



MAXIMUM AMOUNT CONTEMPLATED IN THE DEFINITION OF AN “ASSISTANCE POLICY”

On 11 November 2013 Government Notice No. 868 was published wherein the Minister of Finance changed the maximum amount contemplated in the definition of an “Assistance Policy” from R18 000 to R30 000.

As per the Government Notice, the change is with effect from the date of the publication of the Notice i.e. with effect from 11 November 2013.

Did you know?

Copies of presentations done by the FAIS Department as well as all previous editions of the FAIS newsletter are available for download on the FAIS Homepage of the FSB website:

- Go to www.fsb.co.za
- Under the heading “departments” select “FAIS”
- On the bottom left of the home page select “communication”

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Disclaimer

The FAIS Newsletter must not be construed as a substitution of the FAIS Act and subordinate legislation. The newsletter is aimed at addressing specified areas and provides a quick reference to the reader. It does not take away the obligations that are imposed on FSPs, key individuals, representatives, compliance officers or any person involved in the rendering of financial services to acquaint himself or herself with the provisions of the FAIS Act.

PENALTIES FOR LATE SUBMISSION OF RETURNS

Section 41(2)(a) of the FAIS Act allows the FSB to impose penalties upon Financial Services Providers (FSPs) who fail to submit the required returns [annual financial statements and compliance report(s)].

A decision has been taken that during 2014 the FAIS Department will begin imposing penalties upon those FSPs who fail to submit their returns by the relevant due date. Such penalties will be charged for every day that the returns are submitted late.

FSPs are therefore urged to ensure that their returns are up to date and to ensure that all future returns are submitted on time to avoid being penalised.

All authorised Financial Services Providers (FSPs) are required to:

1. Submit their annual financial statements to the FAIS Department within 4 months of their financial year end; and
2. Submit their annual compliance report(s) to the FAIS Department by the applicable due date (depending on the category of license granted).

Extensions:

- **No extensions** will be considered or granted on the submission of the annual **compliance reports**;
- In terms of section 4(1) of the FAIS Act, FSPs may apply in writing to the Registrar for an extension to the period in which they must submit their **financial statements**. An application for extension must be fully motivated as to why the extension is required.

APPROVAL OF SPECIMEN MANDATES

Sections 5.4 of the Administrative Code of Conduct and 5.2, 5.3 of the Discretionary Code of Conduct deal with the approval of the "specimen mandates". The FSP's mandate must initially be approved by the Registrar at application stage (this is what is referred to as the specimen mandate) and thereafter the specimen mandate may not be substantially amended without prior written approval of the Registrar.

Whilst conducting onsite visits on some Category II (Discretionary FSPs) and Category III (Administrative FSPs) in the past it has been noted that there are some FSPs who have substantially amended their specimen mandate without having submitted the amended mandate to the FAIS Registration Department for approval.

All mandates that are substantially amended may be submitted to Faispfc@fsb.co.za for approval.

COMPLIANCE MONITORING

Based upon the types of queries received as well as the information gathered during onsite visits, the FAIS Department has identified the need to include a short article on compliance monitoring.

"Compliance" by FSPs is essentially at two levels:

1. Compliance with external rules and legislation imposed upon the FSP such e.g. FAIS, FICA, the Labour Relations Act etc.; and
2. Compliance with the FSPs internal systems of control and processes that have been implemented to ensure that the FSP complies with the externally imposed rules and legislation.

Compliance monitoring is then conducted to:

1. Review the internal systems of controls and processes that have been implemented to assess their effective ness; and
2. Identify any areas of weakness and improve upon these areas.

Board Notice 127 of 2010 sets out the frequency of monitoring to be conducted by approved compliance officers on the various categories of FSPs.

This can be summarized as follows:

Type of Compliance Officer	Category of FSP	Frequency of monitoring visits to:	
		FSP business premises / Business units / branches	Representatives
External	I & IV	Minimum of quarterly	Minimum of twice per year
	II, IIA and III	Minimum of monthly	Minimum of monthly
Internal	I & IV	Minimum of annually	Minimum of annually
	II, IIA and III	Minimum of quarterly	Minimum of quarterly

The question has been raised by a number of external compliance officers as to whether it would suffice to conduct monitoring by way of alternative methods such as remote monitoring, teleconferences and Skype interviews. The answer to this question is "no", this is not sufficient for the compliance officer to discharge their duties in terms of Board Notice 127 of 2010.

No external compliance officer or compliance practice is allowed to delegate the rendering of compliance services (including the monitoring referred to above) to another person.

An internal compliance officer may delegate the rendering of compliance services to another person, subject to certain conditions. These conditions can be found in Section 8(2) of Part VII of Board Notice 127 of 2010.

HANDOVER COMPLIANCE REPORTS

A compliance report for FSPs changing or appointing a compliance officer (referred to as a Handover Report) needs to be submitted where:

- An approved compliance officer resigns as the compliance officer of the FSP (the compliance officer completes the report and the report is known as a "CO Handover Report"); or
- Where an FSP who did not have an approved compliance officer appoints a compliance officer (the key individual completes the report and the report is known as a "KI Handover Report")

In both scenarios referred to above the Compliance Officer, the Key individual and the FAIS Department will all need to retain copies of the relevant handover report).

