRESENTATIVE	
<b>1</b>	<b>CATEGORY 1</b>		<b>Advice: Min Experience</b>	<b>Intermediary Services: Min. Exp.</b>
		authorisation is as well. And visa versa.		
1.17	Long-term Deposits	This is a Bank deposit which cannot be accessed within a 12 month period. e.g. a 36 month deposit	6 months	3 months
1.18	Short-term Deposits	This is a Bank deposit which can be accessed within a 12 month period e.g. a normal transaction bank account, call account and a 32 day call account.	6 months	3 months
1.19	Friendly Society Benefits	A society in which the members contribute a specific sum of money on a regular basis for a specific purpose – e.g. own retirement fund.	6 months	2 months
1.20	Long Term Insurance subcategory B2	Death, disability, health, investment policies, annuities which have a guarantee of a minimum return of premium or a guaranteed pay out.	1 year	6 months

	Financial Product	Explanation	TABLE A: CATEGORY I EXPERIENCE REQUIREMENTS FOR AN FSP AND REPRESENTATIVE	
1	CATEGORY 1		Advice: Min Experience	Intermediary Services: Min. Exp.
		<i>Example: Endowment / Education</i>		
1.21	Long-Term Insurance Subcategory B2-A	Long term policies which requires premiums to be invested in an investment portfolio with no option to change or amend	1 year	6 months
1.22	Long-Term Insurance Subcategory B1-A	Long term policies which requires little or no underwriting	1 year	6 months
1.23	Short Term Insurance Personal lines A1	Short Term policies that require limited or no underwriting, with terms of 24 months or less Example: Dent & Fix cover	1 year	6 months
1.24	Structured deposits	Combination of a short term deposit & long term deposit & Tier 1 product	2 years	1 year
1.25	Securities and instruments	Benefit provided by a retirement fund, preservation provident fund	2 years	1 year
1.26	Participatory interest in a CIS Hedge Funds	Collective investment scheme that is a Hedge fund	2 years	1 year

<b>CATEGORY II</b>		
<b>Sub</b>	<b>Experience requirements for FSP's and Reps</b>	<b>Min Experience</b>
2.1	Long-term Insurance Category B1	2 years
2.2	Long-term Insurance Category C	2 years
2.3	Retail Pension Benefits	2 years
2.4	Pension Fund Benefits	2 years
2.5	Securities and instruments: Shares	3 years
2.6	Securities and Instruments: Money market instruments	3 years
2.7	Securities and Instruments: Debentures and securitised debt	3 years
2.8	Securities and Instruments: Warrants, certificates and other instruments acknowledging debt	3 years
2.9	Securities and Instruments: Bonds	3 years
2.10	Securities and Instruments: Derivative instruments excluding warrants	3 years
2.11	Participatory Interests in one or more collective Investment schemes	2 years
2.12	Forex Investment Business	3 years
2.13	Long-term Deposits	1 year
2.14	Short-term Deposits	1 year
2.15	Long-Term Insurance Subcategory B2	2 years
2.16	Long-Term Insurance Subcategory B2-A	2 years
2.17	Long-term Insurance Subcategory B1-A	2 years
2.18	Structured deposits	3 years
2.19	Securities and instruments	3 years
2.20	Participatory interest in a CIS Hedge Funds	3 years
<b>Experience requirements for FSP's and Reps</b>		<b>Advice: Min Experience</b>
<b>CATEGORY II A</b>		

Hedge Funds	3 years
<b>CATEGORY III</b>	
Administrative FSP who places funds in investments	3 years
<b>CATEGORY IV</b>	
Administration of Funeral Products in terms of an Agreement between the FSP and the Insurer	1 year

**Important notes:**

1. Category 1.1 & 1.19 only requires ABET Level 1 (Grade 3 / Standard 1), or the ability to read, write and calculate
2. Category 1.1, 1.2, 1.6, 1.16, 1.19 & 1.23 does not fall under Category 2
3. There are 26 categories under Subcategory 1

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## FICA

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Whereas FICA tries to establish who we are dealing with, FAIS tries to ensure that we deal with them properly, responsibly and professionally.

