

## Regulatory Updates:

### Recent publications:

#### Board Notices

#### Board Notice 194 of 2017:

*Determination of Fit and Proper Requirements for Financial Services Providers and Representatives (Fit and Proper):*

The amendments to the Fit and Proper requirements were published as Board Notice 194 of 2017. Follow this link to access it:

[http://discover.sabinet.co.za/webx/access/netlaw/37\\_2002\\_financial\\_advisory\\_and\\_intermediary\\_services\\_26.pdf](http://discover.sabinet.co.za/webx/access/netlaw/37_2002_financial_advisory_and_intermediary_services_26.pdf)

The Fit and Proper requirements came into effect on 1 April 2018, and FSPs should take note of the following specific transitional requirements:

Section in Notice	Effective Date
Sections 13 (3) and (5)	1 May 2018
Section 29 (1) (a)	1 August 2018
Section 29 (1) (b)	1 May 2018
Section 29 (2)	1 August 2018
Sections 31 – 34	1 June 2018
Section 38	1 May 2018
Sections 44 (1) and (2); 45; 48 and 49 but only insofar as it relates to a juristic representative	1 March 2019

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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 providing an update on regulatory developments and providing guidance on various legislative matters. 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.*

### **FAIS Notices:**

#### FAIS Notice 124 of 2017, as amended by 139 of 2017:

This Exemption Notice exempts juristic representatives of particular FSPs from compliance with section 13(1)(c) of the FAIS Act in respect of premium collection:

<https://www.fsca.co.za/Notices/FAIS%20Notice%20124%20of%202017.pdf>

### FAIS Notice 2 of 2018

On 20 April 2018, the FSCA published the Exemption of Certain Persons from Fees payable to the FSCA, 2018, under FSCA FAIS Notice 2 of 2018 (“the Exemption”). A copy of the Exemption is attached for ease of reference.

The purpose of the Exemption is to exempt FSPs that were authorised on 1 April 2018 to render financial services in respect of the financial products listed in Column A of Table D in section 52(17) of the Determination Fit and Proper Requirements for Financial Services Providers, 2017, and who applies for authorisation to render financial services in respect of the corresponding financial products listed in Column B of that Table, from having to pay the fees in respect of applications for authorisation and the approval of the amendments to the FSPs’ approved mandates.

The Exemption can also be accessed directly through the following link:

<https://www.fsca.co.za/Notices/FSCA%20FAIS%20Notice%202%20of%202018.pdf>

### FAIS Notice 23 of 2018

*Amendment of the Notice on the Exemption of Certain Persons from the*

*Regulatory Examination and Representative Requirements, 2018.*

On 29 March 2018, the FSCA published the Notice on the Exemption of Certain Persons from the Regulatory Examination and Representative Requirements, 2018 under FAIS Notice 23 of 2018 (“the Exemption”) on our web site. This exemption deals specifically with FSPs who render financial services to or for or on behalf of a private equity funds only.

<https://www.fsca.co.za/Notices/FAIS%20Notice%2023%20of%202018.pdf>

### FAIS Notice 24 of 2018

*Amendment of the Notice on the Exemption of Underwriting Managers from the Regulatory Examination Requirements, 2018.*

On 29 March 2018, the FSCA published the Notice on the Exemption of Underwriting Managers from the Regulatory Examination Requirements, 2018 under FAIS Notice 24 of 2018 (“the Exemption”) on our web site. On 24 April 2018, the FSCA published the Amendment of the Notice on the Exemption of Underwriting Managers from the Regulatory Examination Requirements, 2018 (“the Amendment”) under FSCA FAIS Notice 4 of 2018.

The purpose of the Amendment is to substitute the Annexure to the Exemption with an amended Annexure published separately in Microsoft Excel format.

The Amendment can be accessed directly through the following link:

<https://www.fsca.co.za/Notices/FSCA%20FAIS%20Notice%204%20of%202018.pdf>

The Annexure can be accessed directly through the following link:

[https://www.fsca.co.za/\\_layouts/15/xlviewer.aspx?id=/Notices/Registration%20for%20Exemption%20in%20terms%20of%20FAIS%20Notice%204%20of%202018.xlsx&Source=https%3A%2F%2Fwww%2Efsca%2Eco%2Eza%2FRegulatory%2520Frameworks%2FPages%2FNotices%2Easpx](https://www.fsca.co.za/_layouts/15/xlviewer.aspx?id=/Notices/Registration%20for%20Exemption%20in%20terms%20of%20FAIS%20Notice%204%20of%202018.xlsx&Source=https%3A%2F%2Fwww%2Efsca%2Eco%2Eza%2FRegulatory%2520Frameworks%2FPages%2FNotices%2Easpx)

Please use the amended Annexure and follow the instructions set out therein in order to register for the Exemption.

