## Contents

1. **INTRODUCTION** ......................................................................................................................... 3  
2. **OVERVIEW** ................................................................................................................................. 6  
3. **HONESTY & INTEGRITY** ............................................................................................................... 8  
4. **Competence** ................................................................................................................................. 10  
   4.1 Experience Requirements ............................................................................................................. 13  
   4.1.1 General Experience Requirements ........................................................................................ 13  
   4.1.2 Specific experience requirements for the different Categories ............................................ 14  
   4.2 Qualifications .............................................................................................................................. 17  
   4.3 Regulatory Examinations ............................................................................................................ 24  
   4.4 Examination Bodies .................................................................................................................... 27  
   4.5 Competence Requirements for a sole proprietor FSP beyond 2010 .......................................... 27  
5. **Operational Ability** ....................................................................................................................... 28  
6. **Financial Soundness** ..................................................................................................................... 31  
7. **Continuous Professional Development (CPD)** ........................................................................... 34  
8. **Services Under Supervision** ....................................................................................................... 37  
9. **Transitional Arrangements** .......................................................................................................... 37  
10. **References** ................................................................................................................................. 39
1. INTRODUCTION

The primary focus of this plain language guide is to provide the financial services industry with a user-friendly guide to the Fit & Proper Requirements that was published in October 2008.

There are three plain language guides available:

1. Fit and Proper Requirements in Plain Language for Financial Services Providers / sole proprietor FSPs,
2. Fit and Proper Requirements in Plain Language for: key individuals, and
3. Fit and Proper Requirements in Plain Language for representatives.

This guide summarises the elements of the Fit & Proper requirements which apply to Financial Services Providers (FSPs) and sole proprietor FSPs and addresses questions such as:

- **How do the Fit and Proper Requirements affect a FSP AND a sole proprietor FSP?**
- **Where does a sole proprietor FSP check to see if they are complying?**
- **What does a FSP AND a sole proprietor FSP needs to do to become compliant?**
- **By when should a FSP AND a sole proprietor FSP be compliant?**

We discuss specifically:

- the responsibilities of Financial Service Providers / sole proprietor FSPs and;
- the Fit & Proper requirements for sole proprietor FSP.

In order to retain an ‘alignment’ with the other two guides, each key element of this guide will include, where relevant, an insert outlining specific responsibilities of Financial Service Providers which is general to all financial service providers – this will be referred to as an “Important notice for FSPs”. Detailed information provided in the Plain Language Guide for key individuals and/or representatives will not be repeated here.

The Fit and Proper requirements of a sole proprietor FSP are covered in the same sequence as in the other guides, with reference to the other two guides where appropriate.

In order to fully benefit from this guide it is strongly recommended that you read the whole guide to get the complete picture. By only reading specific section you may miss important information, or some of the information may not make 100% sense!

In addition it may also assist you to refer to the other two guides. The key individual guide tells you more about the management and oversight responsibilities of a key individual in a larger FSP and the guide for representatives...
will give you a better understanding of the requirements for representatives especially as a sole proprietor FSP will be fulfilling both the function of the key individual and the representative!

But before we discuss this in detail, let’s first look at where it all started.

Where does the FSP and the sole proprietor FSP fit in?
As you can see from the diagram above, the FAIS Act and hence the Fit & Proper requirements, governs ALL FSPs including sole proprietor FSP authorised by the FSB.

A sole proprietor FSP is all of the following:

- A FSP, as a sole proprietor is the natural person, who "owns the business" (as opposed to a company or close corporation), and will be authorised/licensed as a FSP.
- The sole proprietor FSP also fulfils the role of key individual (who is the same person as the sole proprietor FSP)
- And the sole proprietor is also the representative for the sole proprietor FSP.

The sole proprietor FSP therefore wears two hats - that of a key individual and a representative. As you will see this has an important implication in terms of Fit and Proper for the sole proprietor FSP.

Who and what is the FSP?

The FSP is the legal entity (the company or the close corporation) or the sole proprietor (natural person) which must be licensed by the FSB in order to provide financial services to clients.

The FSP must also have key individuals and representatives. When a FSP is a sole proprietor, it may happen that one person is in fact both key individual and representative.

Each of the role players – FSP, key individual and representative must meet different fit and proper requirements for each role.
Let’s look at an example:

In this guide we discuss the functions of the FSP and the sole proprietor FSP – refer to the guides for key individuals and for the representative to understand the fit and proper requirements which these roles must meet.