As we have discussed, FAIS aims to regulate the giving of advice and rendering of intermediary services to clients and imposes responsibility by requiring that i) the financial needs of the client has to be evaluated, ii) appropriate advice - having established the relevant facts – is to be given, and iii) clients be assisted to make informed decisions, whilst establishing a complaints resolution mechanism.

With regards to FICA: internationally, governments have agreed to fight organised crime and terrorism by, among others, seizing the proceeds of crime and making money laundering a criminal offence. Since the 1980s many countries have passed laws that demonstrate their commitment to this effort.

South Africa has implemented a law in line with international law that is designed to combat money laundering, which is the abuse of financial systems in order to hide and/or disguise

the proceeds of crime. This law is known as the Financial Intelligence Centres Act 38 of 2001, also referred to as FICA.

The establishment of this Centre and a Money Laundering Advisory Council in order to combat money laundering activities also imposed certain duties on institutions and other persons who might be used for money laundering purposes. The FICA Act amended the Prevention of Organised Crime Act, 1998, and the Promotion of Access to Information Act, 2000.

In terms of FICA, all accountable institutions (such as banks) have specific duties to help prevent and reporting on money laundering. It creates money laundering control obligations for banks and other institutions and professionals, such as estate agents, brokers, attorneys and insurance companies. A person is however obligated to report any suspicious transactions that pertain to any business to the Financial Intelligence Centre ("FIC"). Suspicion is a subjective element therefore one must determine what constitutes a suspicious transaction with respect to the business that you operate. Any activity, which falls outside the standard daily practice, would, for example be considered to be suspicious.

## **Purpose of FICA**

- To establish a Financial Intelligence Centre and a Counter-Money Advisory Council to combat money laundering and the financing of terrorist and related activities
- To impose duties on institutions used for the above purposes
- To provide for the registration of accountable and reportable institutions
- To amend the POC Act

## **Training and compliance with FICA**

An accountable institution must

- Provide training to its employees to ensure compliance with the Act
- Appoint a person responsible for compliance with FICA by

## Record Keeping

*Accountable institutions need to keep records of the following:*

- The identity of the client
- If the client is acting on behalf of another person
- Identity of the other person
- Client's authority
- If another person is acting on behalf of the client
- Identity of the other person
- Other person's authority
- Manner in which the identity was established
- Nature of the business relationship
- Transaction amounts and parties involved
- All accounts involved in the transaction(s)
- Name of the person who obtained the information

## *Methods of Record Keeping*

### **Records can be kept in electronic form**

For at least **5 years from:**

- Establishment of the business relationship
- Date when the relationship is terminated
- Date of when the transaction is concluded

### **Records kept by a 3<sup>rd</sup> party**

Records may be kept by a 3<sup>rd</sup> party as long as:

- The accountable institution has free and easy access to records
- The accountable institution is liable if the 3<sup>rd</sup> party fails to comply
- The accountable institution must provide the Centre with the details of the 3<sup>rd</sup> party

- Full name and contact details of person who exercises control over those records
- Address where the records are kept
- Address from where the 3<sup>rd</sup> party exercises control over the records, and
- Full name and contact particulars of the individual who liaises with the 3<sup>rd</sup> party on behalf of the accountable institution concerning the retention of records
- The name under which the 3<sup>rd</sup> party conducts business

## Admissibility of the Records

Records kept are admissible as evidence

## Centre's access to Records

- An authorised representative of the Centre has access to records during ordinary working hours and may examine, make extracts from or copies of records
- The representative may only do this if s/he has a warrant issued in chambers in the area of jurisdiction, unless the records are available to the public
- The warrant will only be issued if there are reasonable grounds to believe that the records may assist to identify the proceeds of unlawful activities or to combat money laundering activities
- The warrant may contain conditions regarding access to the records
- The accountable institution must give the Centre's representative all reasonable assistance

## Internal Rules

The following internal rules forms part of the Financial Service Providers (FSP), and applies to all Key Individuals, representatives, and members of staff in all their business activities.