### **Invitations to comment:**

Kindly take note that the following documents were published on the official website of FSCA:

1. Invitation to comment on proposed amendments to the Qualifications, Experience and Criteria for approval as Compliance Officer, 2018
2. Invitation to comment on proposed amendments to the Determination of Fit and Proper Requirements, 2018

The publications can directly be accessed through the following links:

1. *Invitation to comment on proposed amendments to the Qualifications, Experience and Criteria for approval as Compliance Officer, 2018*

<https://www.fsb.co.za/Departments/fais/communication/Documents/Invitation%20to%20comment%20on%20Amendments%20to%20Qualifications%20Requirements%20for%20Compliance%20Officers-%202018-03-29.pdf>

the proposed amendment seek to expand the list of appropriate subjects for the purpose of recognising qualifications for compliance officers.

2. *Invitation to comment on proposed amendments to the Determination of Fit and Proper Requirements, 2018*

<https://www.fsb.co.za/Departments/fais/communication/Documents/Invitation%20to%20comment%20-%20Amendments%20to%20Fit%20and%20Proper%20-%202018-03-29.pdf>

The consultation focuses on:

- Proposed changes to certain definitions.
- Change to section 40, to clarify that a FSP may not appoint a person who is an unrehabilitated insolvent.
- Section 47 – the definitions of “annual expenditure” and “remuneration”.
- Sections 27 and 52, which seek to correct technical errors.

Comments will close on 1 June 2018.

## **Update of the regulatory examinations**

The Determination of Fit and Proper Requirements for Financial Services

Providers, 2017, was published in Government Gazette No 41321 on 15 December 2017 (Board Notice 194 of 2017).

These requirements came into effect on 1 April 2018. As a result the questions contained in the RE1 and RE5 have been aligned with the amended requirements.

The industry has posed a number of questions regarding the version update of the regulatory examinations insofar as the following two examinations are concerned:

- Regulatory Examination 1 (RE1): FSPs and key individuals in all categories of FSPs; and
- Regulatory Examination 5 (RE5): representatives in all categories of FSPs.

Only the two examinations listed above will be affected and have been updated.

It is important to take note of the time lines that will be applied to transition from the old version of the regulatory examination to the updated version.

#### *Implementation of the Updated Questions and Registrations for Examinations*

##### *Updated Version of the RE1 and RE5*

Persons who registered to write the regulatory examination AFTER 03 April 2018 are obliged to write the new version of the regulatory examination, which will contain the updated questions.

Please refer to Annexure 4 in Board Notice 194 of 2017 for the amended qualifying criteria. The examination questions will be aligned with these criteria.

Persons who write the level 1 regulatory examination after 03 April 2018 must ensure that they use the updated preparation material that is aligned with the qualifying criteria in Annexure 4 of Board Notice 194 of 2018.

#### *Registration For The Examination And Cancellations / Amendments Of Examination Dates*

It is important to take note of the time lines involved for registration, as well as amendments to the exam dates. The standard cancellation policy will apply to all registrations for the regulatory examinations. Candidates who wish to re-schedule their examinations should take careful cognisance of the FSCA's cancellation policy.

#### *Updated Study Material*

There are two sets of material which can be used for preparation purposes:

- a) The Preparation Guide for RE1 and RE5 which is available at <https://www.fsca.co.za/Regulated%20>

[Entities/Pages/LR-FAIS-Amendments.aspx](#) , and

- b) The legislation itself. The Preparation Guide refers to the relevant sections in the Act and subordinate legislation that must be studied.

### *Examination Bodies*

Should more information be required, please contact the following Examination Bodies:

- Financial Planning Institute (FPI)
  - +27 11 470 6000
  - [www.fpi.co.za](http://www.fpi.co.za)
- Moonstone
  - +27 21 883 8000
  - [www.moonstone.co.za](http://www.moonstone.co.za)

Alternatively queries can be submitted to [FAIS.Exams@fsca.co.za](mailto:FAIS.Exams@fsca.co.za).

### *Warning: Training Manuals for Regulatory Examinations*

#### Information That Is Available To All Candidates

In order to illustrate the risks associated with using training manuals to prepare for the regulatory examinations (REs), the information supplied by the FSCA to candidates for this purposes must be explained. The FSCA provides all candidates with the following information in preparation for the REs:

- 1) the exact information that will be tested in the exam. This is in the form of tasks with the corresponding qualification criteria;
- 2) the relevant sections/ provisions of the legislation. This is in the form of motivation and will assist candidates to match the qualification criteria with the applicable provisions.