2. OVERVIEW

The fit and proper requirements that a FSP and a sole proprietor FSP should meet can be summarised as follows:

**FIT AND PROPER REQUIREMENTS**

| 1. Honesty and integrity (discussed in section 3) | 2. Competence (discussed in section 4) | 3. Operational ability (discussed in section 5) | 4. Financial Soundness (discussed in section 6) |

**2. COMPETENCY REQUIREMENTS consist of**

- Experience
- Qualifications
- Regulatory examinations
- CPD
The following Board Notices make provision for the requirements illustrated above:

<table>
<thead>
<tr>
<th>Board Notice</th>
<th>Description</th>
<th>Contains the relevant info about:</th>
</tr>
</thead>
<tbody>
<tr>
<td>BN 106 of 2008</td>
<td>Deals with the new Determination of Fit &amp; Proper requirements for FSPs, key individuals, representatives and Sole Proprietors. In addition this Board Notice includes the relevant “Transitional arrangements” that apply to all parties encompassed by the FAIS Act who were authorised between the 30th of September 2004 and 31 December 2009.</td>
<td>• Honesty and integrity • Competence • Operational Ability • Financial Soundness</td>
</tr>
<tr>
<td>BN 105 of 2008</td>
<td>This Board Notice covers a lot or ground as it deals with Qualifying Criteria, Qualifications and the Criteria for Regulatory Exams. The Board Notice also introduces the concept of “FSB recognised” qualifications and because it takes the competence concept to another level it is an important Board Notice.</td>
<td>• Competence (Specifically qualifications and regulatory examinations)</td>
</tr>
<tr>
<td>BN 104 of 2008</td>
<td>This Board Notice covers a much expanded notion of ‘Services under Supervision’. The concept of services under supervision has undergone significant changes which have greatly expanded the supervision concept. These changes are really important and ALL involved in the supervision process must take the time to study this important document.</td>
<td>• Competence (Specifically in terms of how experience can be gained under supervision)</td>
</tr>
<tr>
<td>BN 103 of 2008</td>
<td>Introduces the concept of Continuous Professional Development (CPD) into the FAIS environment. In a relatively straightforward manner the Board Notice outlines how CPD will roll out in the sector.</td>
<td>• Continuous Professional Development (CPD)</td>
</tr>
</tbody>
</table>
All these determinations fit together like pieces of a puzzle to provide the total picture of the fit and proper requirements in order to provide financial services in South Africa. We discuss each of the requirements in the determinations in detail in this guide so that you may have a better understanding of how these requirements affect the role of the FSP.

3. HONESTY & INTEGRITY

The first requirement of Fit & Proper is honesty and integrity. Put simply, a FSP and a sole proprietor FSP must demonstrate honesty and integrity. These characteristics are clearly very important when one considers the roles and responsibilities of FSPs.

**IMPORTANT NOTICE FOR FSPs with respect to honesty and integrity**

The following honesty and integrity principles apply:

<table>
<thead>
<tr>
<th>General honesty and integrity principles</th>
</tr>
</thead>
<tbody>
<tr>
<td>The FSP must be honest and act with integrity</td>
</tr>
<tr>
<td>The FSP must be candid and accurate when applying to the Registrar for authorisation and disclose all relevant facts or information which may be required by the Registrar.</td>
</tr>
<tr>
<td>The FSP must disclose all facts or information at the disposal of, or which may be accessible to the FSP, that may be relevant to the Registrar when determining the fitness and propriety of the FSP.</td>
</tr>
<tr>
<td>The FSP must act diligently and do everything in its power to ensure that key individuals and representatives meet (and continue to meet) the fit and proper requirements applicable to them meet the honesty and integrity requirements of Fit &amp; Proper.</td>
</tr>
<tr>
<td>The FSP must ensure that at the recruitment stage of key individuals and representatives, the Fit and Proper requirements of honesty and integrity are clearly explained and addressed with the applicant.</td>
</tr>
</tbody>
</table>

The Registrar approves and authorises FSPs, including sole proprietor FSPs and that means that the Registrar must consider information in its possession or which was brought to its attention.
If any of the following factors exist in relation to a sole proprietor FSP, it will exclude the FSP from meeting the "honesty and integrity" requirement. These factors are merely some of the indications of the fitness and propriety of a sole proprietor FSP (applicant) and should not be regarded as a "closed list":

