

The RE 1 Summary

Part 1: Summary of Learning Material

Introduction to the Material

The RE1 exams cover essential tasks and knowledge areas for financial services providers (FSPs) and key individuals (KIs).

The History of FAIS – FAIS Act 37 (2002)

The Financial Services Board (FSB) was established in 1990 to regulate the non-banking financial services industry. The FAIS Act, enacted in 2002, aims to protect consumers and enhance the integrity of the financial services industry by regulating financial advisors and intermediary services.

Objectives of the FAIS Act

The FAIS Act regulates financial advisory and intermediary services, repeals or amends certain laws, and provides for related matters.

Latest Updates in the Financial Services Sector

As of April 1, 2018, the FSB was replaced by the Financial Sector Conduct Authority (FSCA) under the Twin Peaks model of financial regulation. The FSCA's objectives include protecting customers, enhancing market integrity, maintaining financial stability, and supporting inclusion and transformation in the financial sector.

The Relationship Between the FAIS Act and the Financial Sector Regulation Act

References to the Board or registrar in the FAIS Act now refer to the Authority. The FSCA's powers and duties are in addition to those under the Financial Sector Regulation Act (FSRA).

The FSB – Now Referred to as FSCA

The FSCA oversees the non-banking financial services industry, ensuring clients are treated fairly and preventing illegal schemes. It has various departments, including Actuarial, Capital Markets, Consumer Education, and FAIS.

FAIS Division and Departments

The FAIS Division within the FSCA administers the FAIS Act, registers FSPs, supervises compliance, and takes regulatory action against non-compliant entities. It has departments for Registration, Supervision, Compliance, and Enforcement.

Glossary of Terms

Key terms include:

- **Representative:** A person rendering financial services on behalf of an FSP.
- **Key Individual:** A person managing or overseeing the activities of an FSP.
- **Compliance Officer:** A person ensuring compliance within an FSP.
- **Client:** A person or group receiving financial services.

Registrar vs Commissioner

The Registrar of the FSB is now referred to as the Commissioner of the FSCA.

What is Financial Services

Financial services include advice and intermediary services. Advice involves recommendations or guidance on financial products, while intermediary services involve actions performed on behalf of a client or product supplier.

The Representative

A representative (Rep) renders financial services on behalf of an FSP and must be employed or mandated by the FSP. Reps must meet fit and proper requirements, including honesty, integrity, competence, and financial soundness.

Appointment and Supervision of Representatives

FSPs must ensure Reps meet entry-level qualifications and work under supervision if necessary. Supervisors must oversee Reps' activities, provide guidance, and ensure compliance with regulations.

The Fit & Proper Requirements

Reps must maintain honesty, integrity, competence, and financial soundness. They must complete Continuous Professional Development (CPD) and meet experience and qualification requirements.

CPD (Continuous Professional Development)

CPD ensures Reps, KIs, and FSPs maintain and update their knowledge and skills. CPD activities must be relevant and contribute to professional development.

Competence

Competence includes skills, knowledge, and expertise. Reps and KIs must meet experience, qualification, regulatory exam, and training requirements.

Representative Register

FSPs must maintain a register of Reps and KIs, regularly updated and available to the Commissioner. The register includes names, business addresses, and categories of financial services.

Debarring a Representative

FSPs must debar Reps who fail to comply with the FAIS Act. The debarment process must be lawful, reasonable, and procedurally fair. Debarred Reps can be reappointed after meeting specific requirements.

Key Individuals

KIs manage or oversee the activities of an FSP. They must meet fit and proper requirements, including qualifications, experience, and operational ability.

Financial Soundness

FSPs and juristic representatives must maintain financial resources to meet their liabilities. They must comply with financial soundness requirements and submit financial statements to the Commissioner.

Responsibilities of the FSP

FSPs must ensure compliance with fit and proper requirements, maintain internal control procedures, and implement risk management strategies. They must also handle complaints, maintain records, and ensure client confidentiality.

Control Measures and Risk Management

FSPs must have procedures and systems to prevent financial loss through theft, fraud, poor administration, negligence, or misconduct. They must maintain insurance cover and ensure compliance with laws.

