

The RE 5 Summary

Client

Means a specific person or group of persons, **excluding** the general public, to whom a financial service is rendered, the successor in title or the beneficiary. **However, very important! For the purposes under section 14 as it pertains to advertising, client includes the general public.**

FSCA

The Financial Sector Conduct Authority (replaced the FSB – the Financial Services Board) is an independent department established by law to oversee the **non-banking** Financial Services industry.

The FSCA has a number of departments, *one* of them being the FAIS department : the department of the FSCA which is responsible for regulating Financial Services Providers

The FAIS departments has a further 4 departments:

Registration - For registering and maintaining the records and details of FSP's, collecting levies, updating central representative register

Supervision – for implementing a risk based approach to supervising FSP's, doing on-site visits and examining compliance reports and financial statements submitted by FSP's

Compliance – requesting inspections, deal with and investigate complaints regarding FSP's, suspension and withdrawal of licenses, handling appeals, record debarment of reps and debar persons in terms of Section 14A of the Act

Enforcement – for preparing documents and liaising between the FAIS department and the enforcement committee who will decide on sanctions (penalties) against people or FSP's who contravene the Act

Commissioner

- Used to be called the Registrar of the FSB
- Commissioner is the Executive Officer or Deputy Executive Officer of the FSCA
- Commissioner approves (grants) FSP & KI applications and approves Compliance Officers, and can remove approval and authorisation
- When assessing whether a person meets the Honesty, Integrity and Good Standing requirements, s/he will consider
 - The seriousness of the conduct
 - The relevance
 - The passage of time
- Commissioner can impose conditions and restrictions on granted licences
- Issues the license and number of certified copies requested
- Commissioner can publish notice to declare an FSP an undesirable business practice
- Commissioner can provisionally suspend a licence, but if contravention of Act is serious, will suspend the license without the notice
- If KI / FSP / new director / member / partner is not Fit & Proper, Commissioner may suspend the license
- Will inform licensee of intention and allow time for representation
- Commissioner can then suspend a licence, withdraw a licence, declare a business practice undesirable, instruct an FSP to rectify or institute legal action against the FSP (civil remedies available)
- Commissioner may debar any person, including a Rep
 - If they don't meet with the requirements
 - Contravened or failed to comply with the Act
- Commissioner requires a continuously updated and central register of all Reps and KI's
- May require FSP to terminate services of auditor
- May withdraw authorisation from compliance officer if they do not comply

Office of the FAIS Ombud

- This Office is independent of the FSCA and is formed in terms of the FAIS Act to attend to complaints against FSP's
- The Office of the FAIS Ombud has the power to make decisions an order of court as well as to award Costs and Damages in line with the FAIS Act
- The FAIS Ombud may refer matters to the FSCA Commissioner if there appears to be a contravention of the FAIS Act
- Ombud will not investigate unless all parties have been informed and had opportunity to respond
- Respondent **NO LONGER** pays non-refundable case fee of R1 000
- Will try and resolve the matter and if one or both parties don't want to accept, then Ombud will make a final determination – either dismissing the complaint, or upholding it wholly or partially
- Can award costs, interest over and above award, which may not exceed what a court would have awarded and will be in line with the type of complaint, prejudice suffered etc. as determined by the Board
- Only have 3 years to submit complaint (or within 3 years that client ought to have become aware)
- Will not proceed with complaint if complainant has approached the courts, or during, wants to approach the court
- Determination becomes a civil court judgement
- Only appealable at the Financial Services Tribunal (used to be the FSB's Board of Appeal)
- Writ of execution to be issued by court and sheriff appointed
- If complainant delayed proceedings etc., the Ombud can award costs against the complainant
- Any person that commits an act that would have constituted contempt of court if it had occurred in court, is guilty of an offence on conviction to a penalty or if they wilfully interrupt proceedings, a fine or 1 year imprisonment

