

Key Individual Regulatory Exam Workshop Material (RE1)



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Introduction to the material

The following tasks are necessary to know for the RE1 exams (updated April 2018)

TABLE 1: REGULATORY EXAMINATION: FSPs AND KEY INDIVIDUALS IN ALL CATEGORIES OF FSPs

(Criteria highlighted in bold and italic, is identical/similar to the RE5 (Representatives) tasks)

TABLE 1				
Task No	Task	QC	Qualifying Criteria	Knowledge (K) or Skills (S)
1	Demonstrate understanding of the FAIS Act as a regulatory framework	1	<i>Describe the FAIS Act and subordinate legislation</i>	K
		2	Explain how the FAIS Act is integrated with other Financial Services Board Legislation	K
		3	Describe the requirements when interaction between FSPs take Place	K
		4	Explain in general which departments of the Registrar's office deal with which FSP matters.	K
		5	Interact with the Registrar when and where required.	S
		6	Explain what the correct format of communication with the Registrar is.	K
		7	Explain what processes are required to remain updated with regard to published changes to legislation that will affect the FSP.	K
2	Define financial	1	<i>Provide an overview of the financial</i>	K

	Products and financial services.		<i>services and different types of products an FSP can deal with.</i>	
		2	<i>Apply knowledge of the financial products within the financial services environment.</i>	S
		3	<i>Explain the financial products with examples of products in each category.</i>	K
3	Maintain the license of the FSP.	1	Describe the requirements for licensing of an FSP.	K
		2	Apply for an FSP license.	S
		3	Describe the requirements for changing any aspect of an FSP license.	K
		4	Explain the impact of licensing conditions on an FSP.	K
		5	Manage the licencing conditions.	S
		6	Describe what changes to the FSP licensing details must be communicated to the Registrar.	K
		7	Confirm that the Registrar is informed within the prescribed timeframes of any changes to the FSP licensing details.	S
		8	Describe the implication for the FSP if any of the licencing conditions are not met.	K
		9	<i>Discuss the requirements around the display of licenses.</i>	K
		10	Verify that the FSP has internal controls and procedures in place to ensure that the financial services are rendered within the limitations on categories and subcategories for which the license is issued.	S
		11	Explain the implication when a Key	K

			Individual leaves the employ of the FSP.	
		12	<i>Explain the implications for the Key Individual and/or FSP if an accreditation is suspended or withdrawn or lapsed in terms of the Medical Schemes Act, 1998 or any other enabling legislation.</i>	K
		13	Explain what levies are payable to the Registrar and when they should be paid.	K
		14	Verify that there are processes in place to pay the levies within the prescribed timeframes.	S
		15	Explain the reason why the license can be suspended or withdrawn.	K
		16	Describe the conditions under which suspensions, withdrawals and reinstatement of authorisation may be imposed.	K
		17	Explain what resource an FSP has where its license has been suspended or withdrawn.	K
		18	Discuss why a license would be lapsed.	K
		19	Describe how lapsing a licence differs from suspension or withdrawal of a licence.	K
		20	Discuss the effect of voluntary sequestration, winding-up or closure of a business on its licensing status.	K
		21	Describe the requirements where business rescue or application by Registrar for sequestration or liquidation takes place.	K
		22	<i>Explain what is meant by “undesirable practice”</i>	K
		23	Check that there are processes in place to check whether the Registrar has published	S

			notices regarding undesirable practice.	
		24	Verify that there are processes in place to ensure that the business is aware of declared undesirable practices and that they cease any such practices.	S
		25	Describe the implication for an FSP if the Registrar declares a business practice to be undesirable.	K
		26	Explain the reparation measures available to the Registrar if an FSP continues with undesirable business practices.	K
		27	Explain the implication where the Registrar issues a directive.	K
		28	Describe the process of On-site inspections by the Registrar.	K
		29	Describe the FAIS Act offences.	K
		30	Ensure that there are processes in place to avoid actions that can be regarded as offences under the FAIS Act.	S
		31	Define the recourse that an FSP has in the event of a decision made by the Registrar.	K
		32	Explain the process of enforcement as provided for in legislation.	K
4	Operate as an key individual in terms of the FAIS Act	1	Describe the roles and responsibilities of key individuals as divined in the FAIS Act.	K
		2	Explain the requirements for approval of key individual by the Registrar.	K
		3	Describe the regulated management and oversight responsibilities of a key individual.	K
		4	Perform the regulated management and	S

			oversight responsibilities of a key individual.	
		5	Explain the controls required to ensure sufficient management oversight of the financial services that are rendered.	K
		6	Explain when an individual can commence acting as key individual.	K
		7	Describe the good standing, honesty and integrity requirements for a key individual.	K
		8	Check whether a current/potential key individual meets the good standing, honesty and integrity requirements.	S
		9	<i>Explain the implications for a key individual should the key individual no longer meet the good standing, honesty and integrity requirements.</i>	K
		10	Take appropriate action where a key current individual no longer meets the good standing, honesty and integrity requirements.	S
		11	Explain the implications for an FSP should a key individual no longer meet the good standing, honesty and integrity requirements.	K
		12	Describe the competence requirements for a key individual.	K
		13	Check whether a current potential key individual meets the competence requirements.	S
		14	Describe the on-going training and development for key individuals.	K
		15	Verify that the record keeping required for	S

			the on-going meeting of fit and proper requirements for key individuals is in place.	
5	Manage and oversee the operational ability of the FSP	1	Describe the operational ability requirements prescribed in the FAIS Act.	K
		2	Confirm that there is adequate storage and filing systems for the safe keeping of records, business communications and correspondence.	S
		3	Verify that the FSP has the required bank accounts.	S
		4	Implement and maintain the prescribed professional indemnity or fidelity insurance cover.	S
		5	Ensure that disaster recovery and business plans are in place.	S
		6	Describe the financial soundness requirements for an FSP.	K
		7	Confirm that the financial soundness requirements are met.	S
		8	Describe the requirements when outsourcing an administration or system function relating to financial services.	K
		9	Ensure, where activities are outsourced, that written services level agreements are in place.	S
		10	Check that there are processes in place to ensure that suitable providers are selected for any outsourced functions.	S
		11	Confirm that where outsourced entities provide financial services, that they are authorised FSPs.	S

6	Adhere to the General Code of Conduct.	1	<i>Describe the general and specific duties of a provider.</i>	S
		2	Describe the processes that need to be in place to manage conflict of interest.	K
		3	<i>Describe what could possibly be a conflict of interest.</i>	K
		4	Define that needs to be in a conflict of interest policy.	K
		5	Ensure that the FSP is managing potential conflict of interest.	S
		6	<i>Apply the requirements of the General Code of Conduct for FSPs and Representatives.</i>	S
		7	<i>Explain the disclosures that need to be made before rendering a financial service.</i>	K
		8	<i>Explain disclosures that must be made when rendering a financial service.</i>	K
		9	Check that disclosures are adequate to enable clients to make an informed decision.	S
		10	<i>Explain the requirements for an FSP when custody of financial products and funds occurs.</i>	K
		11	Confirm that there is a separate bank account with a registered bank into which client monies are deposited.	S
		12	Explain the requirements of the General Code of Conduct for FSPs and Representatives relating to risk management and insurance.	K
		13	Explain the requirements of the General	K

			Code of Conduct for FSPs and Representatives relating to marketing and advertising.	
		14	<i>Explain the manner in which complaints are to be handled by the FSP as required by the General Code of Conduct for FSPs and Representatives.</i>	K
		15	Verify that complaints procedures and processes are in place.	S
		16	<i>Follow the complaints procedures and processes that are in place for the FSP.</i>	S
		17	<i>Explain the requirements of the General Code of Conduct for FSPs and Representatives relating to the termination of agreement or business.</i>	K
7	Manage and oversee the compliance functions as required by the FAIS Act.	1	Describe the compliance arrangements required by the FSP.	K
		2	Explain the requirements of the compliance function within the FSP.	K
		3	Establish the compliance function within the FSP.	S
		4	Establish and maintain compliance and reporting arrangements for the FSP.	S
		5	Check that the compliance arrangements specify frequency of monitoring and reporting.	S
		6	Implement and maintain a documented process to ensure the adequacy of the FSPs compliance and monitoring arrangements.	S
		7	Describe when a Compliance Officer should be appointed.	K

		8	Explain the criteria for approval of a Compliance Officer.	K
		9	Ensure that the Compliance Officer is approved by the Registrar.	S
		10	<i>Describe the role and function of a Compliance Officer.</i>	K
		11	Confirm that the compliance function /practice has sufficient resources to provide an efficient compliance service.	S
		12	Explain why it is important for the Compliance Officer to act independently from the management of the FSP.	K
		13	Confirm that the compliance function /practice can function objectively and sufficiently independently of the FSP and avoids conflicts of interest.	S
		14	Explain why it is important for the Compliance Officer to be able to avoid conflicts of interest during the execution of their duties.	K
		15	Manage potential conflict of interest where there is not a specifically appointed Compliance Officer\practice.	S
		16	Understand the content of the compliance report(s) in order to be able to sign it off.	K
		17	Confirm that where the Compliance Officer found any instances of non-compliance that this is addressed and rectified.	S
		18	Replace the Compliance Officer if he/she does not have the approval of the Registrar.	S
8	Comply with	1	<i>Explain the record keeping obligations as</i>	K

	regulated record keeping requirements.		<i>prescribed by the FAIS and FIC Acts.</i>	
		2	Verify that record keeping and retrieval of records is carried out in terms of the obligations prescribed by the FAIS and FIC Act.	S
		3	Describe the requirements imposed when record keeping is outsourced to a third party.	K
		4	Confirm that third party outsourcing agreements are executed correctly.	S
		5	Explain the security requirements for record keeping in terms of confidentiality and access to records.	K
9	Manage and oversee the accounting and auditing requirements.	1	Describe the accounting and auditing requirements prescribed by the FAIS Act.	K
		2	Check that the required accounting and auditing requirements are in place and carried out accurately and timeously.	S
		3	Describe the requirements for appointing an auditor or accounting officer.	K
		4	Ensure that the audit report submitted to the Registrar where funds are received meets the regulatory requirements.	S
10	Manage and oversee the requirements of the FIC Act and Money Laundering and Terrorist Financing	1	<i>Explain the requirements specific to an FSP prescribed by the FIC Act.</i>	K
		2	<i>Verify that all requirements for internal rules as required by the FIC Act are in place.</i>	S
		3	Verify that the FSP has processes in place to ensure compliance with the identification, verification, record keeping and reporting obligations under the FIC Act.	S