- **The applicant was found guilty** in any criminal proceedings or liable in any civil proceedings of acting fraudulently, dishonestly, unprofessionally, dishonorably or in breach of a fiduciary duty within 5 years before application, approval, and appointment.
- **The applicant was found guilty** by any statutory professional body or voluntary professional body of dishonesty, negligence, incompetence, mismanagement serious enough to impugn the honesty and integrity of the FSP and/or key individual, within 5 years before application, approval, appointment.
- **The applicant was denied membership** of any statutory professional body or voluntary professional body because of an act of dishonesty, negligence, incompetence or mismanagement, within 5 years before application, approval, appointment.
- **The applicant was found guilty** by a regulatory or supervisory body of an act of dishonesty, negligence, incompetence or mismanagement serious enough to impugn the honesty and integrity of the FSP and/or KI, within 5 years before application, approval, appointment.
- **The FSP/ applicant had its authorisation to carry on business / any license withdrawn or suspended by any regulatory or supervisory body because of an act of dishonesty, negligence, incompetence or mismanagement**, within 5 years before application, approval, appointment.
- **The applicant was disqualified or prohibited by a court** from taking part in the management of any company or other statutorily created, recognised or regulated body, current or not, within 5 years before application, approval, appointment.
Let’s look at an example that illustrates the importance of honesty and integrity:

In the case between Zuleiga Paulse V Roger Wilco Trading 117 the Ombud ordered a Short Term broker to repay a client R639.80 which had been charged as double commission without the client’s consent.

Complainant complained that Mr. Benjamin Van der Merwe had sold a mechanical breakdown insurance policy to her without her knowledge when she bought a motor vehicle on 25 January 2006. The amount of the policy was R2 355.20 and the captured amount on the contract was R3 995. No disclosure was made in respect of fees or charges. The policy document reflects an amount of R3 355.20 inclusive of VAT, and the Wesbank hire purchase agreement stipulates the warranty at R3 995. The complainant discovered that the commission of R639.80 was over and above the commission already incorporated within the policy purchase price of R3 355.20.

The Ombud found that enquiries with the product administrator confirmed that a gross premium of R3 355.20 was already inclusive of dealer’s commission. The Ombud also found that by not responding, the respondent admitted the claimant’s version. The Ombud also found that neither the policy document, nor the sale agreement disclosed the commission charged. There does not even appear to be a method or means to ascertain the commission encompassed within the R3 355.20 much less the fact that the larger figure reflected on the hire purchase agreement comprised an additional commission.

The Ombud stated that first and foremost, it is required of a provider that they must at all times render financial services honestly, fairly, with due skill, care and diligence, and in the interests of clients. The very fact that the respondent saw fit not to disclose the primary or the additional commission must in itself raise questions as to the honesty and integrity of the respondent.

The Ombud found that the respondent’s failure to disclose deprived the complainant of the ability to make an informed decision and this resulted in a loss. There is every indication that had complainant been placed in position where she could have made an informed decision, she would not have taken the policy with the additional commission.

The complaint was upheld.

4. Competence

A FSP and a sole proprietor FSP must satisfy specific competence requirements before approval. These requirements are:
1. Certain minimum **EXPERIENCE** requirements;

2. Relevant **QUALIFICATION(S)** requirements;

3. The completion of appropriate **REGULATORY EXAMINATIONS**; and

### 2. COMPETENCY REQUIREMENTS

<table>
<thead>
<tr>
<th>Experience (discussed in 4.1)</th>
<th>Qualifications (discussed in 4.2)</th>
<th>Regulatory Examinations (discussed in 4.3)</th>
<th>CPD (discussed in 4.4)</th>
</tr>
</thead>
</table>

The specific Transitional arrangements applicable to FSPs and sole proprietor FSPs approved or authorised between 2004 and 2009 are discussed in 4.5 below.

#### IMPORTANT NOTICE FOR FSPs with respect to the competency requirements

The following competency requirements apply:

**General competency principles**

The FSP must comply with the applicable experience, qualification and Regulatory Examination requirements.

The FSP must ensure that there are adequate recruitment and appointment procedures in place (to verify fit and proper requirements) when appointing key individuals and representatives.

The FSP must also ensure that at the recruitment stage the relevant Fit and Proper requirements are clearly explained to prospective applicants for either key individual or representative positions at the FSP. Obligations in terms of Fit & Proper must be included in terms of employment, including obligations in respect of supervision as and when it may apply.