Compliance Officer

- As soon as FSP has more than 1 KI or Rep, then Compliance officer is required
- A Compliance Officer may be an internal appointment or an outsourced appointment (external)
- The Compliance Officer must meet specific qualification and experience requirements (3 years' experience (could be gained under supervision) and relevant qualifications) and be approved/authorised by the FSCA (2 phase approval)
- The duties of the Compliance Officer are;
 - Facilitate the implementation of FAIS compliance
 - Monitor compliance within the business
 - Keep records of all monitoring done
 - Report to Management at least every quarter on the status and progress of compliance
 - Report to the FSCA on an annual Basis – the Compliance Report (to be replaced with Conduct of Business Reports – CBR)
 - Report to Management or the FSCA in the event of a material breach of the FAIS Act
 - Report irregularities or suspected irregularity in conduct or affairs of the FSP which is material
- Important, Compliance officer does not prepare financial statements or sign them off, this is the auditor and FSP signs off (Director or Financial Director etc.)
Compliance officer just submits financials to FSCA
- Also, ultimate responsibility of compliance with the Act lies with the FSP. The compliance officer will monitor and advise and make recommendations, but at the end of the day the KI and FSP will take responsibility of non-compliance

Key Individual

- KI is a natural person
- KI is appointed by the FSP, but approved by the Commissioner
- KI appoints Reps

- KI oversees and manages the rendering of financial services (advice and intermediary services) by the Reps, must be able to implement and maintain the operational ability of the FSP and fulfil the responsibilities imposed by the Act
- KI must be Fit and Proper
 - Honesty and Integrity (called personal character qualities) – must out of own accord volunteer the information and be candid and accurate
 - For example, previous judgements, including criminal or civil matters regarding (but not limited to) theft, fraud, dishonesty, breach of fiduciary duty, misrepresentation, negligence, dishonourable or unprofessional conduct
 - Offences of supervision of financial institutions
 - Offences under Prevention of Corruption Act, Corruption Act or Prevention and Combating of Corruption Activities Act, or similar offences in any country
 - Lack of compliance with Regulatory deadlines or subject of regulatory actions
 - Lack of willingness or readiness to comply with legal, regulatory or professional requirements
 - Disciplined by, refused or withdrawal of, or denied membership of professional and/or regulatory bodies
 - Dismissed, suspended or disqualified as director, managing executive, public officer, auditor or statutory actuary
 - Been untruthful or provided false or misleading information to, or uncooperative in dealing with Commissioner or regulatory authority
 - Found not Fit & Proper and not remedied
 - **Must out of own accord, disclose all relevant info**
 - Competent
 - Class of Business
 - Full qualification
 - Minimum experience (KI's also need one year's experience in overseeing and managing rendering of financial services by Reps of the FSP in that product category or services similar to)

- Regulatory Exams
- CPD (Continuous Professional Development)
 - Operational ability (ensures & maintains)
 - IF KI is Sole Proprietor, then Financial Soundness as well

All must be adhered to when applying as KI

- KI must ensure that Rep register is updated and maintained
- KI must ensure and maintain operational ability which refers to
 - Fixed business address
 - Telephone (communication facilities)
 - Document typing and duplication facilities
 - Storage and filing systems
 - Adherence with FICA if Accountable Institution
 - Account with a registered bank, and where required, a separate bank account for client funds
- KI must ensure that Reps are trained regarding FAIS
- Ensure that supervised Reps adhere to all of the requirements related to supervision
- Ensure that Reps that don't comply are debarred and that the correct procedures are followed
- Ensuring that processes, procedures and systems are in place to ensure adherence to the Act and that appropriate records are kept
- Notifying the FSCA of FSP changes within **15 days** (**14 days** if change of financial year-end approved by another regulator)
- Notifying the Commissioner of changes regarding Reps within **15 days**
- Ensure that un-concluded business of Reps that leave the FSP are appropriately concluded and that no clients are prejudiced
- May appeal against the Commissioner's decision at the Financial Services Tribunal (used to be the FSB's Board of Appeal) at the FSCA

FSP

- Ensure that all KI's and Reps are competent to act and comply with all requirements, are FIT & PROPER, comply with the Code of Conduct, are trained, adhere to CPD requirements and keep a competence register for all KI's and Reps
- Assess the operational ability of its KI's to perform their functions
- Ensure FSP is FIT & PROPER
 - Honesty, Integrity and Good Standing
 - Competence
 - Operational Ability
 - Financial Soundness
 - Assets must always exceed liabilities
 - May not be under business rescue, insolvent, sequestrated or liquidated
- Ensure that
 - Compliance reports are submitted (Sole Proprietors submit self and where FSP has an officer or appointed a practice the latter will submit the report, but the FSP must review the report and sign the declaration attached)
 - Financial statements are submitted
 - Payment of annual levies
- May only act if authorised (license has been granted). May not act if license has been suspended or withdrawn
- Remove KI or Reps name from the register **when debarred and requested by the Commissioner** within **5 days**
- May not allow a rep to outsource or sub-delegate any activities the rep performs on behalf of the FSP
- Design and implement policies and procedures to ensure that business can be carried on in an orderly and efficient manner, reduce risk to FSP and clients, all information is accurate, reliable, backed-up and safe from destruction and all applicable laws are complied with
- Remuneration paid must be reasonable, it won't increase risk or unfair treatment to clients and is in accordance with all relevant legislation