	control regulations as it applies to the FSP.	4	Check that there are processes in place to ensure employees receive training in respect of, and are aware of, their obligation to report suspicious transactions.	S
11	Deal with complaints that have been submitted to the Ombud for FSPs	1	<i>Explain the role and authority of the Ombud for FSPs</i>	K
		2	Discuss the obligations of the FSP in respect of an investigation conducted by the Ombud for FSPs.	K
		3	Check that there are processes in place to ensure that the FSP cooperates in the case of an investigation by the Ombud.	S
12	Define the role of the representative in terms of the FAIS Act.	1	<i>Describe the role and the responsibilities of the representative as defined in the FAIS Act.</i>	K
		2	Explain when an individual must be appointed as a representative in terms of the FAIS Act.	K
		3	<i>Describe the purpose and requirements of the register of representatives.</i>	K
		4	Verify that the FSP maintains a register of representatives that meets the requirements of the FAIS Act.	S
13	Manage and oversee the appointment of representatives.	1	Explain what needs to be in place when appointing a representative.	K
		2	Verify that there are processes that enable the FSP to check that a representative meets the fit and proper requirements and can be appointed.	S
14	Manage the rendering of	1	<i>Explain when representatives can act under supervision.</i>	K

	services under supervision.	2	Confirm that there are sufficient qualified individuals to act in the role of supervisor.	S
		3	<i>Describe the requirements that must be in place when representatives act under supervision.</i>	K
		4	Ensure that the supervisors understand their role and have the capacity for the number of representative.	S
		5	Verify that there is supervision in place to oversee representatives.	S
		6	Perform the necessary supervision function on representatives.	S
		7	Explain the disclosure requirements for a representative under supervision.	K
15	Manage and oversee the representatives appointed by an FSP.	1	<i>Describe the on-going fit and proper requirements for representatives.</i>	K
		2	Verify that the record keeping required for the on-going meeting of Fit and Proper requirements for representatives is in place.	S
		3	Implement and maintain a documented process to ensure that all representatives are competent and will provide financial services on behalf of the FSP in accordance with the FAIS Act.	S
		4	Check that there are processes to ensure that representatives are making progress towards Fit and Proper requirements.	S
		5	<i>Describe the implication if a representative no longer meets the Fit and Proper requirements.</i>	K
16	Debar	1	<i>Define the purpose of debarment.</i>	K

	representatives that failed to comply with any provision of the FAIS Act in a material manner.	2	<i>Describe when debarment should be considered.</i>	K
		3	Check that the employment/mandatory agreement with representatives includes scope of activities as a representative and reason for possible debarment.	S
		4	<i>Explain the debarment process that should be followed in the event of a possible contravention of the FAIS Act.</i>	K
		5	Confirm that all role players in the FSP are informed about the reason why debarment would be considered, the process that would be followed <i>and any recourse that a representative may have.</i>	S
		6	Verify that there are internal processes and procedures in place for the debarment of representatives.	S
		7	Explain the timeframe and process to notify the Registrar of a debarment.	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, FSB/FSCA communication, tools used by compliance officers, our own knowledge and INSETA material was used to design and develop the material.

Please note, all the RE5 material is contained in this manual, so one could study for and complete the RE1 and RE5 exams.

The History of FAIS – FAIS Act 37 (2002)

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**

Objectives of the FAIS Act

- 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

Latest updates in the Financial Services Sector

As from the 1st of April 2018, the FSB has been 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, is live.
- A Financial Sector 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 21st 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).

The FSB – now referred to as FSCA

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 FSCA 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.fsca.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

Term	Definition from the Act
Representative	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. The financial service is either advice, and/or intermediary services.
Key Individual	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 “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.
Auditor	Means an auditor registered in terms of the Auditing Profession Act, 2005 (Act No. 26 of 2005)
Compliance Officer	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.
Client	Means a specific person or group of persons, excluding 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. However, very important! For the purposes under section 14 as it pertains to advertising, client includes the general public
Support staff	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
The Registrar <i>In future to be called the Commissioner</i>	<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><i>In future, a commissioner and deputy commissioners will make up the executive committee that will lead the FSCA.</i></p>
Authority	Means the Financial Sector Conduct Authority established in terms of section 56 of the Financial Sector Regulation Act
The FSB <i>(to be replaced by the FSCA – see below)</i>	<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>
The FSCA	<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</p>

Term	Definition from the Act
	Commencement Notice for the FSRA, formally establishing both the FSCA and its sister organisation, the Prudential Authority (PA).
Authorised FSP's or Providers	Means a person who has been granted an authorisation as a financial services provider (a license has been issued by the FSCA under section 8)
CPD – Continuous Professional Development	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
Court	Means any court having jurisdiction
Product supplier	Means any person who issues a financial product
Publish	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
Employed	Means that there is a service contract that exists between the employer, FSP or Product supplier and the representative
Mandate	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.
DOFA	Date of First Appointment as a Rep or KI with the FSCA

Registrar vs Commissioner

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

This means that from now on the Registrar of the FSB will be referred to as the Commissioner of the FSCA.

What is Financial Services

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**

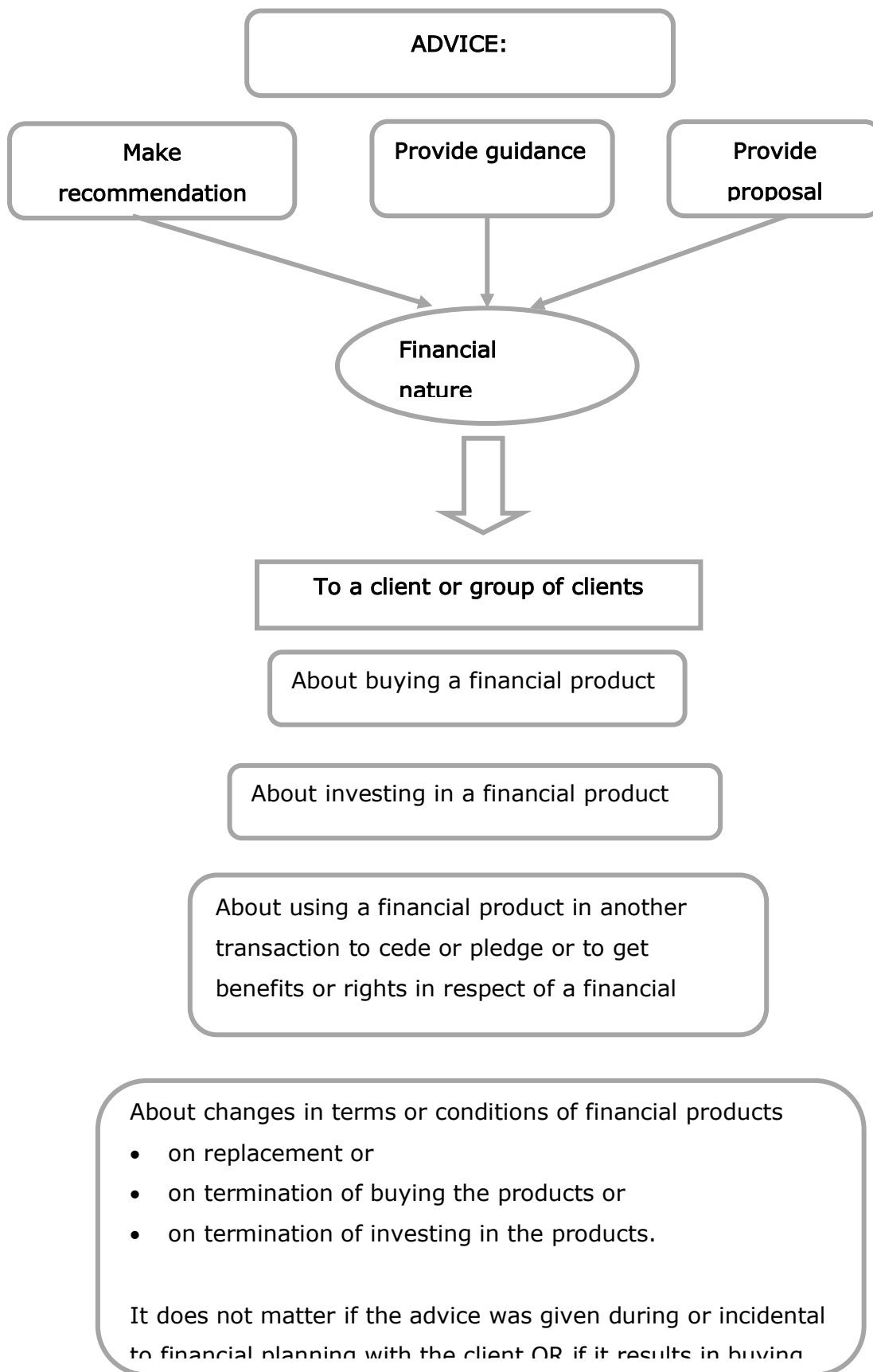
- Of a financial nature furnished
- By any means or medium
- To any client or group of clients regarding
 - Purchasing any financial product
 - Investing in any financial product
 - The conclusion of any other transaction (including a loan or transaction aimed at incurring liability OR acquisition of 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:



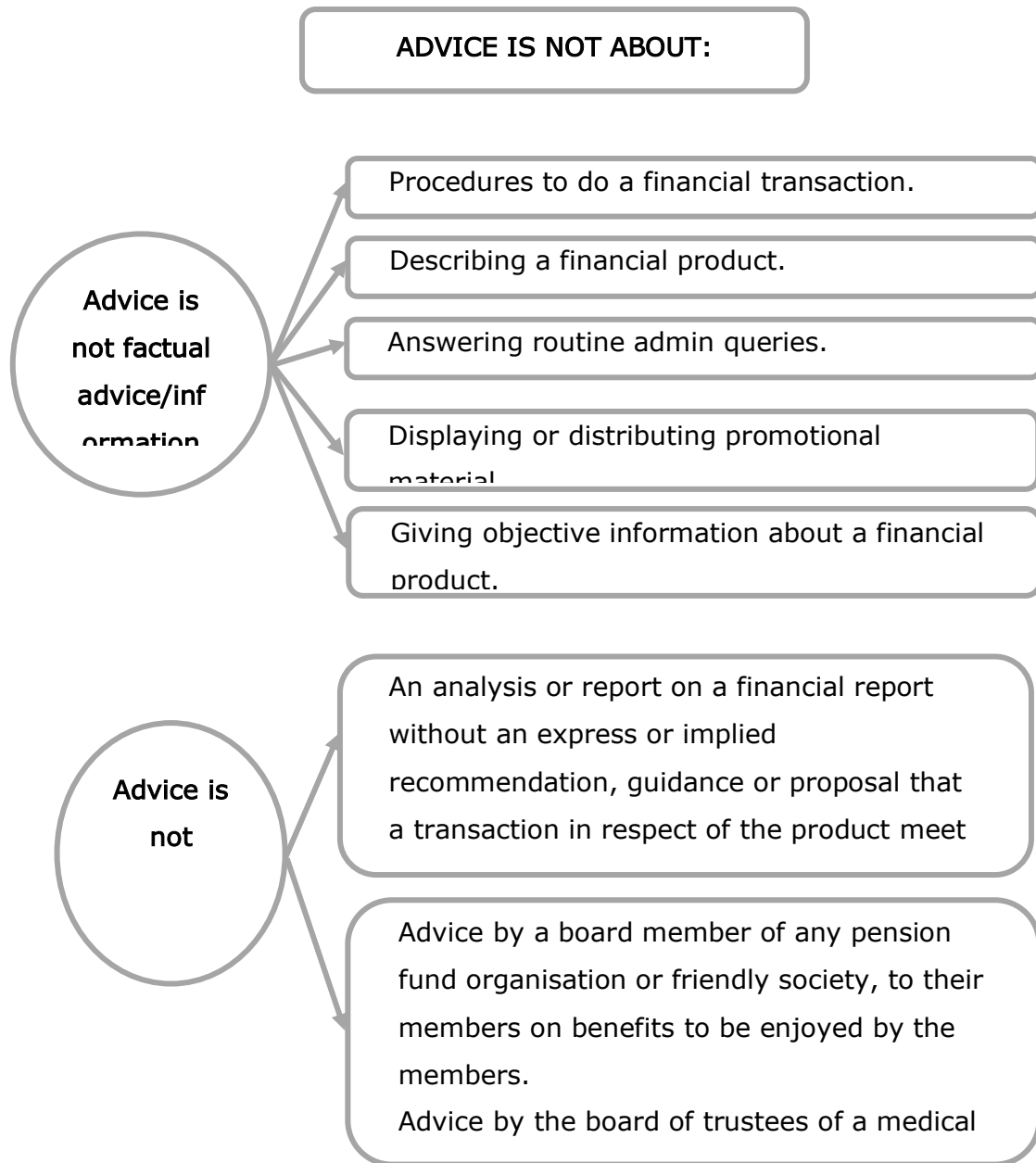
Advice is not about:

Very important to know!

Advice does not include:

- Factual advice given merely –
 - On the procedure for entering into a transaction
 - Describing financial products
 - Answering routine admin queries (e.g. how do I claim?)
 - Providing objective information about a particular product
 - Displaying or distributing promotional material
- An analysis or report on a financial product without any express or implied recommendation, guidance or proposal that any particular transaction in respect of the product is appropriate to the particular investment objectives, financial situation or particular needs of a client
- Advice given by
 - Board of Management, or board member, of any pension fund or friendly benefit society, to the members of the fund or society on benefits to be enjoyed by the members
 - The board of trustees, or board member of any medical scheme, to the members of the medical scheme on health care benefits to be enjoyed

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



(Source: INSETA Representative Training Material)

What is Intermediary Services?

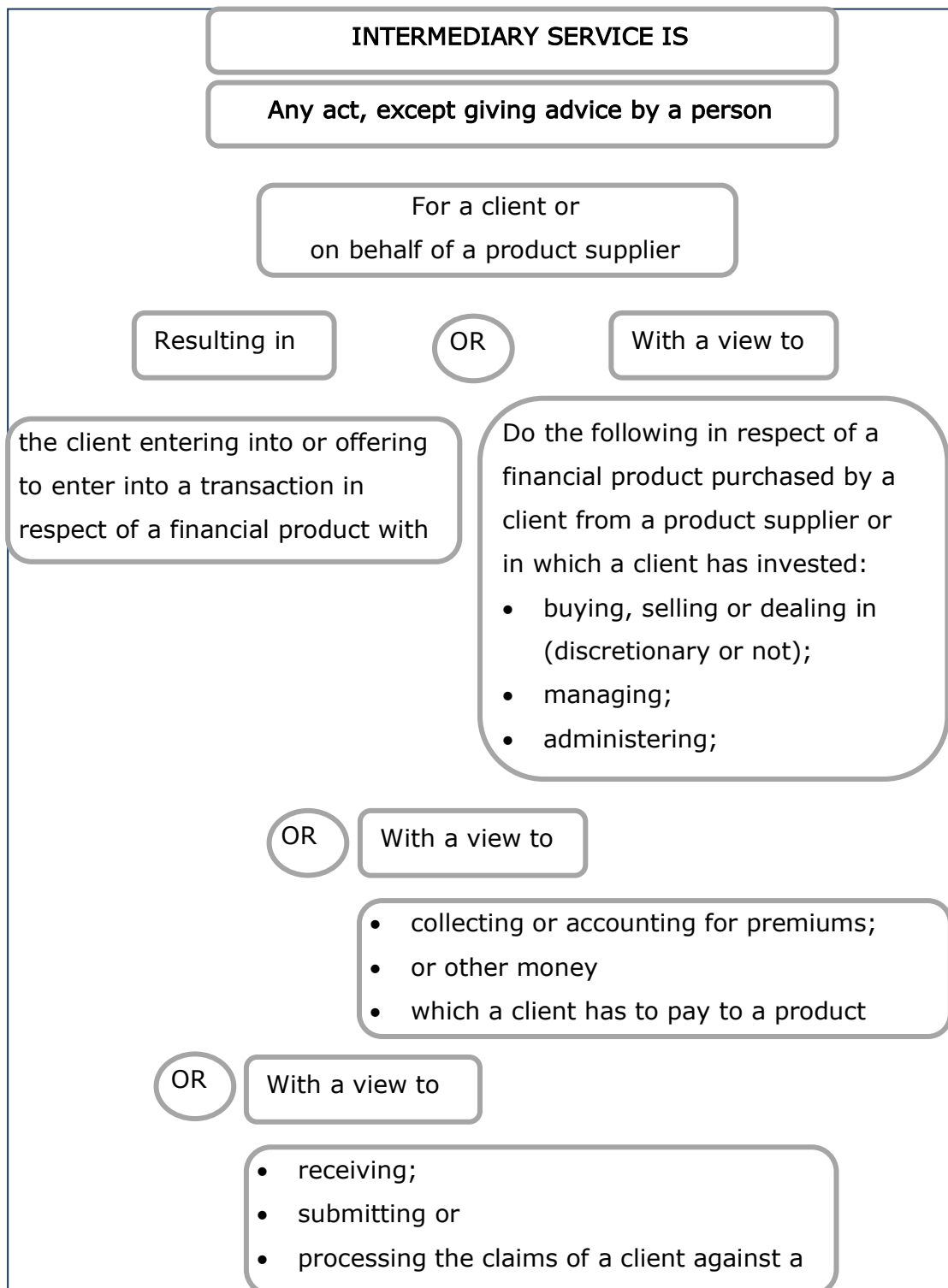
Any act, other than furnishing of advice

- 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)

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 or be an unrehabilitated 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
- If a representative who is a natural person is sequestered after their appointment, the FSP who appointed the Rep may only allow the representative to continue to act on behalf of the FSP if the FSP implements appropriate measures to mitigate any risks that may arise for clients or the FSP as a result of the representative being sequestered

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 again is now part of the Fit & Proper for Reps, but only insofar it applies to Reps, which applies to the above only.

- 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

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 (to be completed within **12 months** from DOFA) *DOFA refers to Date Of First Appointment – it is the 1st date that a Rep is registered with the FSCA)

3. Product specific training (if not completed, must be done before advice is given)
4. Experience
5. Relevant recognised qualification (if not completed, must be done within **6 years** from DOFA)
6. Regulatory exams (also referred to as examinations determined by the Commissioner. If not completed, must be passed within **2 years** from DOFA)
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

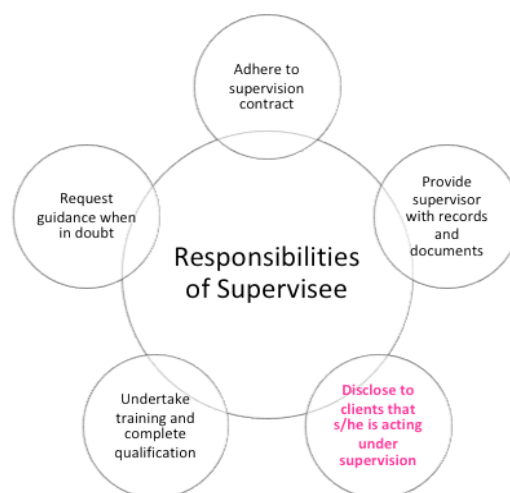
Supervisor responsibilities

- 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

Direct supervision vs. ongoing supervision

Direct supervision means the supervision of the financial services rendered by a representative under the guidance, instruction and supervision of a supervisor, and occurs on a daily to weekly basis (regular).

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

A Representative may not

- Render financial services on behalf of any person who is not an authorised FSP and
- Not exempted in terms of the Act
- Act as a Rep if this person has been 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)

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, Class of Business Training & 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

General duty of a provider:

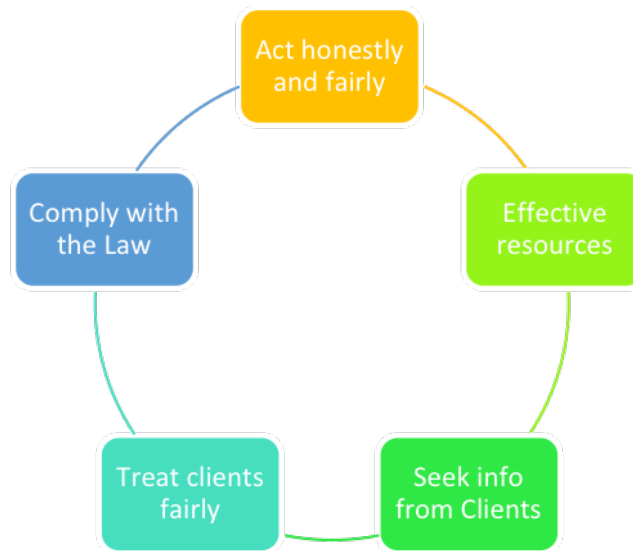
- Act (render financial services) honestly and fairly, and with due skill, care and diligence in the interest of clients and integrity of the financial services industry

Specific duties of a provider:

- Information provided must be:
 - Factually correct
 - Provided in plain language avoiding uncertainty, confusion and must not be misleading
 - 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
 - May be provided orally, and confirmed in writing within a reasonable time after the client's request
- 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**), which 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

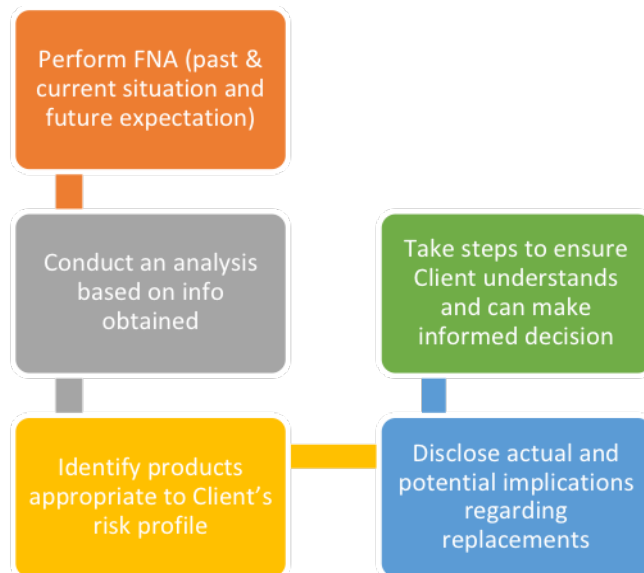
The Code of Conduct must make provision for (each of these will be discussed later on in detail)

- 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
 - 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 offence 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, authorization or license to carry out a trade, business or profession, or has had that registration, approval, authorization 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 organization 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 came into effect on the 1st of 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 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

- It excludes
 - An activity performed towards a qualification
 - 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

A rep under supervision must comply with CPD

- **From the date that the Rep meets the requirements of**
 - **Class of business**
 - **RE**
 - **Qualification requirements**
 - **Experience**
- **After 6 years from DOFA**
- **Whichever occurs first**

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 12 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 1st 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
FSP	RE 1	RE 1 & RE 3	RE 1 & RE 3	RE 1 & RE 4	RE 1
Key Individual	RE 1	RE 1 & RE 3	RE 1 & RE 3	RE 1 & RE 4	RE 1
Representative	RE 5	RE 5	RE 5	RE 5	RE 5

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 Rep
 within 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.