Complaints Handling

FSPs must have an internal complaints resolution system, ensuring complaints are handled fairly and promptly. They must maintain records of complaints and provide clients with information on the complaints process.

Advertising

Advertisements must be factually correct, balanced, and not misleading. They must use plain language and provide clear information on fees, risks, and benefits.

Record Keeping

FSPs must maintain records for at least five years, including complaints, compliance reports, and financial statements. Records must be accessible and secure.

The Compliance Officer

Compliance officers oversee the FSP's compliance function, ensuring adherence to the FAIS Act. They must submit reports to the Commissioner and report any irregularities.

The FAIS Ombudsman

The FAIS Ombud handles complaints related to financial advice and intermediary services. The Ombud aims to resolve complaints fairly, informally, and expeditiously.

Product Categories

FSPs are licensed to sell specific financial products, categorized into different classes and subcategories. Each category has specific experience and qualification requirements.

FICA (Financial Intelligence Centre Act)

FICA aims to combat money laundering and terrorist financing. Accountable institutions must identify clients, keep records, and report suspicious transactions.

Transitional Provisions

Transitional provisions apply to persons registered before April 2018, ensuring they meet updated fit and proper requirements.

Part 2: Summary of the stakeholders, role players and most important aspects

Client

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

FSCA

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

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

The FAIS departments has a further 4 departments:

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

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

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

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

Commissioner

- Used to be called the Registrar of the FSB
- Commissioner is the Executive Officer or Deputy Executive Officer of the FSCA
- Commissioner approves (grants) FSP & KI applications and approves Compliance Officers, and can remove approval and authorisation
- When assessing whether a person meets the Honesty, Integrity and Good Standing requirements, s/he will consider
 - The seriousness of the conduct
 - The relevance
 - The passage of time
- Commissioner can impose conditions and restrictions on granted licences
- Issues the license and number of certified copies requested
- Commissioner can publish notice to declare an FSP an undesirable business practice when an FSP's practice has or can harm the relations between providers, clients or the general public and/or unreasonably prejudice, deceive or unfairly affect any client
- Commissioner can provisionally suspend a licence, but if contravention of Act is serious, will suspend the license without the notice, and can permanently withdraw a license and/or institute legal action against the FSP (civil remedies available)
 - Civil remedies are available to the Commissioner when there is reason to believe that a person is contravening or failing to comply with the Act and can then apply to the Court for a restraining order against doing business or dealing with the money or property and request for remedial steps to take place. Amounts recovered will be deposited into a trust account from which successful claimants (prejudiced clients) will be paid. Any amounts not claimed within 3 years from date of first distribution will accrue to the Commissioner
- Will inform licensee of intention and allow time for representation
- Commissioner may debar any person, including a Rep
 - If they don't meet with the requirements
 - Contravened or failed to comply with the Act

- If KI / FSP / new director / member / partner is not Fit & Proper (honesty, integrity & good standing), Commissioner may withdraw the license
- Commissioner requires a continuously updated and central register of all Reps and KI's
- May require FSP to terminate services of auditor
- May withdraw authorisation from compliance officer if they do not comply
- Commissioner may apply to a court for sequestration or liquidation of an FSP in order to protect the interest of clients and for the integrity and stability of the financial sector

Office of the FAIS Ombud

- This Office is independent of the FSCA and is formed in terms of the FAIS Act to attend to complaints against FSP's
- The Office of the FAIS Ombud has the power to make decisions an order of court as well as to award Costs and Damages in line with the FAIS Act
- The FAIS Ombud may refer matters to the FSCA Commissioner if there appears to be a contravention of the FAIS Act
- Ombud will not investigate unless all parties have been informed and had opportunity to respond
- Respondent **NO LONGER** pays non-refundable case fee of R1 000
- Will try and resolve the matter and if one or both parties don't want to accept, then Ombud will make a final determination – either dismissing the complaint, or upholding it wholly or partially
- Can award costs, interest over and above award, which may not exceed what a court would have awarded and will be in line with the type of complaint, prejudice suffered etc. as determined by the Board
- Only have 3 years to submit complaint (or within 3 years that client ought to have become aware)
- Will not proceed with complaint if complainant has approached the courts, or during, wants to approach the court