The following laws were considered in compiling these Internal Rules:

- Financial Intelligence centre Act 38 of 2001 (and Regulations)
- Prevention of Organised Crime Act 121 of 1998 (and regulations)



- Industry Guidance Notes
- Financial Intelligence Centre Guidance notes

## What is Money Laundering

“Money laundering refers to any act that obscures the illicit nature or the existence, location or application of proceeds of crime and includes the processing of proceeds received from criminal activities, to disguise their origin” as per FICA Act.

In general, money laundering refers to where criminals find ways and means to disguise their proceeds from criminal activities. They “clean” their “dirty” money, by using several entities, to ensure that it looks as if they earned their money with normal business dealings. It changes the nature and location of the proceeds of their criminal activities.

Any criminal, which can include drug traffickers, robbers, terrorists, burglars and fraudsters, will need to hide their money, and therefore will use institutions camouflage their relationship with crime.

### *Additional sources for money laundering:*

The following sources will enable you to enhance your knowledge and understanding of money laundering control:

- <http://www.fatf-gafi.org/>
- <http://general.rau.ac.za/law>

## Offences and Penalties

The offences and penalties created in the Financial Intelligence Centre Act, 38 of 2001 are set out below:

Offence	Penalty
Failure to identify (sec. 6)	Maximum period of 15 years (Sec. 46) imprisonment or a fine not exceeding R10 000 000
Failure to keep records (sec. 47)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000

<b>Offence</b>	<b>Penalty</b>
Destroying or tampering with records (Sec. 48)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000
Failure to give assistance (Sec. 49)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000
Failure to advise the Centre (Sec. 50)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000
Failure to report cash Transactions (Sec. 51)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000
Failure to report suspicious or unusual transactions (Sec. 52)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000
Unauthorised disclosure (Sec. 53)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000
Failure to report conveyance of cash into or out of the Republic (Sec. 54)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000
Failure to send a report to the Centre (Sec. 55)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000
Failure to report electronic Transfers (Sec. 56)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000
Failure to comply with requests (Sec. 57)	Maximum period of 15 years imprisonment or a fine not

Offence	Penalty
	exceeding R10 000 000
Failure to comply with a direction by the Centre (Sec. 58)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000
Failure to comply with monitoring Order (Sec. 59)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000
Misuse of information (Sec. 60)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000
Failure to formulate and implement internal rules (Sec. 61)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000
Failure to provide training or appoint compliance officer (Sec. 62)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000
Obstructing Centre officials in the performance of functions (Sec. 63)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000
Conducting transactions to avoid reporting duties (Sec. 64)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000
Unauthorised access to computer system or application or data (Sec. 65)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000
Unauthorised modification of contents of computer system (Sec. 66)	Maximum period of 15 years imprisonment or a fine not exceeding R10 000 000
A person convicted in terms of FICA	Maximum period of 15 years imprisonment or a fine not

Offence	Penalty
	exceeding R100 000 000

## Transactions to be reported

FICA identifies two broad types of transactions that must be reported:

1. Threshold transactions: cash and electronic fund transfers
2. Cash Transactions

Certain acts and transactions involving cash in amounts greater than the set limit as well as certain transfers of money into and out of the Republic must be reported.

Cash for these purposes, means:

- South African notes and coins
- Similar currency of other countries;
- Traveller's Cheques

## Cash Reporting

The reporting of cash transactions relates to two main areas to the payment and receipt of cash by the Financial Service Provider:

- When cash in excess of a set amount is paid out to a client of his representative
- Or is received from a client or from his representative

## What is the prescribed limit?

- The prescribed limit has been increased from R24, 999.99 to R49, 999.99
- This means that any amount above R49,999.99 must be reported by the Accountable institutions.

## International Electronic Transfers

An international electronic transfer by an accountable institution must be reported if:

- The transfer involves money in excess of a prescribed amount; and
- The transfer is made on behalf of or on the instructions of another person, for example a client

The Minister has not yet established the threshold for the above 2 transactions, however suspicious transactions must still be reported.