Fit & Proper	Reps	K.I.'s	Sole Proprietor	FSP	Compliance officer
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	Yes	Yes – excluding	Yes – Exemptions	Yes – Exemptions	Yes

Fit & Proper	Reps	K.I.'s	Sole Proprietor	FSP	Compliance officer
exams		C.o.B and PS training	apply to Cat I - III	apply to Cat I - III	
Operational Ability	Limited to 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

An authorised financial services provider must debar a person from rendering financial services who is or was, as the case may be –

- a representative of the financial services provider or
- a key individual of such representative

The reasons for debarment must have occurred and become known to the FSP WHILE the person was a rep of the provider

Before effecting a debarment, the FSP must ensure that the debarment process is lawful, reasonable and procedurally fair

If the FSP is unable to locate the person in order to deliver a document to, after taking all reasonable steps to do so, they need to deliver the document to the person's last known e-mail or physical business or residential address.

Before debarring a person, an FSP must

- give adequate notice in writing stating
 - the intention to debar
 - grounds and reason for the debarment
 - any terms attached to the debarment (i.e. unconcluded business, measures stipulated for the protection of interest of clients)
 - provide the person with a copy of FSP's written policy and procedure governing debarment process
 - give person reasonable opportunity to make a submission in response
- consider any response provided
- immediately notify the person in writing of –
 - the FSP's decision
 - the person's right in terms of Chapter 15 of the Financial Sector Regulation Act (Appeal possible via the Financial Services Tribunal)
 - any formal requirements in respect of proceedings for the reconsideration of the decision by the Tribunal

The FSP needs to ensure that any person 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' 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
- Notify the Authority (in the form and manner described) within **FIVE (5) DAYS**

- Provide the Authority with the
 - Grounds and reasons for debarment
 - In the format the Authority requires it
 - Within **FIFTEEN (15) days** of debarment

If the person is no longer a rep of the FSP, the debarment must be commenced no longer than SIX (6) MONTHS from the date the person ceased to be a rep at the FSP

The information regarding the conduct of the person must be supplied to the Commissioner in writing (or the Ombud or any other interested person)

- The Commissioner may publish this on the official website or any other appropriate media
- The FSP must update the rep register within **15 days** after the removal of the names from the register

The Authority may, for purposes of record keeping, require any information to maintain and continuously update the central register of all persons debarred. This central register must be published on the web site of the Authority, or by means of any other appropriate public media.

No person that has been debarred may render financial services or act as a Rep or KI, unless the person complies with the requirements to be reappointed, and then the necessary process must be followed.

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



- Acknowledgement of receipt of
 - Case or
 - Request

Is sent within **14 days** to

- Compliance officer or
- Person that reported the matter

Which will include

- A case number
- Name and contact details of person dealing with case or request

Info is analysed and further info may be required

- Once all info is received, a notice of intention to debar is sent to the person in question
- The notice must be sent within **30 days** and must state:
 - Grounds for intended debarment
 - Reasons
 - Intended period
 - Terms attached
 - Prohibition to render financial services

Person to be debarred is issued with the notice and given the opportunity to respond

- **14 days** is granted to respond
- Upon receipt of the response, the Commissioner makes a final decision
- If no response is received, the Commissioner will only make a decision if proof of delivery exists
- If the
 - Letter is returned
 - Or there is no proof of delivery

- The person's name is flagged on the FSCA's system

Commissioner then issues notice of debarment.

- Notice is issued after **14 days** of date of notice of intention
- Notice must state
 - Grounds for debarment
 - Reasons for debarment
 - Terms attached including
 - Prohibition from furnishing any advice or rendering intermediary service to clients
- Person is allowed to appeal the decision
- Notice of debarment is dispatched by registered post, fax or e-mail
- 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**
- The FSP needs 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**
- If the person is an FSP, regulatory action will ensue

Right of appeal

Right of appeal

Any person who feels aggrieved by any decision by the

- Commissioner or
- Ombudsman

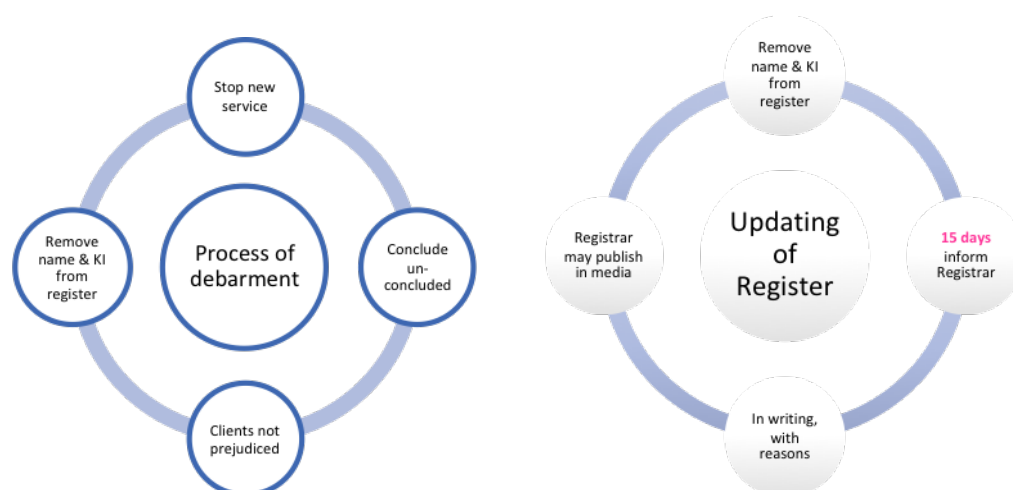
May appeal to the Financial Services Tribunal (used to be known as the FSB's Board of Appeal)

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 decision 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 Sector Tribunal.

Process of Appeal

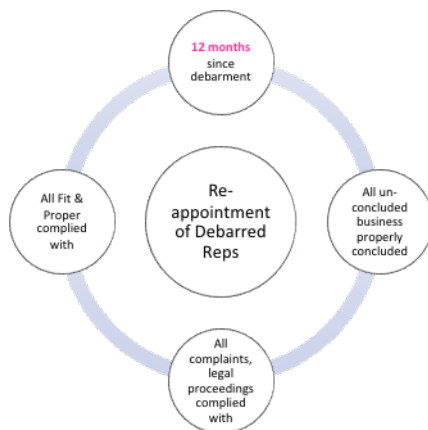
- An appeal must be lodged within **30 days** becoming aware of the decision
- In the manner prescribed by the Minister
- Fees must be paid prescribed by the Minister
- The appeal lodged does not suspend any decision pending the outcome of appeal
 - Unless the chairperson or deputy chairperson directs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



Reappointment of debarred representatives

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



Procedure to be followed when reappointing a debarred person

- FSP that appoints a debarred rep must update the rep register
- However, prior to submission, the FSCA needs to be informed in order for the FSCA to manually remove the name of the person from the list of Debarred persons
- The following information must accompany the notification to the FSCA:
 - Affidavit from the reappointed rep confirming that
 - All matters referred to which led to the debarment of the person has been complied with, including all decisions, determinations or court orders
 - The person complies with all fit and proper requirements
 - If rep was debarred due to honesty and integrity, the affidavit must set out the reasons for reform or rehabilitation
 - Any other information/documentation considered by the appointing FSP

- Confirmation from the KI of the FSP that they are satisfied that the rep complied with all requirements for reappointment

Key Individuals

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**

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

FSP must ensure	FSP must inform the Registrar	If Registrar is satisfied
<ul style="list-style-type: none"> • Every director, member, trustee or partner that is not a KI • Is honest and has integrity 	<ul style="list-style-type: none"> • Within 15 days of the appointment of a director etc. • Provide Registrar with required info 	<ul style="list-style-type: none"> • That appointed person does not comply with • Registrar may withdraw FSP's license

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

Procedure of approval of Key Individuals

- Prior to taking part in the conduct or managements or oversight of the FSP's rendering of financial services, the prospective KI must submit a written (or electronic) application to the Commissioner. Both the licensee (FSP) and person (applying to become a KI) must sign the application forms, containing the following:
 - Applicant's full name, addresses, e-mail address, telephone number, fax number and website (if any)

- Full details
 - Compliance with Fit & Proper
 - Full disclosure on change in personal circumstances (honesty, integrity and good standing)
 - Full disclosure on how applicant will comply fully with requirements in due course
- If applicant is unable to comply fully with Fit & Proper, they can apply for an exemption at the same time
- Remember, when anyone applies to the Authority and Commissioner – full and candid information must be supplied out of own accord – there is a duty on the applicant to mention any aspects that could affect the appointment
- Commissioner will consider the application and inform the applicant whether the approval is granted or refused
 - If refused, reasons will be given by the Commissioner
 - Conditions may be attached in the event that the application is approved

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 3rd 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, systems, procedures and controls are adequate to safeguard the security, integrity and confidentiality of information, and 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 and internal and external cybersecurity
 - 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 for systems and electronic data
 - Training for Reps and KI's on the Act and rendering financial services / giving advice
 - A business continuity plan
- FSP must implement systems and processes to ensure accurate, complete and timeous processing of data, reporting of information and the assurance of data integrity

- 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
- With the latest updates, the KI now has additional responsibilities in terms of ADVERTISING and COMPLAINTS HANDLING as per the General Code of Conduct. Please study those sections carefully as well

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

Financial Soundness (Fit & Proper)