Not many people are aware of this, and as a result they approach training providers to assist them with their preparation. This article is aimed at informing the industry about the information that is readily available to the public.

The REs are intended to test a candidate's knowledge and understanding of how to apply the legislative requirements of the FAIS Act and sub-ordinate legislation as it applies to the candidate's context. As an example, if the candidate is fulfilling the role of a representative, then the questions in the first level regulatory examinations for representatives (RE5) will focus on the legislation from a representative's perspective. The same principle applies to first level regulatory examinations for key individuals and FSPs (RE1).

#### Preparation Guides On The FSCA Website

Further assistance was made by the publication of a Preparation Guide for each of the examinations on the FSCA website. The titles of these Preparation Guides are as follows:

- Preparation Guide for RE1 and RE5;
- Preparation Guide for RE3; and
- Preparation Guide for RE4.

The Preparation Guides are invaluable as they stipulate the content of the exams, in that they seek to explain what the examination questions will be testing. All examination questions are based on the content as set out in these Preparation Guides. In addition to the above, the Preparation Guides map out exactly where a candidate can find the relevant information in the legislation. The format that is used to provide this information is as follows:

TASK	QUALIFYING CRITERIA	REFERENCE / MOTIVATION
<i>The task describes what the candidate must be able to do in respect of the legislation.</i>	<i>The qualifying criteria refer to the knowledge that a person must have to perform the task in column 1.</i>	<i>In this column the reference to the actual legislation is provided – if you read the particular section of the legislation, then you will have the required knowledge as referred to in column 2.</i>

**Every** question in the question bank for all the regulatory examinations is based on the “qualifying criteria” (or the knowledge column) as explained above. The questions **MUST** be linked to these knowledge criteria otherwise it may not be included in the examination as an examination question.

In essence, every person that must write the regulatory examination is provided with the content of the examination, and shown the exact questions to expect in the examination. By looking at the qualifying criteria, you will know exactly what you will

be tested on. In addition to this, specific references to the legislation that candidates must study to gain the required knowledge are carefully listed. The candidates will simply be required to study that particular section in the legislation in order to have the necessary knowledge to answer the question in the examination.

**NOTE:** It is important to read the actual legislation. One cannot expect to be tested on legislation without having read the legislation. By reading the legislation you will get used to the definitions, terminology and the manner in which the legislation is drafted. Please be advised that the same terminology and approach is used in the examination questions. The questions must be technically correct in that the correct legislative terms must be used at all times. Reading the legislation will help you to interpret the questions correctly.

Taking all of this information into consideration, it is clear that using the Preparation Guide together with the FAIS Act and subordinate legislation, is all you need to prepare for any of the regulatory examinations.

### The Concern about Training Manuals

The FSCA does not endorse any training manuals as it has made available the tools needed to assist candidates to prepare for the examinations. Not all training manuals are alike as their authors are not legislative experts, or may have interpreted legislation incorrectly, or might not have covered all the information that will be covered in the examination (i.e. not all the qualifying criteria are covered in the training manual).



It is critically important that training manuals are interrogated to ensure that each and every qualifying criterion is covered in the manual, and that the interpretation of the legislation is 100% accurate. If the training manual is not interrogated for completeness and correctness, then you are setting yourself up for failure. By using a training manual that has omissions, or incorrect interpretations will result in you failing the regulatory examination. The mock examination questions that are used are often sub-standard and only make use of plain language, often affecting the technical correctness of the questions.

It is to be noted that the following requests have been received by the FSCA from the training providers:

- a. that the FSCA provide them with training on the legislation in order to assist in the interpretation thereof; and
- b. that the FSCA provide them with training guides.

It is therefore clear that not all training providers have the required skills and expertise to provide training in respect of the regulatory examinations, and that the content they cover in their training workshops are often insufficient.

Complaints received by the FSCA in respect of the regulatory examinations include:

- 1) The examination included questions that were not covered in my training manual;
- 2) The questions in the examination did not resemble the questions in the mock exams;

- 3) I obtained 100% for every mock examination, but when I wrote the regulatory examination I failed – there must be something wrong with the examination;
- 4) I know the training manual off by heart, but I still fail the regulatory examination.

In each of these examples, the candidate does not question whether the training manual is complete or accurate, and whether the mock examination questions were accurate and reasonably in line with the real/ actual examination questions. Candidates conclude that the training manual and all the mock questions are correct, and therefore it is the regulatory examination that is problematic.