## Exemptions

Some of the exemptions, include the following:

- any reinsurance policy issued to another accountable institution;
  - ❖ any long-term insurance policy in respect of which recurring premiums are paid which will amount to an annual total not exceeding R25 000 00, subject to the condition that the provisions of Parts 1 and 2 of Chapter 3 of the Act have to be complied with in respect of every client.
- Who increases the recurring premiums so that the amount of R25 000 00 is exceeded;
- Who surrenders such a policy within three years after its commencement; or
- To whom that accountable institution grants a loan or extends credit against the security of such a policy within three years after its commencement
  - ❖ any long-term insurance policy in respect of which a single premium not exceeding R50 000 00 is payable, subject to the condition that the provisions of Parts 1 and 2 of Chapter 3 of the Act have to be complied with in respect of every client
- Who surrenders such a policy within three years after its commencement; or
- To whom that accountable institution grants a loan or extends credit against the security of such a policy within three years after its commencement;
- any contractual agreement to invest in unit trust or linked product investments in respect of which recurring payments are payable amounting to an annual total not exceeding R25 000 00, subject to the condition that the provisions of Parts 1 and 2 of Chapter 3 of the Act have to be complied with in respect of every client who

liquidates the whole or part of such an investment with one year after the making of the first payment;

- any unit or linked product investment in respect of which a once off consideration not exceeding R50 000 00 is payable, subject to the condition that the provisions of Parts 1 and 2 of Chapter 3 of the Act have to be complied with in respect of every client who liquidates the whole or part of such an investment within one year after the making of the first payment;

### Verifying the residential address of a client:

The general rule is that any document that will be accepted, as proof of address, needs to be within the last 3 months.

The following may offer confirmation of residential address:

- a utility bill reflecting the name and residential address of the person;
- a bank statement from another bank reflecting the name and residential address of the person if the person previously transacted with a bank registered in terms of the Banks Act and that bank had confirmed the person's particulars;
- a recent lease or rental agreement reflecting the name and residential address of the person;
- municipal rates and taxed invoice reflecting the name and residential address of the person;
- mortgage statement from another institution reflecting the name and residential address of the person;
- telephone or cellular account reflecting the name and residential address of the person;
- valid television licence reflecting the name and residential address of the person;
- recent long-term or short-term insurance policy document issued by an insurance company and reflecting the name and residential address of the person; or
- recent motor vehicle licence documentation reflecting the name and residential address of the person.

When a recent utility bill from a telephone or cellular account, Eskom or a local authority does not identify the physical address of the property owner (that is, if the bill is sent to a postal address), the utility bill will still be acceptable provided the client's name and the erf/stand and township details are reflected on the utility bill.

The client's physical address, erf number and township should be recorded, and the township cross-referenced to the suburb in which the client resides.

If thereafter there is any doubt about the client or the physical address of the client, the erf/stand and township details should be verified by reference to the Deeds Office.

If none of the above is available, other means to verify a client's address such as an affidavit containing the following particulars from a person co-habiting with the client or an employer of the client:

- name, residential address, identity number of the client and the deponent (person who makes the affidavit under oath) of the affidavit;
- relationship between the client and the deponent of the affidavit; and
- confirmation of the client's residential address.

Each accountable institution is responsible for establishing which documentation is acceptable to verify the obtained information, within the internal risk framework of the accountable institution

### **Manner of identification**

The following information needs to be identified:

- Full name
- Date of birth
- Identity number
- Income tax registration number (if issued to such a person); and
- Residential address

**NB – When you collect any information, it must be within the last 3 months**

You are required to collect documents as proof of the information requested from the client and where you will compare the information obtained from the client with documentation that confirms the information.