The Fit & Proper requirements relating to financial soundness apply to

- All FSP's
- Juristic representatives

Please note: Financial Soundness DOES NOT APPLY TO

- A Key Individual or a Representative that is a natural person
- An FSP who is a

- Registered Bank as defined in the Banks Act
- A registered insurer as defined in the Short Term or Long Term Insurance Acts
- Provided that the FSP complies with the financial soundness of those Acts

Remember – even though KI's and Reps cannot be appointed if they have been declared insolvent (declared insolvent or provisionally insolvent or an unrehabilitated insolvent), is not subject to liquidation, and so forth – this is prescribed under OPERATIONAL ABILITY

An FSP & Juristic Rep must at all times

- Maintain financial resources that are adequate that
 - The amounts and quality they need to carry out their activities and supervisory arrangements
 - They are able to meet their liabilities when it is due

FSP must not be

- Declared insolvent or provisionally insolvent or an unrehabilitated insolvent
- Placed under liquidation or provisional liquidation
 - There are no pending proceedings which may lead to the above
- The FSP seriously or persistently failed or fails to manage any of its financial obligations satisfactorily

No person may become an FSP or a juristic representative if business rescue proceedings have commenced

Category I FSP that does not hold client assets or receive premiums or money, and juristic reps of such FSP's

This applies to Cat I FSP's and their juristic reps that

- *Do not hold, control or has access to client assets*
- *Do not collect, hold or receive premiums or other monies in respect of financial products*

Must comply with:

- Assets (excluding goodwill and other intangible assets and investments)
- Exceeds liabilities (excluding loans subordinated in favour of other creditors)

Category I FSP that does hold client assets or receive premiums or money and Cat II, III & IV FSP's

This applies to:

- *Cat I FSP that holds, controls or has access to client assets or that collects, holds or receives premiums or other monies in respect of a financial product*
- *Cat II, IIA, III and IV FSP's*

Must comply with:

- Assets (excluding goodwill and other intangible assets and investments)
- Exceeds liabilities (excluding loans validly subordinated in favour of all other creditors)
- Must at all times comply with the additional asset, working capital and liquidity requirements as set out in "Table B"
- FSP's must submit "Form A in Annexure 6" to the Commissioner
 - CAT I & IV – annually (submitted with the financial statements and reports)
 - CAT II, IIA & III – every six months (half yearly), calculated in terms of the FSP's financial year (submitted within 45 days after every half year-end)
- Juristic Reps must submit "Form A in Annexure 6" to their FSP's
 - every six months (half yearly), calculated in terms of the juristic rep's financial year

TABLE B			
Category of FSP and Juristic Rep	Additional Asset Requirements	Working Capital Requirements	Liquidity Requirement
Category I	N/A	Current assets must exceed current liabilities	Liquid assets equal to or greater than 4/52 weeks of annual expenditure
Category II	N/A	Current assets must exceed current liabilities	Liquid assets equal to or greater than 8/52 weeks of annual expenditure
Category IIA	Assets of FSP must exceed the FSP's liabilities by at least R3 million	Current assets must exceed current liabilities	Liquid assets equal to or greater than 13/52 weeks of annual expenditure

TABLE B			
Category of FSP and Juristic Rep	Additional Asset Requirements	Working Capital Requirements	Liquidity Requirement
Category III	Assets of FSP must exceed the FSP's liabilities by at least R3 million	Current assets must exceed current liabilities	Liquid assets equal to or greater than 13/52 weeks of annual expenditure
Category IV	N/A	Current assets must exceed current liabilities	Liquid assets equal to or greater than 4/52 weeks of annual expenditure

- Annual expenditure means –
 - The expenditure set out in the latest set of financial statements of the FSP or
 - In the case of an applicant commencing business, the budgeted expenditure as expressed in the budget or financial accounts

Less –

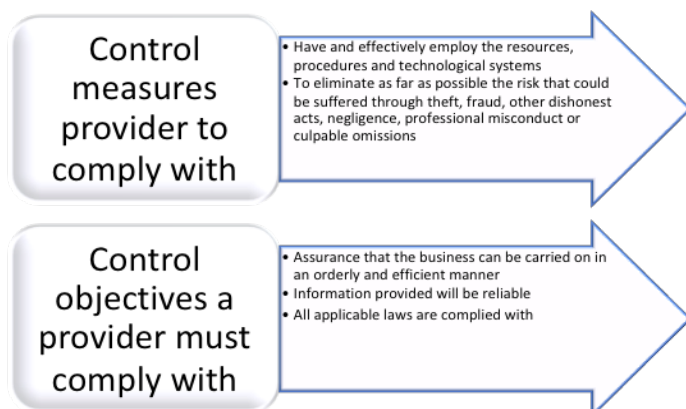
- Staff bonuses
- Employees' and directors', partners' or members' share in profit
- Emoluments of directors, members, partners or sole proprietor
- Other appropriation of profits to directors, members and partners
- Remuneration that is linked to –
 - A percentage of the FSP's revenue
 - A percentage of the revenue generated by an employee or representative of the FSP

That in the absence of such revenue the FSP has no obligation to pay the remuneration

- Depreciation
- Bad debts
- Any loss resulting from the sale of assets

What must a Financial Services Provider (FSP) do?

Control measures required by the FSP relating to Risk Management:



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

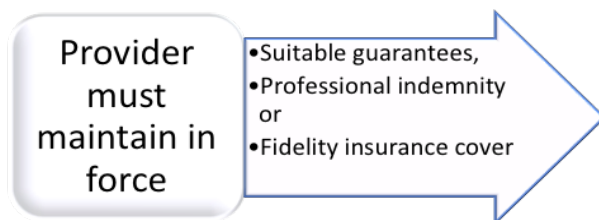
Specific control objectives

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

Insurance:



A provider must maintain in force

- suitable guarantees,
- professional indemnity or/and
- fidelity insurance

Record keeping to provide management information to complete reporting

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 3rd 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 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

The FSP must

- Maintain full and proper accounting records brought up to date monthly
- Annually prepare financial statements that reflect
 - Financial position of entity at financial year-end
 - Results of operations
 - Receipt and payment of cash
 - Cash equivalent balances
 - Changes in equity
 - Any additional components required in terms of GAAP or International Financial Reporting Standards
 - A summary of significant accounting policies and explanatory notes

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 records in respect of money and financial products held on behalf of clients and must submit a report to the Commissioner (by the auditor who performed the audit) which confirms:

- Amount of money and financial products at year end held by the provider on behalf of clients
- That the money and products throughout the year were kept separate from those of the business & report instances of non-compliance
- Any other info required by the Commissioner

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

Accounting and Auditing requirements

An FSP must cause the financial statements that need to be prepared, to be

- Audited and reported on in accordance with the auditing pronouncements as defined in Section 1 of the Auditing Professions Act
- By an external auditor approved by the Commissioner

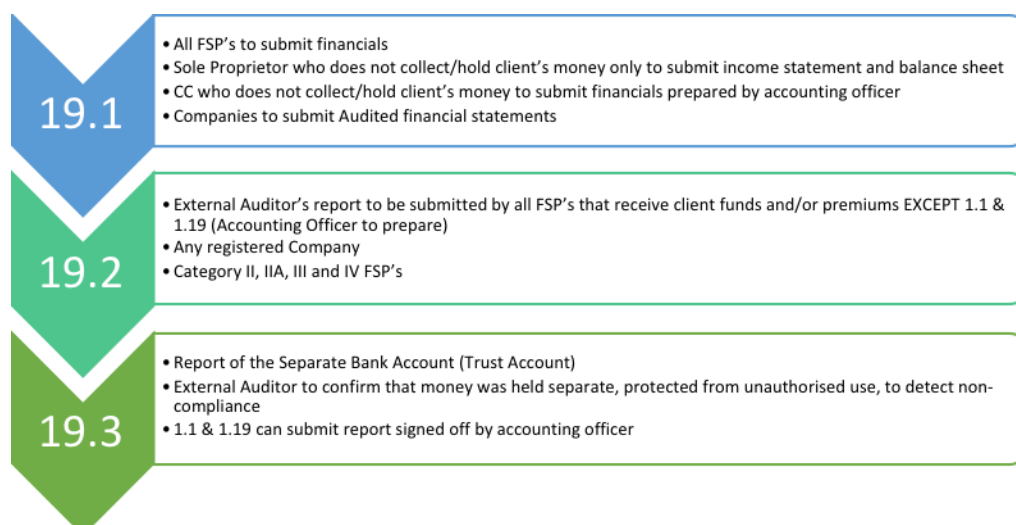
The financial statements must

- Fairly represent the state of affairs of the provider's business
- Refer to any material fact which has, or is likely to affect the financial affairs of the provider
- Be submitted by the FSP to the Commissioner not later than **4 months** after the end of the provider's financial year end

Type of financial statements to be submitted

In terms of section 19 all financial statements must be audited, the Commissioner however exempted certain providers from the audit requirements. The following financial statements must be submitted

- Category II, IIA, III and IV FSP's – AUDITED FINANCIAL STATEMENTS
- Category 1 FSP's
 - Companies – AUDITED FINANCIAL STATEMENTS
 - Sole proprietors and CC's that DO NOT receive client funds or premiums – UNAUDITED FINANCIAL STATEMENTS
 - Sole proprietors and CC that DO receive client funds or premiums – AUDITED FINANCIAL STATEMENTS



Section 19 (1) (a) & (b) – Accounting and Audit requirements

- ALL FSP's to ensure that they maintain up to date accounting records that are brought up to date on at least a **monthly basis**
- An FSP that is a **sole proprietor** (natural person) and **who does not collect premiums or hold client's money**
 - Only needs to submit an income statement and balance sheet
 - HOWEVER, Category I providers that receive client funds and/or premiums and all Category II, III and IV sole proprietors need to submit AUDITED financial statements, unless they are Long Term Category A and/or Friendly Benefits Society providers – theirs can be signed off by an accounting officer
- An FSP that is a **CC** (Close Corporation) and **who does not collect client premiums or hold client's money** needs to submit
 - Financial statements prepared by an **accounting officer**
- An FSP who is company will need to submit
 - Audited financial statements (requirement of the old Companies Act)

Section 19 (2) External Auditors Report

This is known as the report of the independent external auditor and it forms part of all financial statements

Who needs to submit a Section 19 (2) report?

- Category II, IIA, III and IV FSP's
- Any registered company (Refer old Companies Act)
- Any FSP who receives client funds and/or premiums
 - **EXCLUDING** FSP's who receive long term insurance premiums but are only approved in Long Term Cat A and/or Friendly Society Benefits. These FSP's are required to have their financial statements prepared by an accounting officer

Section 19 (3) Audit Report

This is known as the report of the separate banking account (Trust Account)

The purpose of the 19 (3) Report is to:

- Ensure that Client's assets and/or monies held by an FSP are protected from unauthorised use
- Kept separate from the FSP's business funds and
- To detect non-compliance in respect of monies and assets

It is a separate report that is prepared by an external auditor.