- Determination becomes a civil court judgement
- Only appealable at the Financial Services Tribunal (used to be the FSB's Board of Appeal)
- Writ of execution to be issued by court and sheriff appointed
- If complainant delayed proceedings etc., the Ombud can award costs against the complainant
- Any person that commits an act that would have constituted contempt of court if it had occurred in court, is guilty of an offence on conviction to a penalty or if they wilfully interrupt proceedings, a fine or 1 year imprisonment

Compliance Officer

- As soon as FSP has more than 1 KI or Rep, then Compliance officer is required
- A Compliance Officer may be an internal appointment or an outsourced appointment (external)
- The Compliance Officer must meet specific qualification and experience requirements (3 years' experience (could be gained under supervision) and relevant qualifications) and be approved/authorised by the FSCA (2 phase approval)
- The duties of the Compliance Officer are;
 - Facilitate the implementation of FAIS compliance
 - Monitor compliance within the business
 - Keep records of all monitoring done
 - Report to Management at least every quarter on the status and progress of compliance
 - Report to the FSCA on an annual Basis – the Compliance Report (to be replaced with Conduct of Business Reports – CBR)
 - Report to Management or the FSCA in the event of a material breach of the FAIS Act
 - Report irregularities or suspected irregularity in conduct or affairs of the FSP which is material

- Important, Compliance officer does not prepare financial statements or sign them off, this is the auditor and FSP signs off (Director or Financial Director etc.).
Compliance officer just submits financials to FSCA
- Also, ultimate responsibility of compliance with the Act lies with the FSP. The compliance officer will monitor and advise and make recommendations, but at the end of the day the KI and FSP must take responsibility of non-compliance

Key Individual

- KI is a natural person and could be a Sole Proprietor
- KI is appointed by the FSP, but approved by the Commissioner
- KI appoints Reps
- KI oversees and manages the rendering of financial services (advice and intermediary services) by the Reps, must be able to implement and maintain the operational ability of the FSP and fulfil the responsibilities imposed by the Act
- KI must have the operational ability to carry out their functions as determined by the Commissioner
- Juristic representatives must at least have one KI
- KI needs to verify that FSP maintains a Rep register
- KI must be Fit and Proper
 - Honesty and Integrity (called personal character qualities) – must out of own accord volunteer the information and be candid and accurate
 - For example, previous judgements, including criminal or civil matters regarding (but not limited to) theft, fraud, dishonesty, breach of fiduciary duty, misrepresentation, negligence, dishonourable or unprofessional conduct
 - Offences of supervision of financial institutions
 - Offences under Prevention of Corruption Act, Corruption Act or Prevention and Combating of Corruption Activities Act, or similar offences in any country

- Lack of compliance with Regulatory deadlines or subject of regulatory actions
- Lack of willingness or readiness to comply with legal, regulatory or professional requirements
- Disciplined by, refused or withdrawal of, or denied membership of professional and/or regulatory bodies
- Dismissed, suspended or disqualified as director, managing executive, public officer, auditor or statutory actuary
- Been untruthful or provided false or misleading information to, or uncooperative in dealing with Commissioner or regulatory authority
- Found not Fit & Proper and not remedied
- **Must out of own accord, disclose all relevant info**
- Competent
 - Class of Business
 - Full qualification (must have full recognised qualification before KI will be approved by Commissioner)
 - Minimum experience (KI's also need **one year's** experience in overseeing and managing rendering of financial services by Reps of the FSP in that product category or services similar to). Experience lapses when KI has not managed/overseen financial services for a period of **5 consecutive years**
 - Regulatory Exams
 - CPD (Continuous Professional Development)
 - Must be relevant, contribute to knowledge, address needs, changing conditions relevant to product
 - Keep records and report CPD activities
- Operational ability (ensures & maintains)
- IF KI is Sole Proprietor, then Financial Soundness as well

All must be adhered to when applying as KI

- KI must ensure that Rep register is updated and maintained
- KI must ensure and maintain operational ability which refers to

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

Application to Commissioner to apply for License/Approval as KI

- Complete & sign the relevant application forms
- Supply all information details regarding applicant's contact details, compliance officer, personal circumstances (honesty, integrity and & good standing), how applicant will comply with requirements, with supporting evidence (candid, out of own accord)