### List of accountable institutions

- **A practitioner** who practices as defined in section 1 of the **Attorneys Act, 1979** (Act 53 of 1979) and a person who is admitted and enrolled to practice as a legal practitioner as contemplated in section 24(1) of the Legal Practice Act, 2014 (Act 28 of 2014) who is an attorney or an advocate
- **A commercial juristic entity, as per section 34(7) of the Legal Practice Act, 2014**
- **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) and a person who prepares or carries out transactions for a client where
  - The client is assisted in the planning or execution of –
    - Organising contributions necessary to create, operate or manage a company as defined in the Companies Act, 2008 (Act 71 of 2008)
    - Create, operate or manage a company, or an external company or a foreign company, as defined in the Companies Act, 2008, or
    - Operate or manage a CC (Close Corporation) as defined in the Close Corporation Act, 1984 (Act 69 of 1984)
  - A person that acts for a client as a nominee as defined in the Companies Act, 2008 or arranges for another person to act for a client as such a nominee
  - A person who creates a trust arrangement for a client
  - A person who prepares for or carries out transactions (including as a trustee) related to the investment, safe keeping, control or administering of trust property with 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) now replaced by the Financial Markets Act, 2012 (Act 19 of 2012)
- 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).
- **Mutual bank** as defined in the Mutual Banks Act, 1993 (Act 124 of 1993).
- **A co-operative bank** as defined in the Co-Operative Banks Act, 2007 (Act 40 of 2007)
- A person who carries on a **"long-term life insurance business"** as defined in the Long-Term Insurance Act, 1998 (Act 52 of 1998) replaced by the Insurance Act, 2017 (Act 18 of 2017), but excludes reinsurance business as defined in that Act.
- A person who carries on a business in respect of which a **gambling licence** is required to be issued by a provincial licensing authority as per section 3 of the National Gambling Act, 2004 (Act 7 of 2004)
- 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 credit provider as defined in the National Credit Act, 2005 (Act 34 of 2005) who lends money against the security of securities
  - A credit provider in terms of any credit agreement that is excluded from the application of the National Credit Act, 2005 by virtue of section 4(1) (a) or (b) of that Act
- 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/or 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), a **non-life insurance policy, reinsurance business** as defined in the Insurance Act, 2017 (Act 18 of 2017) and a **health service benefit provided by the business of 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.
- **The South African Postbank Limited** referred to in section 51 of the Postal Services Act, 1998 (Act 124 of 1998) replaced by the South African Postbank Act, 2010 (Act 9 of 2010)
- The **Ithala Development Finance Corporation** Limited.
- A person who carries on the **business of a money remitter or value transfer provider** Example: Western Union
- A person who deals in high-value goods in respect of any transaction where such business received payment in any form to the value of R100 000 or more, whether payment is made in a single operation or more than one operation that appears to be linked (any item at R100 000, or more)
- The South African Mint Company (RF) (Pty) Ltd where is distributes coins in retail trade to the value of R100 000 or more (in one or multiple linked operations)
- Any person that carries on the business of one or more of the following on behalf of a client
  - Exchanging a crypto asset for a fiat currency or vice versa
  - Exchanging one form of crypto for another
  - Conducting a transaction that transfers a crypto asset from one address or account to another
  - Safekeeping or administration of a crypto asset or an instrument enabling control over a crypto asset
  - Participating or providing financial services related to an issuer's offer or sale of a crypto asset
  - Where crypto asset means a digital representation of perceived value that can be traded or transferred electronically within a community of the internet who considers it as a medium of exchange but excludes a digital representation of a fiat currency or security as defined in the Financial Markets Act, 2012 (Act 19 of 2012)
- A clearing system participant as defined in section 1 of the National Payment System Act, 1998 (Act 78 of 1998) that facilitates or enables the origination or receipt of any

electronic funds transfer and or acts as an intermediary in receiving or transmitting the electronic funds transfer

## Reportable Institutions

- ~~Entities who deals in motor vehicles~~
- ~~Entities who deals in Kruger Rands~~

Reportable institutions have been removed from the amendments as all institutions that sell items valued at R100 000 or more, would need to be registered as accountable institutions

## Glossary of Terms on FICA

Term	Definition
Accountable Institution	Institutions which have been identified as being vulnerable to money laundering, as such they have specific obligations regarding money laundering (FICA Schedule 1)
Business Relationship	An arrangement between a client and an accountable institution for the purpose of concluding transactions on a regular basis
FIC	Financial Intelligence Centre – The entity created in terms of FICA to receive and analyse suspicious transactions
FICA	The Financial Intelligence Centre Act, 38 of 2001 – The South African legislation which imposes money laundering control obligations on all major financial institutions
Money Laundering	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 activity
POCA	The Prevention of Organised Crime Act 121 of 1998 – South Africa legislation which creates the main money laundering offences and provides for the forfeiture of the proceeds of