In the case of 1.1 & 1.19 FSP's a similar report compiled by an accounting officer can be submitted.

It should be submitted by FSP's that collect client's funds

Who needs to submit a 19(3) report?

- Any FSP who receives client funds and/or premiums or who holds assets on behalf of a client with the exception of short-term insurance brokers who hold a valid IGF.
- Those FSP's who are only approved in 1.1 & 1.19 subcategories, but an accounting officer can sign it off, instead of an auditor

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 same applies to compliance officers

Termination of the Auditor

If the appointment of an Auditor of an FSP is terminated –

- The Auditor must submit a statement to the Commissioner of what the Auditor believes to be the reasons for termination
- If the Auditor would have had reasons to submit a report in terms of any irregularity or suspected irregularity, then the Auditor must submit such report

The Commissioner may by notice require the FSP to terminate the appointment of an Auditor if

- The Auditor no longer complies with the requirements when approved by the Commissioner
- Or fails to comply with any provision in a material manner
- The notice takes effect on a specified date and may only be sent out after the Commissioner has –
 - Given the FSP and the Auditor reasons

- And a reasonable opportunity to be heard
- And considered any submissions made

Changing a financial year end

An FSP may not change a financial year end without the approval of the Commissioner

- Unless it has been approved by another regulatory authority (other than the Companies and Intellectual Property Commission (CIPC), regulating the financial soundness of the FSP)
- Where a change of financial year end was approved by another regulatory authority, the provider must inform the Commissioner within **14 days**

What must be complied with when applying to the Commissioner?

Compliance with Fit & Proper after authorisation

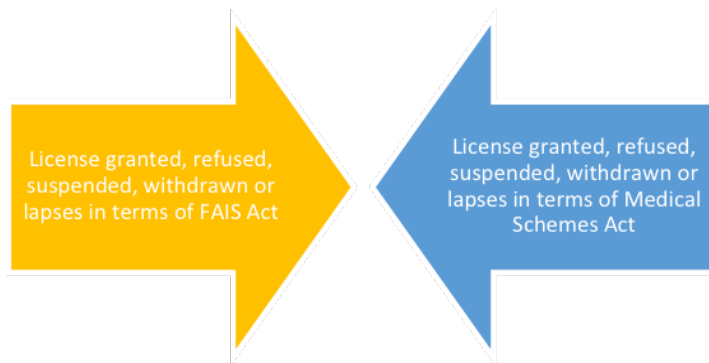
An authorised FSP, KI and/or Rep must

- Continue to comply with Fit & Proper
- Comply with Fit & Proper regarding CPD

Licenses granted by the Commissioner

- An FSP must meet the
 - minimum experience and all
 - applicable qualification requirements and
 - must have completed the relevant exams
 - 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

The Financial Services Provider

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
- Ensure that staff who are not competent do not render financial services

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 mother 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

- As mentioned previously, reps & KI's cannot be under administration, liquidated etc. but this is part of OPERATIONAL ABILITY

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
 - declared insolvent or provisionally insolvent or is 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

Application requirements to become an FSP

- Application to the Commissioner must be done in the manner stipulated
- Together with supplementary evidence
- To satisfy the FAIS Fit & Proper requirements
- In terms of:
 - Personal character qualities of Honesty, Integrity and Good Standing
 - Competence
 - Operational ability
 - Financial soundness (if the application is a partnership, trust, corporate or unincorporated body)
 - CPD

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

- 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

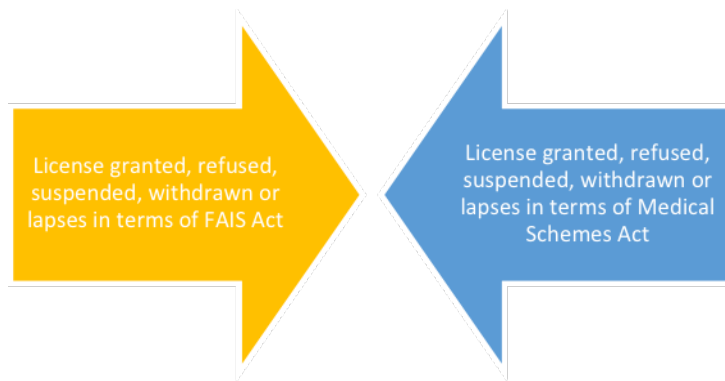
- Reporting changes in the FSP
 - Changes to Directors or Members for instance
- Reporting changes regarding KI's

- 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)
 - 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

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

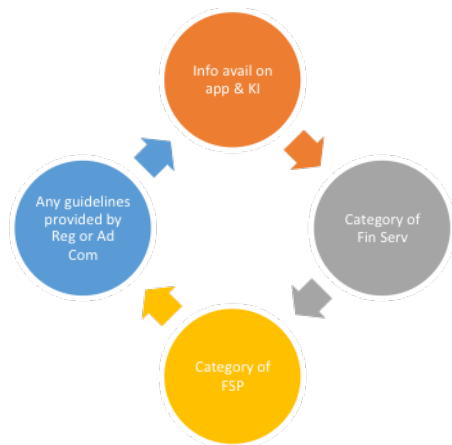
By the Commissioner (FSCA), it is deemed to have been refused, suspended, withdrawn or lapsed in terms of the Medical Schemes Act, and visa versa

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

Conditions and restrictions imposed on licenses granted by the Commissioner

- If granted, the Commissioner may impose conditions and restrictions
- Included in the license:



- All facts and information available pertaining to applicant and KI of applicant
- Category of financial services
- Category and subcategory of financial services provider in relation to Fit & Proper
- Guidelines provided by Commissioner/Commissioner or Authority

Conditions and restrictions may include:

- A condition that after granting the license
 - Any KI is replaced with a new KI
 - New KI is appointed or assumes office
 - KI's personal circumstances change, affecting
 - Honesty and Integrity
 - If the person is not Fit & Proper anymore, may not perform activities of a KI (manage and oversee), unless allowed by the Commissioner

Current conditions:

1. Condition 1: Reporting changes in relation to the FSP
2. Condition 2: Reporting changes relating to Key Individuals
3. Condition 3: Submit a representative register
4. Condition 4: Reporting a change in business name
5. Condition 5: Only deal with authorised FSP's

WITHIN 15 DAYS

Compliance with Fit & Proper after authorisation

An authorised FSP, KI and/or Rep must

- Continue to comply with Fit & Proper
- Comply with Fit & Proper regarding CPD

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

Levies on authorised FSP's

Levies are payable on or before 31 October of the levy year, and the calculation is based on the number of Reps and KI's as at the 31st of August of the same year.

Herewith follows the latest Levies. However, I am of the opinion (and have written enough exams to prove it) that the actual amounts will not be asked in the exam. The reason for that is because the levies are increased by the FSCA every year, but they would not want to go back to all the RE questions to update the amounts in the exam.

Category I or IV FSP's, unless the FSP is also a Category II, IIA or III provider

- The levy is calculated as follows:
 - Base amount of R3 982 **plus**
 - $R635 \times \text{KI's} + \text{Reps} - \text{KI's appointed as Reps}$ (in other words, you only pay once for each person. On each KI and each Rep. If a person is both and Rep and a KI, then you only pay once for them)
 - As at 31 August of the levy year
 - The levy is subject to a maximum of R2 054 274

Category II, IIA & III

- Base amount of R8 024**plus**
- $R635 \times \text{KI's} + \text{Reps} - \text{KI's appointed as Reps}$ **plus**
- Value of investments managed $\times 0.0000184595$
- As at 31 August of the levy year
- The levy is subject to a maximum of R2 054 274

Category I and IV FSP's only authorised for Long-Term Insurance subcategory A or Friendly Society Benefits

- Base amount of R3 982 **plus**
- $R250 \times \text{KI's} + \text{Reps} - \text{KI's appointed as Reps}$
- As at 31 August of the levy year
- The levy is subject to a maximum of R2 054 274

Multiple FSP's who form part of the same legal entity are jointly and severally liable for payment of a single levy (KI's and Reps are deemed to be the KI's and Reps of one authorised FSP).

- Must pay their levy on or before 31 October of the levy year

Levies for funding the FAIS Ombudsman

Due by all FSP's

- Must pay their levy on or before 31 October of the levy year
- The levy is calculated as follows:
 - Base amount of R1 231
 - $R469 \times \text{KI's} + \text{Reps} - \text{KI's appointed as Reps}$
 - As at 31 August of the levy year
 - The levy is subject to a maximum of R333 245

Multiple FSP's who form part of the same legal entity are jointly and severally liable for payment of a single levy (KI's and Reps are deemed to be the KI's and Reps of one authorised FSP)

Maintaining a license

Undesirable Business Practice

This is regulatory action taken by the Commissioner (FSCA)

- The Commissioner may, by notice in the Gazette, declare a business practice undesirable for ALL, or a category of authorised service provider, or any provider

- If the practice, directly or indirectly, has, or is likely to have the effect of -
 - Harming the relations between authorised FSP's, category of providers, 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, giving reasons therefore,
 - 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 of the 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 or the Financial Sector Regulation 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
 - 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

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

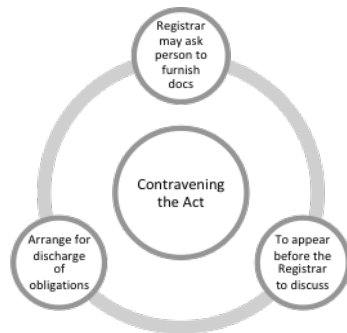
During the period of suspension, whether provisional or final, the licensee concerned is regarded as a person who is NOT authorised to act as a FSP.

A person whose license has been withdrawn under this section is debarred for a period specified by the Commissioner from applying for a new license.