- Display a certified copy of license in every business premises in a prominent and durable manner
- Refer to the fact that a license is held in all docs and advertisements
- Produce the license to anyone requesting it
- Ensure that directors / members / partners etc. are Fit & Proper and inform the Commissioner **within 15 days** when new person has been appointed
- Sole proprietor FSP must have qualification when applying
- Sole proprietor FSP must have minimum experience
- When changing license
 - Adding new service – 50% of experience
 - Adding new subcategory – 100%
- When using a 3rd party to render admin services or system functions, SLA in place stipulating agreed services, time standards, roles and responsibilities and penalties
- Ensure that internal control structures are in place which include segregation of duties, logical access security, access rights and data security, physical security of assets and records, documentation relating to processes, procedures, policies and controls, system application testing, disaster recovery and back-up, training for KI's and reps regarding Act and rendering of Financial Services and a business continuity plan
- Ensure that necessary system controls are in place, general admin processing and risk control measures
- Must record all financial and system procedures to enable FSP to report in terms of accounting requirements
- Bring accounts up to date monthly
- Submit annual statements to Commissioner (Compliance officer will usually do this, but FSP must ensure it happens)
- Maintain in force suitable guarantees, professional indemnity insurance and fidelity insurance cover to cover risk of losses due to fraud, dishonesty or negligence
- When accepting client funds or documents, issue written receipt, keep safe and separate from FSP's funds, pay into designated (separate/trust) account in **1 business day**

- Maintain a Rep register
- Take responsibility for activities of the Rep
- Recruitment of reps – check the following:
 - Entry level qualification
 - Usually matric/senior certificate/NQF Level 4 certificate except Cat 1.1 & 1.19 & Cat 1 Execution of Sales – their requirements are less – check under Fit & Proper for Reps later in this document
 - Experience
 - Qualification
 - Regulatory exams
 - Honesty and integrity
 - Person has been debarred?
- Can employ Rep under supervision if competence fit and proper is not adhered to
 - Selection of supervisor – natural working relationship
- When Rep is debarred, ensure that un-concluded business is properly concluded and clients aren't prejudiced
- Pay levies
- When receiving client funds, keep it separate, pay it into account in **1 business day**, give receipt to client
- When rendering financial services, do so in plain language, provide factually correct information which is adequate and appropriate, provide it timeously in order for clients to make informed decisions, provide it in writing when requested, provide all fees, sums etc. in monetary terms or provide the calculation thereof
- Disclose personal interest or conflict of interest and incentives offered or received
- Execute service in accordance with the contract as soon as possible in the interest of the client
- Accurately account for all transactions
- Don't deal with any product for own benefit, account or interest
- Have a conflict of interest management policy to identify and manage conflict of interest. All staff must be trained on the policy and clients must be able to view it

(publish in appropriate media). Compliance officer to report on implementation and compliance with report to Commissioner and policy must be reviewed annually

- Don't offer financial interest to Rep to give preference to product, product suppliers or promote quantity to the exclusion of quality
- Disclose nature, extent and frequency of "valuable considerations" (all sums, fees, charges etc.)
- Disclose details about FSP and Product Supplier
- Disclose interest in a product supplier (10%) or if income from P.S. exceeded 30% in preceding 12 months
- Give clients a choice between product suppliers (if applicable) and use judgment objectively
- Not make inaccurate/unsubstantiated/unfair statements about other product suppliers, their products, FSP's, reps etc. If comparing products, must be done based on facts
- Always act in the interest of the client, honourably and professionally
- Disclose risks and changes when products are replaced
- Keep data and records of complaints, categorise them and report on them
- Act upon complaints received in **5 days** and provide the client with all of the information, contact details, who is working with complaint and have process to complain available and accessible, communicate regularly, fairly and frequently with complainant
- If complaint is not resolved, give other avenues available to the client
- Advise client to go to Ombud within **6 months** if not resolved, provide all details of Ombud, keep records of complaints to Ombud and outcome, monitor determinations and guidance by Ombud to identify failings and risks in own processes and policies, and adjust accordingly
- Have systems and reviews that routine complaints are rectified and avoided in future, senior manager must review complaints, procedure of complaint must be in easy language and published for clients and non-routine complaints can be escalated
- All adverts must be factual and may not contain untrue, fraudulent or misleading information. Must use plain language and clearly display warnings, risks and terms

and conditions. Ads cannot lead the average targeted client to any false conclusions, no negative option marketing and a key person must be used to approve ads.