It is therefore very important that all FSPs, key individuals and representatives satisfy themselves that the training provider they use has the required skills and expertise, that the training material that is provided is 100% accurate and complete (in line with the content provided in the FSCA Preparation Guide) and that the mock questions are not sub-standard.

## From the FIC Desk

### *Enforcement date*

In the FAIS Newsletter published on 04 December 2017, it was indicated that enforcing compliance with the new provisions of the FIC Amendment Act will be delayed to 01 December 2018. This date was determined based on the few responses received in reply to the FIC's state of readiness survey. Having taken into consideration concerns raised over challenges experienced in implementing

the new requirements, a decision was taken to set a single date for all institutions regulated by the Financial Sector Conduct Authority (FSCA) and align it with the date set by the Prudential Authority.

Therefore, the cut-off date for enforcing compliance has been changed to 02 April 2019. The alignment was deemed necessary in order to achieve effective supervision, promote coordination of supervisory activities and ensure that the two agencies work in similar ways.

During the period leading up to this date, institutions are expected to demonstrate full compliance. Institutions are encouraged to implement the new requirements as early as possible. The respective supervision departments within the FSCA will engage with regulated institutions to establish progress towards implementation of the new requirements.

The FAIS Supervision department will conduct surveys on a quarterly basis from end of June to obtain feedback on implementation levels and indication of timelines to address the outstanding requirements. The surveys will focus on different types and/or categories of FSPs each quarter.

#### *FICA workshops*

The FAIS supervision department is committed to providing support and guidance to supervised entities regarding the FICA provisions. In this regard the FAIS supervision department will continue to conduct workshops for category I FSPs. The purpose of the workshops is to assist this category of FSPs to better understand their obligations in respect of the new provisions of the FIC Amendment Act.

A series of workshops will be held at the FSCA's offices in a continued effort of creating awareness and education and promoting implementation of the FIC Amendment Act. Small FSPs without compliance officers are encouraged to attend these workshops.

#### *FICA Compliance report*

Please note that the 2018 Compliance Reports will be published in the month of June 2018 and will exclude a section on FICA compliance. The FAIS Supervision department is developing a new AML/CFT annual compliance report which will be designed to ensure that we ask the right questions to maximise the report's value.

The FICA compliance report will be published in due course for consultation.

#### *Onsite inspections*

FAIS supervision will continue to conduct onsite inspections to assess the level of compliance with the FIC Act and in preparation for the FATF evaluation in 2019.

#### **Conduct of Business Report**

The Commissioner intends to replace the current compliance reports under section 17(4)(a) of the Financial Advisory and Intermediary Services Act, 2002 (the Act), with the proposed Conduct of Business Report (COBR) that was published for public comment on the official web site of the Financial Services Board on 06



December 2016. We received extensive public comments which were considered and some incorporated into the draft COBR.

Due to the extensive amendments that were made the proposed COBR will go out for a second round of public consultation during June 2018.

## Useful information

This office often receives queries on various issues such as:

- How to register on the ePortal system
- Amending contact details
- Completion and submission of compliance reports
- How to log in to the ePortal.

We have compiled a user-guide to our ePortal system that you can access here:

[https://www.fsca.co.za/FAIS/FAIS\\_Application/User\\_Guide\\_FAIS\\_Online.pdf](https://www.fsca.co.za/FAIS/FAIS_Application/User_Guide_FAIS_Online.pdf)

## DOFA Dates

The following table can be useful in determining the DOFA dates of representatives:

Representatives' DOFA	RE 5 Deadline
01/01/2012 – 29/06/2012	30/06/2014
30/06/2012 – 31/12/2012	30/06/2015
01/01/2013 – 29/06/2013	30/06/2015
30/06/2013 – 31/12/2013	30/06/2016
01/01/2014 - 29/06/2014	30/06/2016
30/06/2014 - 31/12/2014	30/06/2017
01/01/2015 - 29/06/2015	30/06/2017
30/06/2015 – 31/12/2015	30/06/2018
01/01/2016 – 29/06/2016	30/06/2018
30/06/2016 – 31/12/2016	30/06/2019

## Contact Details

<b>Contact Centre:</b>	0800 11 04 43 0800 20 20 87
<b>Switchboard:</b>	+27 12 428 8000
<b>Facsimile:</b>	+27 12 346 6941
<b>Media Queries:</b>	+27 12 422 2823
<b>Email Us:</b>	<a href="mailto:info@fsc.co.za">info@fsc.co.za</a>
<b>Anonymous Fraud &amp; Ethics Tip Offs Hot-Line:</b>	0800 31 36 26
<b>Anonymous Fraud &amp; Ethics email:</b>	<a href="mailto:fsc@whistleblowing.co.za">fsc@whistleblowing.co.za</a>
<b>For technical queries:</b>	<a href="mailto:web.master@fsc.co.za">web.master@fsc.co.za</a>