**General competency principles**

The FSP must ensure that prospective and existing **key individuals and representatives** are aware of and comply with **the Continuous Professional Development (CPD) requirements published by the Regulator**.
General competency principles

The FSP must at all times ensure that its key individuals and representatives comply with the relevant Fit & Proper requirements.

The FSP must ensure that at all times at least one or more of the key individuals approved by the Registrar meet the same experience, qualifications and regulatory examination requirements as would apply to a sole proprietor FSP with regard to any one or more Categories or subcategories the FSP is authorised for, and in respect of which that key individual will manage or oversee the provider’s activities.

The FSP must ensure that each juristic representative must at all times have at least one key individual who is responsible for managing and overseeing the juristic representative. That key individual must meet the same experience, qualifications and regulatory examination requirements applicable to the key individual of the FSP.

A FSP that renders financial services in respect of health service benefits must be accredited as a broker in terms of the provisions of the Medical Schemes Act, 1988.

Let’s look at an example to illustrate the requirement that an FSP must have at least one key individual who satisfies the necessary regulatory requirements in a particular subcategory.

Eric is a key individual responsible for life products in a relatively small brokerage, XYZ Financial Services, which is a licensed financial services provider (FSP) based in Kwa-Zulu Natal. Angela is a key individual in the same brokerage and she is responsible for short term insurance products. Eric accepts an attractive offer with excellent career opportunities to join a large investment company in Gauteng. He resigns from XYZ Financial Services. XYZ Financial Services may not offer financial services in life products until a replacement key individual for life...
4.1 Experience Requirements

There are general experience requirements, which sole proprietor FSPs in ALL the different categories must adhere to and then there are specific experience requirements for specific product categories.

4.1.1 General Experience Requirements

The sole proprietor FSP must, on the date of approval (in other words, before applying) have at least one year’s practical experience (this applies to Categories I, II, IIA, III and IV) in the management or oversight of the activities of a business or part thereof.

- The experience could have been gained within or outside the borders of South Africa.
- The experience could have been gained in intermittent periods, not more than 5 years prior to the application, and includes experience gained prior to the implementation of the FAIS Act.
- The experience may have been gained in the management and oversight of services similar to or corresponding to the services rendered by the FSP.

What is acceptable experience?

- The experience must be practical experience (in other words “hands-on” experience) that the sole proprietor FSP has gained specifically in terms of the management and oversight of an FSP or a similar business entity.
- When submitting the evidence of the experience the sole proprietor FSP has gained, to the Registrar, the period of the relevant experience must be clearly specified – dates from and to must be provided.
- The evidence provided to the Registrar must be signed off by someone at management level that can be contacted to confirm this experience.
- A confirmation letter on an official letterhead of the previous employer and/or business may also be submitted.
4.1.2 Specific experience requirements for the different Categories.

The specific experience requirements which applies to a sole proprietor FSP, in respect of each Category is published in the subordinate legislation and shows the number of months/years, in a Table format (published in BN 106), required for each subcategory, where applicable. (There are no tables for Categories IIA and III)

<table>
<thead>
<tr>
<th>Specific experience requirements for Category I</th>
<th>All the general experience requirements must be met, and in addition, the FSP must meet the minimum experience applicable to the subcategories as described in Table A.</th>
</tr>
</thead>
<tbody>
<tr>
<td>It must be practical experience gained in the rendering of financial services in respect of Category I and the subcategories concerned provided that:</td>
<td>• The experience involved the active and ongoing gaining of knowledge, skills and expertise required in terms of the Act.</td>
</tr>
<tr>
<td></td>
<td>• The experience was obtained through active involvement and could have been gained whilst rendering financial services under supervision.</td>
</tr>
<tr>
<td></td>
<td>• The experience could have been gained simultaneously in multiple subcategories, provided that proof of such experience can be submitted.</td>
</tr>
</tbody>
</table>

If the license changes to include other financial services or other subcategories, the experience requirements of the other subcategories must be met PROVIDED that:

• if the change includes additional financial service (advice and intermediary service), the FSP must obtain 50% of the experience requirements applicable to the additional financial services (as indicated in the applicable Table) and
• if the change relates to an additional subcategory the FSP must obtain 100% of the experience requirements applicable to the additional subcategory (as indicated in the applicable Table).
All the general experience requirements must be met, and in addition, the FSP must meet the minimum experience applicable to the subcategories as described in Table B.