- KI must be able to prove to Commissioner that he/she has required operational ability to effectively and adequately manage and oversee financial services of all FSP's and juristic reps where he/she is appointed as KI and that they can fulfil the responsibilities as prescribed in the Act
- FSP must meet minimum experience, qualification requirements, completed RE
- Commissioner may require additional information and may collate this from any source, including the Ombud and other regulatory or supervisory authorities, then will consider the application and inform applicant whether approved (which could be with conditions) or refused (with reasons). If approved, Commissioner will issue FSP with a number of certified copies
- Once granted, the Commissioner may withdraw or amend any condition once notice has been provided and clients are not prejudiced, impose new conditions when new KI is appointed or personal circumstances change

FSP

- Ensure that all KI's and Reps and competent to act and comply with all requirements, are FIT& PROPER, comply with the Code of Conduct, are trained, adhere to CPD requirements and keep a competence register (qualifications, RE, product specific training, class of business training, other relevant training and CPD records) for all KI's and Reps
- Assess the operational ability of its KI's to perform their functions taking into account the scale, range and complexity of the business & if their KI's are reps or KI's for other FSP's too
- Ensure FSP is FIT & PROPER
 - Honesty, Integrity and Good Standing
 - Competence
 - Operational Ability
 - Financial Soundness relates to all FSP's and Juristic Representatives
 - Assets must always exceed liabilities

- Must be able to meet liabilities when they are due and have adequate financial resources to carry out activities
 - May not be under business rescue, insolvent, sequestrated or liquidated or seriously or persistently fails to manage any financial obligations satisfactorily
- FSP to record the KI's and Reps' CPD activities with evidence and keep for **5 years**
- All training to be recorded within **15 days**
- Ensure that
 - Compliance reports are submitted (Sole Proprietors submit self and where FSP has an officer or appointed a practice the latter will submit the report, but the FSP must review the report and sign the declaration attached)
 - Financial statements are submitted
 - Payment of annual levies (as FSP's and levies for Ombudsman)
- May only act if authorised (license has been granted). May not act if license has been suspended or withdrawn
- Remove KI or Reps name from the register **when debarred and requested by the Commissioner** within **5 days**
- Ensure all requirements for reappointment of reps are complied with as determined by the Commissioner
 - Update the rep register, inform FSCA to remove name from list of debarred reps, supply FSCA with affidavit confirming all matters have been complied with, person is fit & proper, if due to honesty and integrity, set out reasons for reform or rehabilitation and any other info/docs considered by the appointing FSP and confirmation from KI or FSP that they are satisfied that rep complied with all requirements for reappointment
- May not allow a rep to outsource or sub-delegate any activities the rep performs on behalf of the FSP
- Design and implement policies and procedures to ensure that business can be carried on in an orderly and efficient manner, reduce risk to FSP and clients, all information is accurate, reliable, backed-up and safe from destruction and all

applicable laws are complied with and have contingency plans to ensure the continued function of the business and service to clients

- 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
- Have an effective and adequate corporate governance and risk management system that cover a business plan, risk, Financial Intelligence Centre risks, compliance, corrective actions, accounting policies and timeous reporting to the Commissioner
- FSP's that provide automated advice must have resources to understand and monitor algorithms, risks to clients, manage changes, suspend provision in the event of errors, protect confidentiality that meet the current and future operational needs and capacity
- Remuneration paid must be reasonable, it won't increase risk or unfair treatment to clients and is in accordance with all relevant legislation
- Display a certified copy of license in every business premises in a prominent and durable manner
- Refer to the fact that a license is held in all docs and advertisements
- Produce the license to anyone requesting it
- Ensure that directors / members / trustees / partners etc. adhere to Honesty & Integrity and inform the Commissioner **within 15 days** when new person has been appointed
- Sole proprietor FSP must have qualification when applying
- Sole proprietor FSP must have minimum experience
- When changing license
 - Adding new service – 50% of experience
 - Adding new subcategory – 100%
- When using a 3rd party to render admin services or system functions, SLA in place stipulating agreed services, time standards, roles and responsibilities and penalties