A copy of the handover report must always be submitted to the FAIS Department for record purposes. The report will be analysed by the FAIS Supervision Department and, where necessary, a query raised.

When is a handover report not required?

There are only 3 scenarios where a handover compliance report would not need to be submitted:

- Where the compliance officer died during the reporting period, provided the FSP informs the FAIS Department in writing; or
- The compliance officer is substituted by a compliance officer employed by the same compliance practice as the resigning compliance officer; or
- The FSP has more than one approved compliance officer i.e. two or more approved compliance officers.

Impact of the Handover Report on the submission of the annual compliance report

- With **Category II, IIA and III FSPs** the appointment or resignation of a compliance officer will have no impact on the submission of the bi-annual compliance reports as the compliance reports will need to be submitted by the submission dates irrespective of whether the FSP has an approved compliance officer or not.
- With **Category I FSPs** however the submission of a handover report (as a result of the appointment or resignation of a compliance officer) may have an impact on what annual compliance report(s) need to be submitted by the FSP and when.

The diagram on page 5 below illustrates what compliance report(s) will need to be submitted for a Category I FSP during a calendar year where there has been a resignation / appointment of a compliance officer.

You will note that in some instances more than one annual compliance report will need to be submitted by the FSP (in addition to the handover report).

Any queries relating to the submission of the handover report can be submitted to Faiscomp1@fsb.co.za

CATEGORY I - FSP HAS A CO WHO RESIGNS AND NEW CO NOT APPOINTED (2011 REPORT ONWARDS)				KEY	
				FSP HAS CO	
				NO CO	
31 Dec	31 May	CO resigns	31 Dec		
					
No report due	Cat I With CO report due	CO Handover Report due	Cat I Without CO report due		
31 Dec	CO resigns	31 May	31 Dec		
					
No report due	CO Handover Report due	No report due	Cat I Without CO report due		
CATEGORY I - FSP WITHOUT CO APPOINTS A CO (2011 REPORT ONWARDS)					
31 Dec	31 May	CO Appointed	31 Dec		
					
Cat I Without CO report due	No report due	KI Handover Report due	No report due		
31 Dec	CO appointed	31 May	31 Dec		
					
Cat I Without CO report due	KI Handover Report due	Cat I With CO report due	No report due		

PUBLICATION OF TCF GUIDES FOR SMALL FSPs & ASSET MANAGERS

Although there will be explicit inclusion of TCF principles in forthcoming over-arching legislation to be introduced under Twin Peaks, it is clear that existing legislative and regulatory frameworks already allow us to introduce most elements of TCF.

For example, Section 2 of the FAIS General Code of Conduct already obliges FSP's to "at all times render financial services honestly, fairly, with due skill, care and diligence, and in the interests of clients and the integrity of the financial services industry." In practice, a material failure to deliver one or more of the TCF Outcomes will already constitute a breach of this obligation, and would therefore be actionable by the regulator. A number of the more specific obligations in the General Code, for example those relating to disclosure, suitability of advice, etc. are equally consistent with the TCF principles. Similar examples exist in other pieces of FSB-supervised legislation.

The general principles of TCF have been consistently communicated for a number of years. The FSB therefore expects regulated entities to already be applying fair treatment principles in their overall business processes. Where smaller FSP's are concerned, the FSB acknowledges the need for on-going guidance and support regarding our TCF expectations, and the FAIS department is including this support in its supervisory interactions with FSP's.

The FAIS Department recently published two TCF guides which are aimed at assisting small FSPs (IFA's) and Asset Managers in understanding what TCF means for them. The guides also contain a number of questions that small FSPs and Asset Managers can consider.

Copies of the guides can be downloaded on the FAIS Homepage of the FSB website (www.fsb.co.za):

The screenshot shows the Financial Services Board (FSB) website. The header includes the FSB logo and the text "FINANCIAL SERVICES BOARD Promote and Maintain a sound financial investment environment in South Africa." Below the header is a navigation menu with links for Home, About FSB, Departments, Procurement, Contact Us, Legislation, Feedback, and Site Search. The main content area is titled "Financial Advisory and Intermediary Services" and includes a breadcrumb trail: "The Financial Services Board > Departments > Financial Advisory and Intermediary Services". On the left, there is a sidebar menu with links for About Us, Events, Searches, Financial Service Providers, Compliance Officer, Debarred Representatives, Part Qualifications Recognitions, Recognised Qualifications, and Regulatory Examinations. The main content area has a heading "About Us" and a paragraph: "The Financial Advisory and Intermediary Services (FAIS) Division is responsible for the regulation of Financial Service Providers ("FSPs"). The Division is divided in four departments namely Registration, Supervision, Compliance and Enforcement. The main function of each department is as follows...". On the right, there is a "Latest News" section with a list of links: "BN 229 of 2013.pdf", "BN 229 of 2013 - Exemption of SLN Watkins", "Government Notice R 892.pdf", "Government Notice R 892 - Determination of Fees Payable from 20 December 2013", "TCF Presentation.pdf", "TCF Small FSP Guide.pdf", "TCF Asset Manager Guide.pdf", and "Events". The links "TCF Small FSP Guide.pdf" and "TCF Asset Manager Guide.pdf" are circled in red.