- The Commissioner may, on good cause shown, vary the period

Civil Remedies and Penalties that the Commissioner may impose

Contravening the Act



If there is reason to believe that a person is contravening or failing to comply with, or has contravened or failed to comply with the Act, the Commissioner may

- By notice direct the person
 - To furnish the Commissioner with information or documents related to the contravention or failure
 - To appear before the Commissioner to discuss the matter
 - To make arrangements for the discharge of the person's obligations in terms of the Act
- If the Commissioner is satisfied that significant prejudice or damage to clients has or may occur, apply to a Court for a restraining order against doing business or dealing with the money or property
 - The Commissioner may use any of the legal remedies available and if prejudice has occurred, will direct the matter to the Office to be dealt with as a complaint by the client

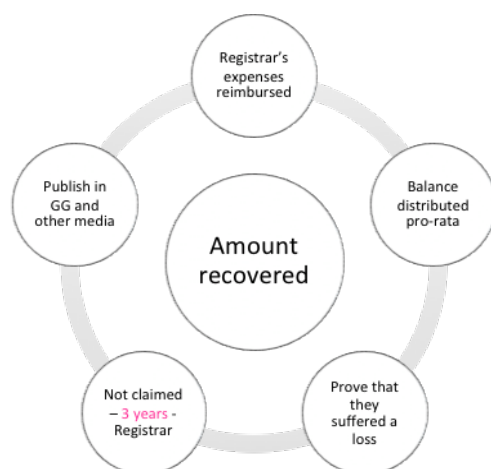
Restraining order and remedial steps



The Commissioner may, on the basis of available facts that

- A person has contravened or not complied with the Act
- Or is likely to contravene or not comply
- Apply to a Court for an order restraining the person to
 - Continue or
 - To commit the act or omission
 - Or from committing it in future
- And require the person to take remedial steps to
 - rectify the consequences of the act or omission
 - including consequences which prejudiced or may prejudice any client

Compensation



The Commissioner may institute action in a Court against

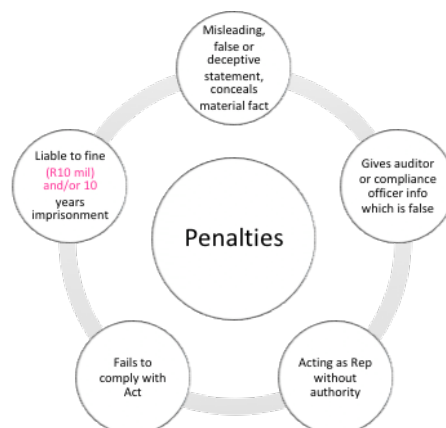
- Any person who has contravened or not complied with the act
- For payment of –
 - Compensation for losses suffered as a consequence of the contravention or non-compliance (determined by the Court)
 - Penalty for punitive purposes
 - Interest
 - Cost of suit
- Any amount recovered must be deposited into a specially designated trust account
 - The Commissioner, as first charge, is entitled to reimbursement of all expenses in terms of bringing the proceedings
 - The balance (distributable balance) must be distributed by the Commissioner to
 - Persons that can prove that they suffered a loss due to the actions by the FSP on a pro rata basis
 - Persons that contravened or failed to comply with the Act may not share in the above
 - Any amount not claimed within **3 years** from date of 1st distribution, accrues to the Commissioner

Court order must be published in the Government Gazette and other appropriate media.

The Commissioner may withdraw, abandon or compromise civil proceedings, but any compromise must be made an order of the courts and published in the Government Gazette and other appropriate media.

If civil proceedings have not been instituted, any agreement of settlement may, on application by the Commissioner, be made an order of the court and published.

Penalties in terms of the Act

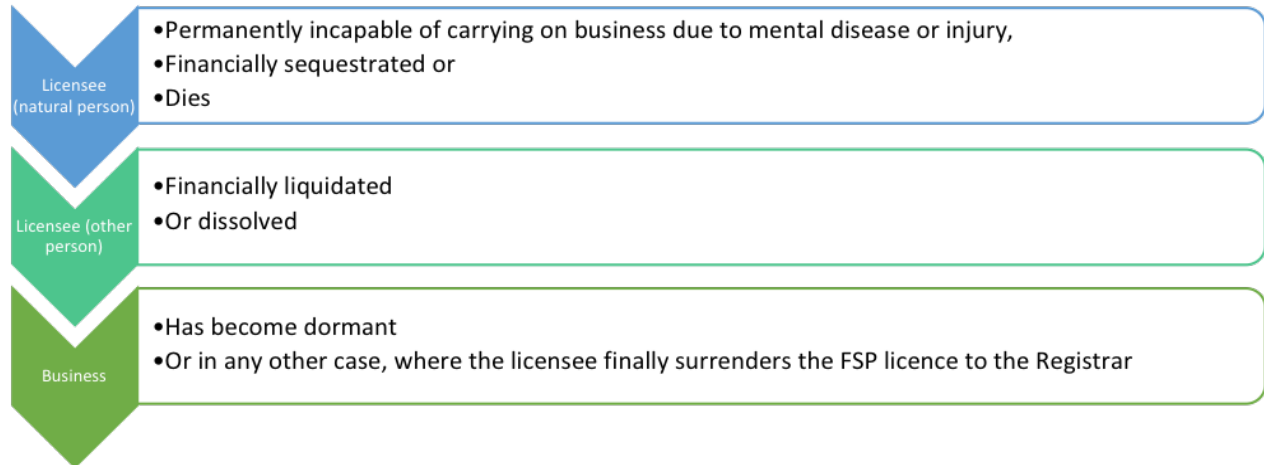


- Any person who makes a misleading, false or deceptive statement, or conceals a material fact
- Any person who gives an appointed auditor or compliance officer information which is false, misleading or conceals any material fact
- Any person who is not a Rep mandated or employed by an authorised FSP, 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

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

Voluntary sequestration, winding up and closure

The FSP, or representatives of the FSP may not close a business, unless

- a copy of notice has been lodged with the Commissioner
- the Commissioner has been informed that the FSP will meet all their liabilities under transactions entered into with clients, prior to the sequestration, winding up or closure

Business Rescue

The Companies Act will apply in relation to a business rescue of a provider, whether it is a company, or not.

Business rescue will not apply if another Registrar/Commissioner is authorised in terms of Financial Board Legislation as defined in the Financial Services Board Act, or in terms of banking legislation, to make an application for the business rescue of a provider.

The Commissioner may make an application in respect of a provider if the commissioner is satisfied that it is in the interest of the clients of the provider or the financial services industry.

From the date that a business rescue practitioner is appointed, the business rescue practitioner of a provider shall not conduct any new business unless the practitioner has been granted permission to do so, by a court.

Application by the Commissioner for sequestration or liquidation

The Commissioner may apply to a court for the sequestration or liquidation of an FSP, whether solvent or not, after an on-site visit or inspection, the commissioner considers the interests of clients of an FSP, or if members of the public so require – for the following reasons

- Whether sequestration or liquidation of the FSP is reasonably necessary –
 - In order to protect the interests of the clients of the provider, and

- For the integrity and stability of the financial sector

Format of communication with the Regulator (Commissioner and Authority)

In writing (fax or any electronic medium)

General Code of Conduct

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 (within a reasonable time)
- 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

Where the financial product or products recommended is a replacement product

- The comparison of fees, charges, special terms and conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided, between the terminated product and the replacement product, and
- The reasons why the replacement product was considered to be more suitable to the client's needs than retaining or modifying the terminated product

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 bank account is not applicable to:
 - Providers that holds or deals with premiums payable under a short term reinsurance policy, or
 - Providers that is subject to section 45 of the STIA, 1998, and complies to that section (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 3rd 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 3rd 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 3rd 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

No person may offer or provide a sign-on bonus to any person, as an incentive to become a Category I provider authorised to provide advice.

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 3rd parties in which the provider holds ownership
- Include the names of any 3rd 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, and
 - Accessibility of 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 balances 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 complainant 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 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 3rd 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

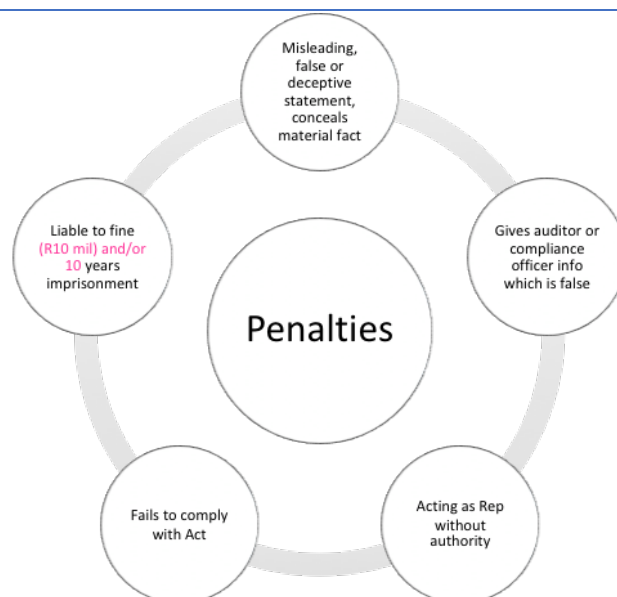
An FSP must the following records for a minimum of **5 years after termination** of the following:

- 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

Penalties in terms of the Act



- 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

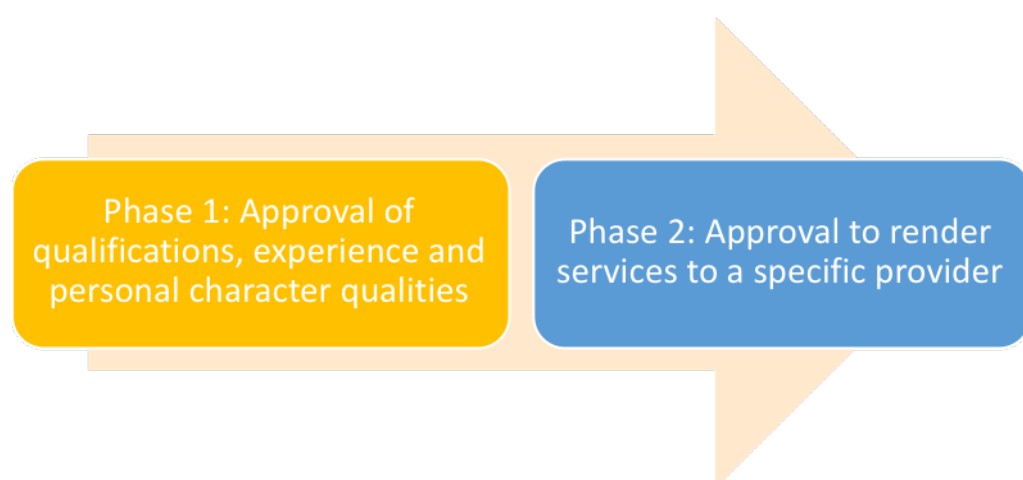
The Compliance Officer:

Roles and functions of a Compliance officer

- Any FSP with more than 1 KI or more than 1 Rep must appoint a Compliance officer (or more than 1) to
 - oversee the FSP's compliance function and
 - to monitor compliance with the FAIS Act, in accordance with the procedures prescribed,
 - take responsibility to liaise with the Commissioner
- A Compliance Officer must have the suitable qualifications and experience and comply with the Fit & Proper
- 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
 - Does not meet the FIT & Proper requirements any longer, or
 - No longer complies with the criteria and guidelines determined by the Commissioner
 - The Commissioner may publish the withdraw on the official website, or any other appropriate media

- 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
 - FSP must establish & maintain procedures to be followed by the provider and any representative concerned, in order to ensure compliance
- 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
- The compliance officer, or in the case of an FSP with 1 KI or Rep with no compliance officer, the FSP, must
 - Submit reports to the Commissioner
 - In the manner and regarding matters prescribed by the Commissioner
- The FSP must ensure that the reports are submitted