- Ensure that internal control structures are in place which include segregation of duties, logical access security, access rights and data security, physical security of assets and records, documentation relating to processes, procedures, policies and controls, system application testing, disaster recovery and back-up, training for KI's and reps regarding Act and rendering of Financial Services and a business continuity plan
- Ensure that necessary system controls are in place, general admin processing and risk control measures
- Must record all financial and system procedures to enable FSP to report in terms of accounting requirements
- Bring accounts up to date monthly
- Submit annual statements to Commissioner (Compliance officer will usually do this, but FSP must ensure it happens)
- Maintain in force suitable guarantees, professional indemnity insurance and fidelity insurance cover to cover risk of losses due to fraud, dishonesty or negligence
- When accepting client funds or documents, issue written receipt, keep safe and separate from FSP's funds, pay into designated (separate/trust) account in **1 business day**
- Maintain a Rep register
- Take responsibility for activities of the Rep
- Recruitment of reps – check the following:
 - Entry level qualification
 - Usually matric/senior certificate/NQF Level 4 certificate except Cat 1.1 & 1.19 & Cat 1 Execution of Sales – their requirements are less – check under Fit & Proper for Reps later in this document
 - Experience
 - Qualification
 - Regulatory exams
 - Honesty and integrity
 - Person has been debarred?
- Can employ Rep under supervision if competence fit and proper is not adhered to

- Selection of supervisor – natural working relationship
- When Rep is debarred, ensure that un-concluded business is properly concluded and clients aren't prejudiced
- When rendering financial services, do so in plain language, provide factually correct information which is adequate and appropriate, provide it timeously in order for clients to make informed decisions, provide it in writing when requested, provide all fees, sums etc. in monetary terms or provide the calculation thereof
- Disclose personal interest or conflict of interest and incentives offered or received
- Execute service in accordance with the contract as soon as possible in the interest of the client
- Accurately account for all transactions
- Don't deal with any product for own benefit, account or interest
- Have a conflict of interest management policy to identify and manage conflict of interest. All staff must be trained on the policy and clients must be able to view it (publish in appropriate media). Compliance officer to report on implementation and compliance with report to Commissioner and policy must be reviewed annually
- Don't offer financial interest to Rep to give preference to product, product suppliers or promote quantity to the exclusion of quality
- Disclose nature, extent and frequency of "valuable considerations" (all sums, fees, charges etc.)
- Disclose details about FSP and Product Supplier
- Disclose interest in a product supplier (10%) or if income from P.S. exceeded 30% in preceding 12 months
- Give clients a choice between product suppliers (if applicable) and use judgment objectively
- Not make inaccurate/unsubstantiated/unfair statements about other product suppliers, their products, FSP's, reps etc. If comparing products, must be done based on facts
- Always act in the interest of the client, honourably and professionally
- Disclose risks and changes when products are replaced

- Have an internal complaints resolution system to ensure the effective resolution of complaints and the fair treatment of complainants. FSP's to ensure appropriate engagement with the relevant Ombud. The board of directors/governing body and KI's is responsible for effective complaints management and must approve and oversee the effectiveness thereof. FSP must establish and maintain complaints escalation and review. If complaint is resolved in favour of the client, it must be done without delay and if rejected, client must be informed of reasons and possible escalation processes. Complaints must be scrutinised and analysed by the FSP to ensure recurrences are prevented and information must be reported to its governing body or executive management
- Keep data and records of complaints, categorise them and report on them
- Act upon complaints received and provide the client with all of the information, contact details, who is working with complaint and have process to complain available and accessible, communicate regularly, fairly and frequently with complainant. Finalise complaints within **6 weeks**
- Advise client to go to Ombud within **6 months** if not resolved, provide all details of Ombud, keep records of complaints to Ombud and outcome, monitor determinations and guidance by Ombud to identify failings and risks in own processes and policies, and adjust accordingly
- Have systems and reviews that routine complaints are rectified and avoided in future, senior manager must review complaints, procedure of complaint must be in easy language and published for clients and non-routine complaints can be escalated
- FSP must have documented process and procedure for the approval of advertisements by a key person or appropriate senior person with delegated approval
- All adverts must be factual and may not contain untrue, fraudulent or misleading information. Must use plain language and clearly display warnings, risks and terms and conditions. Ads cannot lead the average targeted client to any false conclusions, no negative option marketing and a key person must be used to approve ads.
- Make risks known and disclose if returns are not guaranteed or dependant on other variable factors and if projections are based on past performance etc.