FAIS FINANCIAL STATEMENTS REQUIREMENTS vs THE COMPANIES ACT

All companies registered in terms of the South African Companies Act will have what is known as a Public Interest Score (PIS / PI Score). **This article is therefore relevant to all Financial Services Providers who are a registered company.**

The PI Score plays a role in, inter alia:

- Determining which Financial Reporting Standards a company must use;
- Whether a company must be audited or independently reviewed;
- Which persons are eligible to perform the independent review, and
- Whether a company must appoint a Social and Ethics Committee

How should the public interest score be calculated?

In terms of Regulation 26(2), the PI Score is calculated as the sum of the following:

- A number of points equal to the average number of employees of the company during the financial year
- One point for every R1 million (or portion thereof) in third party liability of the company at the financial year end
- One point for every R1 million (or portion thereof) in turnover during the financial year
- One point for every individual who, at the end of the financial year, is known by the company-
 - In case of a **profit** company, to directly or indirectly have a beneficial interest in any of the company's issued securities; or
 - In case of a **non-profit** company, to be a member of the company, or a member of an association that is a member of the company

This calculation should be done for each company individually and not at a consolidated group level.

What do the different PI scores mean?

- Companies scoring 350 points or more are required to have an audit
- Any company, whatever its points score, that holds funds of R5 million or more for a client in a fiduciary capacity, at any time during the year, is also required to have an audit
- Companies scoring between 100 – 350 points must have an independent review conducted by a registered auditor or a chartered accountant.
- Companies scoring less than 100 points are required to have an independent review conducted by anyone who qualifies as an accounting officer, unless circumstances indicate otherwise

Comparison between “old” and “new” Companies Acts and the audit requirements:

“OLD” (Section 300)	“NEW” (Section 30)
All companies to be audited	Companies that <u>MUST</u> be audited <ul style="list-style-type: none"> • Public companies • State owned companies • Private companies, personal liability companies and non-profit companies that meet the requirements

How does the New Companies Act impact on Companies authorised under FAIS?

- All **Category II, IIA, III and IV** FSPs are **required to submit audited financial statements** on an annual basis, without exception. In other words the New Companies Act will not impact on these FSPs and they are required to continue to submit audited financial statements, irrespective of their PI Score.
- **Category I FSPs that receive client funds and / or premiums** are required to submit audited financial statements. In other words the New Companies Act will not impact on these FSPs and they are required to continue to submit audited financial statements, irrespective of their PI Score.
- **Category I FSPs that don’t receive client funds and / or premiums** are not required to submit audited financial statements on an annual basis (as per the exemption published under Board Notice 193 of 2011) however, they **need to register** with the FAIS Department to make use of this exemption. These FSPs would then be expected to submit financial statements in compliance with the New Companies Act (the PI Score of the Company applies).
- **Category I FSPs that are approved in subcategory 1.1 and / or 1.19 only** (assistance business FSPs) are not required to prepare audited financials however, their financial statements may be prepared by an accounting officer. These FSPs also **need to register** to make use of the exemption published under Board Notice 193 of 2011.

IMPORTANT FAIS CONTACT DETAILS

General FAIS related queries	Faisinfo@fsb.co.za
Extensions on the submission of annual financial statements	Faisfins2@fsb.co.za Faisfins3@fsb.co.za
Queries relating to qualifications	Fitandproper@fsb.co.za
Queries on Fit and Proper requirements	Fitandproper@fsb.co.za
Specific exemption applications	Fais.exemptions@fsb.co.za
Updating details on a license (Profile Changes)	Faispfc@fsb.co.za
Debarment of representatives	Debarment@fsb.co.za
Queries on Date of First Appointment (DOFA)	Fais.Dofa@fsb.co.za
Submission of complaints against a FSP	FaisComplaints@fsb.co.za
Queries relating to the suspension / withdrawal of licenses	Fais.Compliance@fsb.co.za
Correspondence relating to specific exemptions	Fais.Exemptions@fsb.co.za
Queries on the FAIS online reporting system	Faiscomp1@fsb.co.za
Queries relating to compliance reports	Faiscomp2@fsb.co.za Faiscomp3@fsb.co.za Faiscomp4@fsb.co.za

FSB Call Centre: Are you aware that the Financial Services Board has a Call Centre / Contact Centre that is dedicated to resolving all your queries? The following toll free numbers may be used to contact the FSB Call Centre:

0800110443 or 0800202087

Per email: info@fsb.co.za

Website : All the important information applicable to financial services business is posted on our website. You are encouraged to frequently visit our website for latest information and updates. Our website address is www.fsb.co.za.

On the homepage select “FAIS” from the list of departments.