<b>Term</b>	<b>Definition</b>
	crime
Proceeds of Crime	Any financial benefit that a criminal derives from any criminal activity
Smurfing, Splitting, Structuring	Money Laundering methods which involve the splitting of proceeds of crime into smaller amounts to avoid detection
STR	Suspicious and Unusual Transaction Report

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## Transitional Provisions

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The transitional provisions apply to persons registered prior to the updates in April 2018 and this should not be necessary to know for the exam

### Qualifications;

- For a particular product and service if obtained **prior to 01 January 2010**

Or

- That complied with the qualifications in the previous Fit & Proper requirements

Is deemed to meet the requirements for that particular product and service that they are authorised for at the commencement date of this Notice – 01 April 2018

### Experience

Experience that the FSP or representative had prior to commencement of this Notice is recognised 01 April 2018

BUT

**Excludes persons working under supervision**

### Product Specific Training

An FSP or representative authorised for specific products (excluding a rep under supervision) at commencement of this Notice 01 April 2018 is deemed to have completed the Product Specific Training for the Products they were authorised for

But;

**Does not apply to amendments to those particular products made after 01 April 2018**

**A rep working under supervision as at 01 April 2018 has **three months** (i.e. to end June 2018) to complete the Product Specific training**

A person appointed after 01 April 2018 but prior to 01 May 2018 has **three months** to comply with the Product Specific training

### **Class of Business training**

- An FSP, KI or Rep of Cat I, Cat II, Cat IIA, Cat III, Cat IV - excluding a person working under supervision – appointed prior to 01 April 2018, is deemed to have completed COB training for their existing products
- A Cat I KI is deemed to have completed the COB for the products for which they are approved and which the FSP is approved for as at 01 April 2018 has **12 months** from 01 August 2018 to comply with COB
- A person authorised between 01 April and 01 August 2018 has **12 months** to comply with COB

### ***However (Very Important)***

- The KI of Cat I must **within 6 months of 01 April 2018** (i.e. before end August 2018) submit the details of the COB's which they work with to the Commissioner on the form to be provided
- A rep working under supervision as at 01 April 2018 has **12 months** from 01 August 2018 to comply with COB
- A person authorised between 01 April and 01 August 2018 has **12 months** to comply with COB

### **Reps register and FSP licence**

The categories and sub-categories listed on an FSP licence will be amended by the Commissioner to include the corresponding new financial products

But the FSP is deemed to be authorised for these until the amendment is made

TABLE C	
Column A	Column B
Short Term Insurance Personal Lines	Short Term Insurance Personal Lines A-1
Long Term Insurance sub-category B1	Long Term Insurance sub-category B1-A
Long Term Insurance sub-category B2	Long Term Insurance sub-category B2-A

The FSP with the additional new products as shown above, must;

Within **3 months of** the amendment

- Update the reps register accordingly and use the same start date as was previously recorded on the register
- Persons appointed on or after 01 April must have the actual start dates entered on the register

An FSP that is authorised for the financial products and services listed in Column A of the Table below as at 01 April 2018 is deemed to be authorised for the products and services in Column B

**BUT**

Must submit an application for authorisation within 3 months of 01 April 2018 (i.e. before end June 2018)

## Summary of timelines

Aspect	Time period
When found guilty on Honesty & Integrity, excluding disqualified or prohibited by a court of law	Never – depending on seriousness and passage of time
When found guilty on Honesty & Integrity and when disqualified or prohibited by a court of law	Never – depending on seriousness and passage of time
Minimum period that a Rep can work under supervision	12 months
Maximum period that a Rep can work under supervision	6 years
Period to complete the First Level RE from DOFA	2 years
Period to complete the appropriate qualification required from DOFA (excluding 2004 – 2009 persons)	6 years
FSP to update changes on the Rep Register	15 days
Number of days to remove Rep/KI's name off the Rep Register after the Commissioner debarred them	5 days
Number of days for FSP's to remove Rep/KI's name off the Rep Register after the Commissioner debarred them	15 days
Number of years that the Commissioner usually debars a person	2 – 5 years
Number of days to appeal a decision made by the Commissioner or Ombud	30 days
Minimum number of months after which a	12 months