- Maintain records for a minimum of **5 years** regarding known premature cancellations, non-compliance, complaints received and ongoing licensing and continued compliance
- Provide docs to Commissioner in writing in **7 days**
- If accountable institution with FICA, then
 - Have responsible person
 - Systems, processes and procedures
 - Train staff
 - Provide records when warrant is received
 - Report transactions
 - Keep records for **5 years**
 - Keep records of ID's and authorisation, all transactions, accounts, amounts etc.
 - Give assistance to the representative from the Centre
 - Must have a warrant issued in chambers (local jurisdiction)
 - Evidence could be admissible in court
 - Can use 3rd party to store records, but must inform Centre who they are, their contact details, FSP remains accountable for records and must have free and easy access to records
- FSP's assets must exceed liabilities
- Submit financials within **4 months** from financial year-end

Changes:

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

Lapsing:

- FSP can lapse license due to financial reasons, ill health, death, injury or business reasons by surrendering it to the FSCA
- Commissioner must be informed in writing, with reasons
- In the case of voluntary sequestration, winding up and closure, the FSP may not close the business unless a copy of notice has been lodged with Commissioner
 - Informing that FSP will meet all their liabilities under transactions entered into clients prior to closure
- In the case of business rescue, the Companies Act will apply and no new business may be conducted unless a Court has granted permission

Accounting and Auditing requirements:

- All FSP's must maintain accounting records, brought up to date monthly
- Annually prepare financials that reflect financial position at year-end, results of operations, cash, changes in equity and any other components required in terms of GAAP or International Financial Reporting Standards
- Full set of financial statements to be submitted to the Commissioner within **4 months** from the year end of the provider
- FSP that is a Sole Proprietor and DON'T collect premiums or hold client funds
 - Only needs to submit an income statement and balance sheet
- FSP that is a CC and DON'T collect premiums or hold client funds
 - Need to submit financial statements prepared by an accounting officer
- FSP that is a Company need to submit audited financial statements
- CAT I FSP's & juristic reps that do not hold or collect premiums/other monies/client assets must comply with requirements regarding assets exceeding liabilities
- CAT I FSP that collects premiums/money/client assets and CAT II, IIA, III and IV FSP's must comply with assets to exceed liabilities, comply with "Table B" requirements in terms of assets, working capital and liquidity, must submit "Form A in Annex 6" to Commissioner annually if CAT I & IV and every six months if CAT II, IIA & III and Juristic reps must submit the above to their FSP's every six months. FSP must report to

Commissioner amount of money held on behalf of clients, that they were kept safe and separate from FSP's money and assets and other relevant info required by Commissioner

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
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

- Section 19.2 report is the external auditor's report and forms part of all audited financial statements and must be submitted by
 - Cat II, IIA, III and IV FSP's
 - Any registered company
 - FSP's that receive client funds and/or premiums (excluding 1.1 (Long Term Cat A & 1.19 (Friendly Benefit Societies – need accounting officer only)

- Section 19.3 report is known as the report of the separate banking account (Trust Account) must be submitted by all FSP's that collect funds
 - The purpose of this report is to ensure that clients' assets and/or monies held by FSP's are protected from unauthorised use, kept separate from FSP's funds and to detect any non-compliance in respect of the monies or assets
 - It is a separate report prepared and submitted by an external auditor
 - Cat 1.1 & 1.19 submits a similar report compiled by an accounting officer
- If auditor's services are terminated, inform the Registrar and still submit reports / irregularities if applicable
- Cannot change financial year-end without permission from Registrar unless other regulatory body that governs financial status does so (not Registrar of Companies)

Representatives

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

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

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

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

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

Rep register

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

Debarment

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

Debarment must be lawful, reasonable and procedurally fair

Process:

- Inform of intention to debar, the grounds, terms attached, copy of FSP's written procedure and policy of debarment, give person reasonable opportunity to respond, consider responses and inform person in writing of decision and person's rights to appeal
- Ensure person is prohibited from rendering service, remove from rep register, ensure all un-concluded business is properly concluded