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 sequestered or liquidated
- Have adequate access to communication facilities

Criteria for Phase II approval

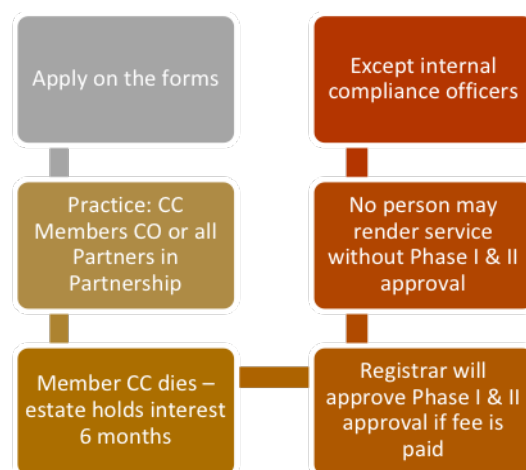
Applicant or practice must have phase 1 approval

- 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**

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

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 same applies to compliance officers

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

Content of the Compliance report – as noted above, in future Compliance Reports will be replaced with Conduct of Business Reports (CBR) which is currently being developed by the FSCA

Section 1 – General

1. Conditions and restrictions

Conditions and restrictions imposed by the Commissioner

1. Condition 1 requires the FSP to update business information within **15 days**
2. Condition 5 relates to the financial product that the FSP renders financial service in

2. Group structure

Refers to a company organogram and SLA's with other FSP's

3. Key Individuals

4. Staff complement

5. Insurance cover

6. Compliance function

7. Maintenance of records

8. General Code of Conduct in terms of:

1. General provisions
2. Disclosure requirements
3. Direct marketing
4. Furnishing of advice and record of advice
5. Custody of financial products and funds

6. Risk Management
7. Advertising
8. Complaints
9. Termination
10. Waiver of rights
9. Money laundering control procedures
10. Financial soundness

Section 2 – Forex FSP's

Duties and obligations relating to Forex FSP's

Section 3 – Health Service Benefits

Accreditation under the Medical Schemes Act

Section 4 – Attachments

(For additional information, refer to BN127 of 2010: Qualifications, experience and criteria for approval as a Compliance officer)

The FAIS Ombudsman

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. Also the FAIS Ombudsman is a statutory Ombud, whereas the Long Term and Short Term Ombud (for now) are voluntary Ombudsmen.

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 and the Financial Sector Regulation Act
- The Ombud is independent and must be impartial

Appointment of the Ombud and deputy Ombuds

- The Minister (of Finance)
 - Must appoint a person qualified in law who possesses adequate knowledge of rendering financial services
 - May appoint one or more persons qualified in law who possesses adequate knowledge of rendering financial services, as deputy Ombud
- The remuneration and other terms of appointment must be determined by the Board
- The Ombud or deputy Ombud may resign in writing to the Minister, giving 3 months' notice (unless the Minister allows a shorter period)
- The Minister may remove the Ombud or deputy Ombud from office on the ground of
 - Misbehaviour
 - Incapacity or incompetenceAfter affording the person a reasonable opportunity to be heard

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 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

Please remember, as per the Complaints Handling procedure (See BN 81 of 8 August 2003 – Rules on Proceedings of the Office of the Ombud for FSP's) – if the complainant has already complained to the FSP, then the client only has 6 months to submit a complaint with the Ombudsman for FSP's from date of final response by respondent.

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

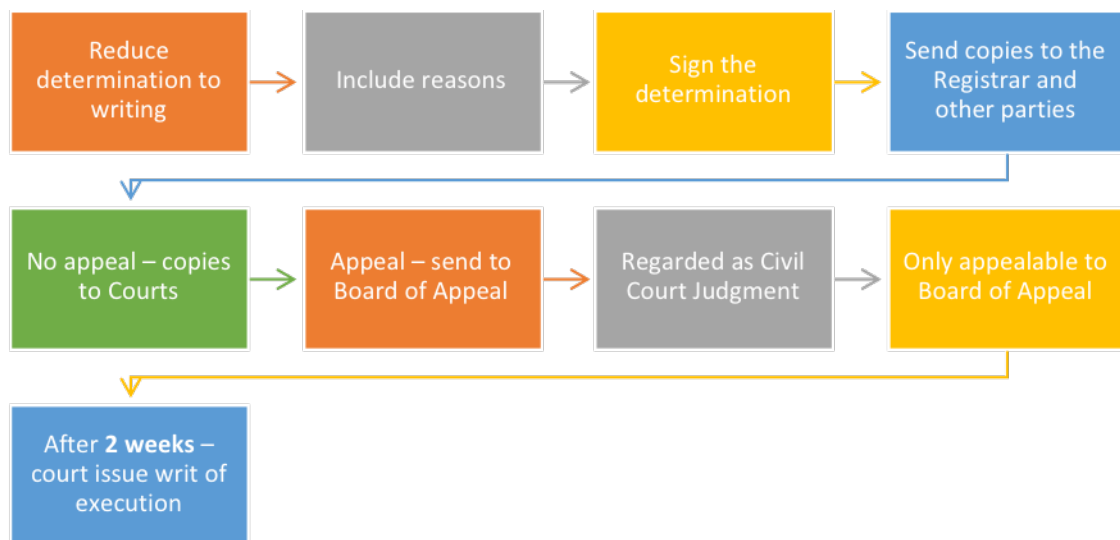
- Dismiss the complaint

- 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 Financial Services Tribunal (old Board of Appeal) with the leave of the Ombud, after considering
 - The complexity of the matter
 - The likelihood that the Financial Services Tribunal (old Board of Appeal) may reach a different conclusion
 - With the permission of the chairperson of the Financial Services Tribunal (old Board of Appeal), the Ombud may refuse the leave to appeal
- After **two weeks** following the determination by the Ombud or Financial Services Tribunal (old Board of Appeal) 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 anticipates a determination of the Ombud in any manner calculated to influence the determination, or, who wilfully interrupts any proceedings, is guilty of an offence and liable on conviction of to a fine, not exceeding **1 year**

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

- Financial Services Board Act, 1990
- Stock Exchanges Control Act, 1985
- Financial Markets Control Act, 1989

- Drugs and Drug Trafficking Act, 1992

Product Categories

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

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, disability and health events, and do not have any investment or growth <i>Example: Credit Life Policy</i>	1 year	6 months
1.4	Long-term Insurance subcategory C	All other Long Term Insurance policies.	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: Life & Dreaded disease policy when an FNA was performed (determined future risk requirements etc.)</i>		
1.5	Retail Pension Benefits	Pension, Provident or Preservation fund policies that are sold to individuals	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 premiums paid in.	1 year	6 months
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	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.
		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.		
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 generally a restriction on withdrawals.	2 years	1 year
1.10	Securities and Instruments: Debentures and securitised debt	Debentures are used when a business or the government needs to borrow money over a long	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>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 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</p>		

	Financial Product	Explanation	TABLE A: CATEGORY I EXPERIENCE REQUIREMENTS FOR AN FSP AND REPRESENTATIVE	
1	CATEGORY 1		Advice: Min Experience	Intermediary Services: Min. Exp.
		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 “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	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.
		beginning). <i>Some of the stadiums for the Soccer World Cup were financed by Bonds.</i>		
1.13	Securities and Instruments: Derivative instruments excluding warrants	Buying an asset which will only have a value at a future date. <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 sell the instrument before then if he realises it would be more profitable to sell the derivative instrument rather than make the oil.	2 years	1 year
1.14	Participatory Interests	Often referred to as “Unit	1 year	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.
	in Collective Investment Schemes	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 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	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.
		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.		
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 authorisation is as well. And visa versa.	2 years	2 years
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

	Financial Product	Explanation	TABLE A: CATEGORY I EXPERIENCE REQUIREMENTS FOR AN FSP AND REPRESENTATIVE	
1	CATEGORY 1		Advice: Min Experience	Intermediary Services: Min. Exp.
1.18	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. <i>Example: Endowment / Education</i>	1 year	6 months
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	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.
		change or amend		
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

CATEGORY II		
Sub	Experience requirements for FSP's and Reps	Min Experience
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
Experience requirements for FSP's and Reps		Advice: Min Experience
CATEGORY II A		
	Hedge Funds	3 years
CATEGORY III		
	Administrative FSP who places funds in investments	3 years
CATEGORY IV		
	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

FICA

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 3rd party

Records may be kept by a 3rd party as long as:

- The accountable institution has free and easy access to records
- The accountable institution is liable if the 3rd party fails to comply
- The accountable institution must provide the Centre with the details of the 3rd party
 - Full name and contact details of person who exercises control over those records
 - Address where the records are kept
 - Address from where the 3rd party exercises control over the records, and
 - Full name and contact particulars of the individual who liaises with the 3rd party on behalf of the accountable institution concerning the retention of records
 - The name under which the 3rd 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
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	Maximum period of 15 years

Offence	Penalty
cash into or out of the Republic (Sec. 54)	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 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

Offence	Penalty
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 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 is 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 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

Transitional Provisions

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 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

HOWEVER, 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	1 year
Experience should have been gained for both Reps & KI's within how many years	5 years (Consecutively)
Number of days to report any changes to the FSCA , excluding change of financial year end	15 days
Minimum period to keep records in terms of FAIS	5 years
Minimum period to keep records in terms of FICA	5 years
Number of days to provide information requested by the Commissioner in writing	7 days
Within how many days must funds received from clients be paid into a bank account	1 business day
Number of days within which clients must receive written confirmation of disclosure made orally	30 days
How often must the FSP conduct a review of the Conflict of Interest Management Policy?	Every year
What is the time period within which to resolve complaints received?	5 days (used to be 6 weeks)
For how long do copies of complaints need to be kept by the FSP?	5 years
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)?	6 months

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 st 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

TABLE 1 Financial Products	
Column A Tier 1 Financial Products	Column B Tier 2 Financial Products
Pension Fund Benefits	
Participatory interest in a collective investment scheme	
Participatory interest in a CIS hedge fund	
Forex investment	
Health Service Benefits	
Shares	
Money Market instruments	
Debentures and securitised debt	
Warrants, certificates and other instruments	
Bonds	
Derivative instruments	
Securities and Instruments	

Annexure 2

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
3	Long-term Insurance
<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
5.	Short-term and Long-term Deposits
6.	Structured Deposits
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
8.	Forex Investments
9.	Health Services Benefits

Sources:

- INSETA (RE5) Material
- Extracts of the Acts (prepared by Charmaine Koch - IISA)
- René Ronge (License to Skill)
- Danie Theunissen (ThirtyEleven)
- Sue Liebenberg (Compliance officer)
- Pervina Soma (Compliance officer)
- FSB Communication and Board Notices
- FSCA Communication