## Addresses

<b>Physical</b>	Riverwalk Office Park, Block B 41 Matroosberg Road (Corner Garsfontein and Matroosberg Roads) Ashlea Gardens, Extension 6 Menlo Park Pretoria, South Africa, 0081
<b>Postal</b>	P.O. Box 35655 Menlo Park 0102

## E-mail inboxes:

<b>Purpose</b>	<b>Inbox</b>
General FAIS related enquiries.	<a href="mailto:Faisinfo@fsc.co.za">Faisinfo@fsc.co.za</a>
Submission of profile change requests specifically relating to FSPs.	<a href="mailto:Faispfc@fsc.co.za">Faispfc@fsc.co.za</a>
Submission of the excel rep import spread sheet. This e-mail address should only be used where the person submitting the excel spreadsheet is registered to submit on behalf of the FSP. Where the person is not registered to submit an excel spreadsheet on behalf of the FSP then the request should be sent to the <a href="mailto:faispfc@fsc.co.za">faispfc@fsc.co.za</a> inbox.	<a href="mailto:Reps@fsc.co.za">Reps@fsc.co.za</a>
Submission of any requests to lapse licenses and enquiries relating to lapse requests that have been submitted.	<a href="mailto:Fais.Lapse@fsc.co.za">Fais.Lapse@fsc.co.za</a>

Purpose	Inbox
Requests for duplicate copies of FAIS licenses and annexures. Please ensure that proof of payment accompanies the request for a duplicate license copy.	<a href="mailto:Fais.Licensecopies@fsca.co.za">Fais.Licensecopies@fsca.co.za</a>
E-mail submissions of new license applications for FSPs.	<a href="mailto:Fais.Newlicense@fsca.co.za">Fais.Newlicense@fsca.co.za</a>
E-mail submissions for application for phase 1 approval of compliance officers	<a href="mailto:Fais.COapprovals@fsca.co.za">Fais.COapprovals@fsca.co.za</a>
Submission of specimen mandates for approval.	<a href="mailto:Fais.Mandates@fsca.co.za">Fais.Mandates@fsca.co.za</a>
All queries relating to the regulatory examinations e.g. queries related to duplicate certificates, how to register for exams, authentication etc.	<a href="mailto:Fais.Exams@fsca.co.za">Fais.Exams@fsca.co.za</a>
Queries relating to qualifications e.g. credits, recognition of qualifications.	<a href="mailto:Fais.Qualifications@fsca.co.za">Fais.Qualifications@fsca.co.za</a>
Queries relating to the Fit and Proper Requirements e.g. new entrants wanting to know what competency requirements they have to meet.	<a href="mailto:Fitandproper@fsca.co.za">Fitandproper@fsca.co.za</a>
Submission of documents and queries in response to an intention to suspend or suspension letter sent to an FSP.	<a href="mailto:Fais.Compliance@fsca.co.za">Fais.Compliance@fsca.co.za</a>
Extension requests for the submission of annual financial statements.	<a href="mailto:Faisfins2@fsca.co.za">Faisfins2@fsca.co.za</a>
Extension requests for the submission of annual financial statements.	<a href="mailto:Faisfins3@fsca.co.za">Faisfins3@fsca.co.za</a>
Queries on compliance reports and queries related to the FAIS online reporting system.	<a href="mailto:Faiscomp1@fsca.co.za">Faiscomp1@fsca.co.za</a>
Submission of FAIS related complaints against key individuals, representatives and FSPs.	<a href="mailto:FaisComplaints@fsca.co.za">FaisComplaints@fsca.co.za</a>
Submission of debarment notifications relating to representatives.	<a href="mailto:Debarment@fsca.co.za">Debarment@fsca.co.za</a>
Submission of exemption applications for exemptions specific to a person or FSP.	<a href="mailto:Fais.Exemptions@fsca.co.za">Fais.Exemptions@fsca.co.za</a>
Submission of proof that conditions associated with exemptions that were granted have been complied with.	<a href="mailto:Fais.conditions@fsca.co.za">Fais.conditions@fsca.co.za</a>
Submission of DOFA related enquiries and requests for DOFA reports.	<a href="mailto:Fais.Dofa@fsca.co.za">Fais.Dofa@fsca.co.za</a>