- Make risks known and disclose if returns are not guaranteed or dependant on other variable factors and if projections are based on past performance etc.
- Maintain records for a minimum of **5 years** regarding known premature cancellations, non-compliance, complaints received and ongoing licensing and continued compliance
- Provide docs to Commissioner in writing in **7 days**
- If accountable institution with FICA, then
 - Have responsible person
 - Systems, processes and procedures
 - Train staff
 - Provide records when warrant is received
 - Report transactions
 - Keep records for **5 years**
 - Keep records of ID's and authorisation, all transactions, accounts, amounts etc.
 - Give assistance to the representative from the Centre
 - Must have a warrant issued in chambers (local jurisdiction)
 - Evidence could be admissible in court
 - Can use 3rd party to store records, but must inform Centre who they are, their contact details, FSP remains accountable for records and must have free and easy access to records
- FSP's assets must exceed liabilities
- Submit financials within **4 months** from financial year-end

Changes:

- Inform Commissioner, within **15 days**, when:
 - KI is replaced with a new one
 - New KI is appointed
 - KI's personal circumstances change

- New director/member etc. is appointed

Lapsing:

- FSP can lapse license due to financial reasons, ill health, death, injury or business reasons by surrendering it to the FSCA
- Commissioner must be informed in writing, with reasons

Accounting and Auditing requirements:

- All FSP's must maintain accounting records, brought up to date monthly
- Full set of financial statements to be submitted to the Commissioner within **4 months** from the year end of the provider

Representatives

- Is employed or mandated
- Renders financial services on behalf of authorised FSP's
- Makes a judgement call
- Provides advice – recommends, guides and proposes in term of any financial product
- Juristic Reps (not a natural person, like a company) must have operational ability, financial resources, cannot increase risk for FSP or prevent FSP of acting in the best interest of clients and must have at least 1 KI responsible for managing or overseeing the financial services rendered by the representatives
- Must take all reasonable steps to get info from client to conduct a detailed Financial Needs Analysis (FNA), being client's Financial Situation, Financial Product Experience and the Objectives that the client has
- Identify suitable product, make full disclosures, act in the best interest of the client, explain sufficiently in plain language, allow client time to make an informed decision, record details in a record of advice, give the client a copy.
- If recommending replacing a product, fully disclose all implications to the client, like the costs and consequences, fees and charges, exclusions, excesses, loadings, waiting periods, restrictions, effect of age and health in case of insurance product,

tax implications etc. AND notify issuer of the long term insurance contract if their policy is to be replaced

- Don't compare different financial products unless differing characteristics are made client and no inaccurate, unfair or unsubstantiated criticisms are made
- Adhere to the Code of Conduct
 - Act honestly and fairly with due skill, care and diligence in the interest of clients
 - Have and effectively employ the resources, procedures and appropriate technological systems to perform activities
 - Seek from clients appropriate and available information regarding their financial situation, financial product experience and objectives
 - Treat clients fairly
 - Comply with applicable statutory or common law requirements
- Code of Conduct must contain provisions to
 - Making of adequate disclosures of relevant information, including disclosures of actual or potential own interest in relation to dealing with clients
 - Adequate and appropriate record keeping
 - Avoiding fraudulent and misleading advertising
 - Protecting funds and documents
 - Suitable guarantees, PI or fidelity cover
 - Control or prohibit incentives
 - Any other matter necessary to better achieve the Act
- Rep may not act on behalf of FSP that is not authorised
- Reps are approved (appointed) by KI's/FSP
- Must provide client with certified copy (certified by FSP) that a contract or mandate exists and that FSP accepts responsibility of activities performed (Section 13 Certificate)
- May not act if debarred
- May only deal with categories that they have been authorised for
- Must be Fit & Proper