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

Process:

- Inform person of notice to debar within 30 days with all relevant info (grounds, reasons, intended period, terms attached and prohibition to render financial services).
- Person to be debarred is issued with notice and has **14 days** to respond

- Commissioner then issues notice of debarment after **14 days** of notice of intention with grounds, reasons and terms. Person's name is flagged on FSCA website. Period of debarment depends on severity of transgression, usually between **2 – 5 years**
- The debarred Rep may appeal to the Financial Services Tribunal (used to be the FSB's Board of Appeal) at the FSCA within **30 days** by paying the fees and following the process prescribed by the Minister

Reappointment of debarred representative

- Only possible after 12 months since debarment IF
 - All unconcluded business is concluded, all complaints or legal proceedings are resolved and all fit & proper requirements are complied with, unless reason for debarment was due to competence, in which case person can be reappointed the moment they have been found competent and fit & proper
- Thereafter activities are monitored, i.e. bi-monthly

Supervision

- First period is an active period where all activities are signed off
- Thereafter activities are monitored, i.e. bi-monthly
- Agreement must be in place and evidence of supervision must be kept
- Supervisee to disclose the fact that s/he works under supervision
- Minimum period rep can work under supervision – **12 months**
- Maximum period rep can work under supervision – **6 years** (enough time to become Fit & Proper, including gaining a full qualification)

Recruitment:

Check

- Person has not been declared insolvent, placed under liquidation/sequestration/business rescue or started proceedings
 - If rep is sequestrated after appointment, FSP must implement measures to reduce risks for clients or the FSP as a result
- Juristic reps (not natural person, i.e. a company), ensure

- They have operational ability
- entry level requirement (matric, grade 12, NQF 4 qualification or in terms of Cat 1.1 & 1.19 – ABET Level 1 and in terms of Cat 1 FSP – Execution of Sales, a Grade 10 or equivalent to Grade 10)
- experience
- relevant recognised qualification
- RE's
- Honesty and Integrity
- Whether person has been debarred

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

FICA

- Accountable institutions must appoint responsible person and train employees to comply with Act
- Keep records of all transactions, accounts involved, persons involved, their identities and authorisations to act on behalf of others, if applicable, nature of relationships and person who obtained all of the info
- Keep all records for a minimum of **5 years**, and if records are kept by 3rd party, inform the FIC of all details and ensure free and easy access
- Assist FIC representative when warrant is received to obtain admissible evidence that could lead to criminal charges
- Penalties are mostly R10 000 000 and/or imprisonment of 15 years, but fine for person convicted in terms of FICA could be up to R100 000 000
- Report transactions above **R49 999.99 (changed from R24 999.99)**
- Verify residential address

- Know accountable institutions and ensure you know about recent changes to the list that include high value items above R100 000 and crypto currencies now included
- Reportable institutions no longer applicable, due to the above

Other important aspects:

- Financial services refer to the giving of advice and intermediary services
- The “body” used to confirm credits and/or qualifications is INSETA
- Know definition of Advice, what advice is not and intermediary services (refer to INSETA diagrams). Remember that Financial Services refers to Advice and/or Intermediary Services
- Know the different financial products
- Client excludes the general public, except when we refer to advertising
- Know the Accountable Institutions in terms of FICA
- Car dealers and selling Kruger Rands are no longer REPORTABLE institutions in terms of FICA, due to the inclusion of all products sold valued at R100 000 and above
- Know the penalties in terms of the Act – **R10 000 000 and/or 10 years in prison awarded for**
 - Misleading, false or deceptive statements or concealment of material facts given by any person
 - A person, who is not a Rep, that pretends to be an authorised Rep and render financial services
 - Failing to comply with the Act in terms of acting as an FSP without a license, not displaying the license, not enabling Reps to give certified proof that Rep renders services on behalf of an authorised FSP who takes responsibility for Rep and have the necessary insurance and, if applicable, guarantees in place. Further, FSP’s that do not debar Reps that don’t comply with the Act, not appointing a compliance officer and/or not submitting reports to the FSCA, not maintaining records, not submitting audited financial statements or not reporting irregularities or guilty of undesirable business practices