Aspect	Time period
debarred Rep can apply of reappointment (excl. honesty & integrity issues)	
KI requires number of years' experience in overseeing and management	<b>1 year</b>
Experience should have been gained for both Reps & KI's within how many years	<b>5 years (Consecutively)</b>
Number of days to report any changes to the FSCA, excluding change of financial year end	<b>15 days</b>
Minimum period to keep records in terms of FAIS	<b>5 years</b>
Minimum period to keep records in terms of FICA	<b>5 years</b>
Number of days to provide information requested by the Commissioner in writing	<b>7 days</b>
Within how many days must funds received from clients be paid into a bank account	<b>1 business day</b>
Number of days within which clients must receive written confirmation of disclosure made orally	<b>30 days</b>
How often must the FSP conduct a review of the Conflict of Interest Management Policy?	<b>Every year</b>
What is the time period within which to resolve complaints received?	<b>It used to be 6 weeks. It has now been reduced to 5 days</b>
For how long do copies of complaints need to be kept by the FSP?	<b>5 years</b>
Within which time period must an aggrieved client submit their complaint to the Ombud once the FSP has provided a resolution to the complaint (if client is not satisfied with the outcome)?	<b>6 months</b>

Aspect	Time period
And if it leads to a conclusion of a financial transaction?	5 years
Regarding civil remedies, after which period will unclaimed monies accrue to the Commissioner from date of 1 <sup>st</sup> distribution	3 years
Number of years that a person guilty of a FAIS penalty could be imprisoned for	10 years
Once the Commissioner published his notice to declare an FSP an undesirable business practice, how many days does the FSP have to make written representations?	21 days
If the FSP continues after the Commissioner as declared them an undesirable business practice, how many days does the Commissioner allow to rectify?	60 days
Number of years that an Accountable Institution need to keep records in terms of FICA	5 years
Where a member of a CC who is a Compliance Practice dies, how many months can the estate of the deceased member hold interest?	6 months
Number of years' experience that a Compliance officer must have in risk management or compliance	3 years
Number of years' experience that a Compliance officer must have in risk management or compliance within the specific product category	1 year
Prescription period within which a client	3 years

Aspect	Time period
must lodge a complaint with the Ombud from the date when the act or omission occurred	
Period that the Ombud can imprison a person who purposefully interrupt proceedings	1 year

## Annexure 1

### Tier 1 and Tier 2 Financial Products

TABLE 1 Financial Products	
Column A Tier 1 Financial Products	Column B Tier 2 Financial Products
Structured Deposits	Short-term Personal Lines A1
Short-term Personal Lines	Long-term Insurance subcategory A
Short-term Commercial Lines	Long-term Insurance subcategory BI-A
Long-term Insurance subcategory B1	Long-term Insurance subcategory B2-A
Long-term Insurance subcategory B2	Friendly Society Benefits
Long-term Insurance subcategory C	Short-term Deposits
Retail Pension Benefits	Long-term Deposits
Pension Fund Benefits	
Participatory interest in a collective investment scheme	
Participatory interest in a CIS hedge fund	
Forex investment	
Health Service Benefits	

TABLE 1 Financial Products	
Column A Tier 1 Financial Products	Column B Tier 2 Financial Products
Shares	
Money Market instruments	
Debentures and securitised debt	
Warrants, certificates and other instruments	
Bonds	
Derivative instruments	
Securities and Instruments	

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## Annexure 2

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### CLASSES OF BUSINESS

1. In this Annexure-

**"Accident and health policy"** has the meaning assigned to it in section 1(1) of the Short-term Insurance

Act, but excludes a reinsurance policy in respect of such a policy;