It must be practical experience gained in the rendering of financial services in respect of Category II and the subcategories concerned provided that:

- the experience involved the active and ongoing gaining of knowledge, skills and expertise required in terms of the Act;
- the experience was obtained through active involvement and could have been gained whilst rendering financial services under supervision;
- the experience could have been gained simultaneously in multiple subcategories, provided that proof of such experience can be submitted;
- the experience could have been gained in a team environment where the person participated in the process of making investment decisions whilst working under supervision and
- if the license changes to include the financial services in other subcategories, the experience requirements of the other subcategories must be met.
All the general experience requirements must be met, and in addition, the FSP must have 3 years experience which must be practical experience gained in the rendering of financial services in respect of Category IIA provided that:

- the experience involved the active and ongoing gaining of knowledge, skills and expertise required in terms of the Act and
- the experience was obtained through active involvement in providing financial services and could have been gained whilst working under supervision.

Specific experience requirements for Category III

All the general experience requirements must be met, and in addition, the FSP must have 3 years practical experience. It must be practical experience gained in the rendering of financial services as referred to in the definition of “administrative FSP”. The FSP must also have at least one year’s practical experience in the management and/or oversight of services similar to or corresponding to the financial services rendered by the FSP provided that:

- the experience involved the active and ongoing gaining of knowledge, skills and expertise required in terms of the Act and
- the experience was obtained through active involvement in providing financial services and could have been gained whilst working under supervision and
- the experience could have been gained simultaneously in multiple subcategories, even whilst working under supervision, provided that proof of such experience can be submitted.
All the general experience requirements must be met, and in addition a sole proprietor FSP in respect of Category IV must, on the date of appointment, have at least one year’s practical experience in the rendering of financial services which are defined as ‘assistance policies’ provided that:

- the experience involved the active and ongoing gaining of knowledge, skills and expertise required in terms of the Act and
- the experience was obtained through the active involvement of the representative in the rendering of intermediary services and could have been gained whilst working under supervision,
- the experience could have been gained simultaneously in multiple subcategories, even whilst working under supervision, provided that proof of such experience can be submitted.

4.2 Qualifications

The ‘new’ Fit and Proper regulations have ushered in qualification requirements which are significantly different from the original “30/60 credit” requirements as were found in Column 4 of the Fit and Proper Determination of 2006. The stage has been reached when QUALIFYING CRITERIA, which have been developed in consultation with the financial services industry, provide criteria against which BOTH qualifications and regulatory examinations will be evaluated and considered for recognition by the Registrar.

Qualifications satisfying these qualifying criteria are published in a list of recognised qualifications. This is a hugely important step in the evolution of Fit and Proper requirements for the industry – one which will ultimately play an important role in promoting the professional development of the financial services industry.
What are qualifying criteria?

In order to establish which qualifications are recognised as appropriate for key individuals, the qualifications must meet the qualifying criteria, also set by the Registrar and published in the subordinate legislation.

The qualifying criteria serve two purposes:
- It is used to evaluate the content of the qualifications against.
- It is used to set the standards for the Regulatory Examinations.

The qualifying criteria describe what a person must know (knowledge) and what a person must be able to do (skill) in order to complete a specific task (such as giving advice and/or rendering intermediary services or performing the functions the functions of a key individual) successfully. must be able to do (skill) in order to complete a specific task (as it relates to giving advice and/or rendering intermediary services) successfully.

The following is an example of a qualifying criterion for a Category I key individual:

<table>
<thead>
<tr>
<th>Task</th>
<th>Knowledge</th>
<th>Skill</th>
</tr>
</thead>
<tbody>
<tr>
<td>Describe the role of the key individual in terms of the FAIS Act.</td>
<td>Describe what the key individual’s management responsibility entails regarding the regulated functions of the FSP.</td>
<td>Perform the necessary management and oversight functions regarding their functioning within the FSP.</td>
</tr>
<tr>
<td></td>
<td>Describe what the honesty and integrity requirements are for a key individual.</td>
<td>Check whether a potential/current key individual meets the requirements regarding honesty and integrity.</td>
</tr>
</tbody>
</table>

All the qualifying criteria can be found in the Determination of Qualifying Criteria and Qualifications, 2008 – Annexure 1.

Remember that these qualifying criteria are used to provide criteria against which appropriate qualifications are evaluated, as well as being used as the basis for setting the regulatory examinations.
What is meant by “recognised qualifications”?