- Honesty, Integrity & Good Standing (Rep to volunteer information and be candid and accurate)
- Competence
 - Product specific training **before advice is given**
 - Class of Business training within **1 year** from DOFA
 - RE (also referred to as exams determined by the Commissioner) – within **2 years** from DOFA
 - Recognised qualification – within **6 years** from DOFA
- If not competent, can be appointed under supervision
 - Must advise clients when acting under supervision
- Also needs experience in active involvement of rendering services, not more than **5 years** prior, could have been gained intermittently and simultaneously in or outside the RSA
- Cannot be insolvent, under liquidation, business rescue or subject to pending proceedings which may lead to this outcome
- Operational ability insofar it applies to a Rep
- Entry level requirements
 - Matric
 - Grade 12
 - Other equivalent school leaving certificate / NQF Level 4
 - Long Term Cat A and Friendly Benefit Societies – only ability to read, write and calculate (ABET Level 1/Grade 3)
 - Cat I FSP's only authorised for Execution of Sales – reps only need a Grade 10 / Grade 10 equivalent achievement
- Comply with the Act and its subordinate legislation
- If debarred, may not act and must be reappointed before the Rep may act again
 - Wait at least **12 months** before reappointment, unless due to Competence – if then Competent can be reappointed immediately
 - If Commissioner debars – usually between **2 – 5 years** – must wait that period

- To be reappointed – must adhere to Fit and Proper and ALL other requirements

Rep register

- Contain Rep & KI's name and business address
- Rep works as employee or mandated
- Categories that services are rendered in
- If rep works under supervision
- Must be updated every **15 days**

Debarment

If FSP debars, then they need to remove the person's name from the Rep register and inform the FSCA, in writing, with reason, of such within **15 days** (withdraw Rep's authority to Act on behalf of the FSP)

If the Commissioner debars, then the FSP only has **5 days** to remove the person's name from the Rep Register

- The debarred Rep may appeal to the Financial Services Tribunal (used to be the FSB's Board of Appeal) at the FSCA within **30 days** by paying the fees and following the process prescribed by the Minister

Supervision

- First period is an active period where all activities are signed off
- Thereafter activities are monitored, i.e. bi-monthly
- Agreement must be in place and evidence of supervision must be kept
- Supervisee to disclose the fact that s/he works under supervision

Recruitment:

Check

- entry level requirement (matric, grade 12, NQF 4 qualification or in terms of Cat 1.1 & 1.19 – ABET Level 1)
- experience

- relevant recognised qualification
- RE's
- Honesty and Integrity
- Whether person has been debarred

If compromised honesty and integrity or previously debarred – need to check reform and make decisions very carefully

FICA

- Accountable institutions must appoint responsible person and train employees to comply with Act
- Keep records of all transactions, accounts involved, persons involved, their identities and authorisations to act on behalf of others, if applicable, nature of relationships and person who obtained all of the info
- Keep all records for a minimum of **5 years**, and if records are kept by 3rd party, inform the FIC of all details and ensure free and easy access
- Assist FIC representative when warrant is received to obtain admissible evidence that could lead to criminal charges
- Penalties are mostly R10 000 000 and/or imprisonment of 15 years, but fine for person convicted in terms of FICA could be up to R100 000 000
- Report transactions above **R49 999.99** (changed from R24 999.99)
- Verify residential address
- Know accountable institutions and ensure you know about recent changes to the list that include high value items above R100 000 and crypto currencies now included
- Reportable institutions no longer applicable, due to the above

Other important aspects:

- Financial services refer to the giving of advice and intermediary services
- The “body” used to confirm credits and/or qualifications is INSETA
- Know definition of Advice, what advice is not and intermediary services (refer to INSETA diagrams). Remember that Financial Services refers to Advice and/or Intermediary Services
- Know the different financial products
- Client excludes the general public, except when we refer to advertising
- Know the Accountable Institutions in terms of FICA
- Car dealers and selling Kruger Rands are no longer REPORTABLE institutions in terms of FICA, due to the inclusion of all products sold valued at R100 000 and above
- Know the penalties in terms of the Act – **R10 000 000 and/or 10 years in prison**

Laws Amended or Repealed

Financial Services Board Act, 1990

Stock Exchanges Control Act, 1985

Financial Markets Control Act, 1989

Drugs and Drug Trafficking Act, 1992