**"Assistance policy"** has the meaning assigned to it in section 1(1) of the Long-term Insurance Act but excludes a reinsurance policy in respect of such a policy;

**"Engineering policy"** has the meaning assigned to it in section 1(1) of the Short-term Insurance Act, but excludes a reinsurance policy in respect of such a policy;

**"Fund policy"** has the meaning assigned to it in section 1(1) of the Long-term Insurance Act but excludes a reinsurance policy in respect of such a policy;

**"Guarantee policy"** has the meaning assigned to it in section 1(1) of the Short-term Insurance Act, but excludes a reinsurance policy in respect of such a policy;

**"Long-term investment policy"** means a life policy as defined in section 1(1) of the Long-term Insurance Act other than a life risk policy;

**"Liability policy"** has the meaning assigned to it in section 1(1) of the Short-term Insurance Act, but excludes a reinsurance policy in respect of such a policy;

**"Life risk policy"** means a disability, health or life policy as defined in section 1(1) of the Long-term Insurance Act that provides risk benefits only;

**"Long-term reinsurance policy"** means a reinsurance policy as defined in section 1(1) of the Long-term Insurance Act;

**"Miscellaneous policy"** has the meaning assigned to it in section 1(1) of the Short-term Insurance Act, but excludes a reinsurance policy in respect of such a policy;

**"Motor policy"** has the meaning assigned to it in section 1(1) of the Short-term Insurance Act, but excludes a reinsurance policy in respect of such a policy;

**"Property policy"** has the meaning assigned to it in section 1(1) of the Short-term Insurance Act, but excludes a reinsurance policy in respect of such a policy;

**"Short-term reinsurance policy"** has the meaning assigned to it in section 1(1) of the Short-term Insurance Act;

**"Sinking fund"** has the meaning assigned to it in section 1(1) of the Long-term Insurance Act but excludes a reinsurance policy in respect of such a policy;

**"Transportation policy"** has the meaning assigned to it in section 1(1) of the Short-term Insurance Act, but excludes a reinsurance policy in respect of such a policy.

TABLE 1 CLASSES OF BUSINESS	
1	Short-term Insurance :Personal Lines
<i>Subclasses</i>	
1.1	Personal Lines : Accident and health policy
1.2	Personal Lines : Liability policy
1.3	Personal Lines: Miscellaneous policy
1.4	Personal Lines: Motor policy
1.5	Personal Lines: Property policy
1.6	Personal Lines : Transportation policy
1.7	Personal Lines : Short-term reinsurance policy
2.	Short-term Insurance : Commercial Lines
<i>Subclasses</i>	
2.1	Commercial Lines : Accident and health policy
2.2	Commercial Lines :Engineering policy
2.3	Commercial Lines : Guarantee policy

2.4	Commercial Lines : Liability policy
2.5	Commercial Lines : Miscellaneous policy
2.6	Commercial Lines : Motor policy
2.7	Commercial Lines : Property policy
2.8	Commercial Lines : Transportation
2.9	Commercial Lines : Short-term reinsurance policy
<b>3</b>	<b>Long-term Insurance</b>
<i>Subclasses</i>	
3.1	Assistance Policy
3.2	Life Risk Policy
3.3	Life Investment Policy
3.4	Fund Policy
3.5	Sinking Fund Policy
3.6	Long-term Reinsurance policy
4.	Pension Fund Benefits
<b>5.</b>	<b>Short-term and Long-term Deposits</b>
<b>6.</b>	<b>Structured Deposits</b>
7.	Investments
<i>Subclasses</i>	
7.1	Shares
7.2	Money Market Instruments
7.3	Debentures and securitised debt
7.4	Bonds
7.5	Derivative instruments, warrants, certificates and other instruments
7.6	Securities and instruments
7.7	Participatory interests in a collective investment scheme
7.8	Participatory interests in a CIS hedge fund
7.9	Retail Pension Benefits
<b>8.</b>	<b>Forex Investments</b>
<b>9.</b>	<b>Health Services Benefits</b>

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## Sources:

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