Qualifications are formally recognised by the Registrar if the content of the qualification is deemed to be appropriate to the Category or subcategory that individuals in the financial services industry is authorised, approved or appointed for. This essentially means that if the content of a qualification matches the qualifying criteria, then the qualification is deemed to be appropriate.

Why is the recognition given to qualifications not all the same?

As you might imagine, it’s not always possible to find qualifications that match all of the qualifying criteria 100%. So in order to make the recognition of qualifications practical and manageable, the following approach was implemented:
The qualifications that match the qualifying criteria only partially in terms of their content are recognised as *generic*, and as a result an individual that has obtained this type of qualification will have to also complete the product specific regulatory examinations.

The qualifications that match the qualifying criteria 80% in terms of their content is recognised as *specific*, and as a result all individuals that have obtained these type of qualifications up unto the end of 2009 will be exempted from writing the product specific regulatory examinations. Please note however that this type of recognition only applies to the transitional period, and from January 2010 the “S” recognition will fall away.

The qualifications that match the qualifying criteria 100% in terms of their content will be recognised as “SP” and this means that individuals that obtain these qualifications will be exempted from writing the product specific regulatory examination. This recognition does not only apply to the transitional period, and will apply from 2010 onwards.

The list of recognised qualification can be found in the Determination of Qualifying Criteria and Qualifications of 2008, Annexure 2. It is also available on the FSB website.

**How do I read the lists of recognised qualifications?**

The lists were developed in a matrix format. This is an example of the list, and how you should read the information on the list in order to identify whether your qualifications is recognised, and if so, how the qualification is recognised.
There are several different lists depending on the license Categories i.e. Category I, Category II and IIA, Category III and Category IV. There are also additional lists where qualifications are listed that will only be recognised if specific electives or unit standards have been selected as part of the qualification, because those electives or unit standards make the content of the qualification relevant and matches the qualifying criteria.

When looking at a specific qualification, you need to check how the qualification is recognised to identify whether you will be required to complete the product specific regulatory examination (which will be discussed in a lot more detail later on in this manual).

Qualifications can only be recognised as a "G" – generic, "S" – specific up until the end of 2009, and "SP" – specific beyond 2009.

Let’s take a look at the example on the next page....

Here we are looking at a qualification that is both recognised as generic and specific depending on the subcategory / product category. Remember that it is the content of the qualification that must match the qualifying criteria for the specific subcategory / product category, and based on this the type of recognition is awarded.
Also note that a separate column caters specifically for key individuals to provide key individuals with clarity as to which qualifications are deemed to be appropriate to them.

**What do I do if my qualification is not on the list?**

You may apply to include your qualification on the list of recognised qualifications. The application form can be downloaded from the FSB website.

**How often will the list be updated?**

The list will be updated at least once every quarter.

**What qualification must I have if I am already an authorised sole proprietor FSP?**

If you have been authorised as a sole proprietor FSP during the transitional period (2004 to 2009), then you need to refer to the “Transitional Requirements” section of this guide for step by step information regarding the qualification you required by 31 December 2009.

**What qualification must I have if I am planning on applying to become an authorised sole proprietor FSP in 2010 or later?**

You would need to obtain a qualification from the list of recognised qualifications, and you must have completed this qualification at the time that you apply for approval as a sole proprietor FSP.
IMPORTANT NOTICE FOR FSPs

The role of the FSB & SAQA with reference to recognised qualifications

Due to the number of questions and queries received from industry and training providers, the following must be clarified:

- The Regulator (FSB) does NOT quality assure or does programme approval of qualifications – that is the responsibility of SAQA usually through the SETAs and Higher Education Institutions.
- The FSB does NOT accredit training providers. This is the role of the SETAs and Higher Education Institutions.
- The FSB has determined qualifying criteria which are deemed appropriate for Fit and Proper purposes only.
- The FSB compares the qualification to the qualifying criteria to determine if the qualification is appropriate for Fit and Proper purposes.
- If the qualification is deemed to be appropriate then it is recognised by the FSB and placed on the list of recognised qualifications which was published in the Determination of Qualifying Criteria and Qualifications, 2008.
- The list of recognised qualifications is updated on a regular basis – updates being published by the Regulator. If a qualification is not deemed to be appropriate and therefore is NOT recognised by the FSB that does not imply the qualification is of poor quality, it simply means that the qualification content does not match the qualifying criteria set out by the Regulator.
- The roles and responsibilities of the two Regulators (i.e. SAQA and the FSB) do NOT overlap – put simply SAQA accredits and registers qualifications and learner results according to SAQA approved standards. The FSB does something quite different.
- The FSB verifies whether a SAQA accredited qualification is appropriate for Fit & Proper purposes only by comparing the qualification with its predetermined qualifying criteria. If the qualification is deemed to satisfy the qualifying criteria then the qualification is placed on the list of FSB recognised qualifications.
4.3 Regulatory Examinations

The Fit and Proper requirements published in 2008 have introduced the industry to a new concept, namely Regulatory Examinations (REs). There is little doubt that these REs will make an important impact on the financial services industry.

**IMPORTANT NOTICE FOR FSPs**

Regulatory Examinations apply to ALL FSPs, its key individuals and representatives in terms of the FAIS Act.

There are two levels of regulatory examinations:

*LEVEL 1: Regulatory Requirements*

The level 1 exam focuses on the regulatory requirement such as the Code of Conduct, disclosures, etc. The level 1 examination for key individuals will also focus on the role and responsibilities of the key individual.

*LEVEL 2: Product Specific*

The level 2 exam focuses on the product specific knowledge and skills a person needs in terms of a specific financial product in order to give advice / render an intermediary service.
**How do the Regulatory Examinations affect a sole proprietor FSP?**

A sole proprietor FSP will be required to complete the regulatory examination level 1. This RE focuses on your role and responsibilities as a key individual of a sole proprietor FSP and what you need to know about the FAIS Act in order to ensure compliance within your business.

In order to see what will be covered in this examination, you can refer to the Determination of Qualifying Criteria and Qualifications Annexure 1. You will find the qualifying criteria for the following REs:

1. First level regulatory examination for applicants and/or a sole proprietor FSP in Category I, and IV;
2. First level regulatory examination for applicants and/or a sole proprietor FSP in Category II and IIA;
3. First level regulatory examination for applicants and/or a sole proprietor FSP in Category III.
4. First level regulatory examination requirements for applicants and/or representatives in Category I, II, IIA, III and IV.
5. Second level regulatory examination requirements for applicants and/or a sole proprietor FSP.

**IMPORTANT NOTES**

1. The reason why there is more than one set of qualifying criteria for a sole proprietor FSP is because there are criteria applicable to this FSP in all the various Categories, and then there are additional criteria that applies only to a sole proprietor FSP in a specific Category. The qualifying criteria will be combined into one examination depending on which Category applies to you as a sole proprietor FSP.

2. A sole proprietor FSP will be required to complete the relevant second level regulatory examinations for which the FSP is authorised.

**How do the regulatory examinations affect a sole proprietor FSP?**

The sole proprietor FSP will be required to complete:

- the appropriate RE level 1 examination for key individuals and for representatives as well as
- the appropriate level 2 examinations for which the sole proprietor FSP is authorised. To learn more about the REs for level 2 please refer to the Plain Language Guide for representatives.
Let's look at an example:

Richard is a sole proprietor FSP in terms of Category I. He is authorised to give advice in the following subcategories:

- Long Term Insurance category B and C
- Retail Pension Benefits
- Collective Investment Schemes, and
- Pension Fund Benefits.

Richard will be required to complete the RE level 1 for key individuals in Category I. Richard will also have to complete the RE level 1 for representatives.

In addition, Richard will have to complete the regulatory examination level 2 for the three subcategories indicated above. He will therefore complete more than one examination because he will not only be required to write the regulatory examination that applies to the key individuals, but also complete the regulatory examination(s) as it applies to the representatives.

How do the REs affect key individuals that are already approved prior to 2009?

A sole proprietor FSP authorised during this period falls into the transitional period and therefore the transitional arrangements will apply to them. Please refer to the “Transitional Arrangements” section of this guide for more detailed information in this regard.

When must the regulatory examinations be completed?

A sole proprietor FSP that applies for approval from 2011 onwards must have completed the REs by the time that they apply for approval. A sole proprietor FSP who is already authorised prior to 2011 must complete the RE level 1 by 31 December 2011. The level 2 REs must be completed by 31 December 2013. Also refer to the matrix of at the end of this guide for the deadlines as it pertains to the fit and proper requirements.
4.4 Examination Bodies

The Registrar appointed Examination Bodies in 2009 and there is only a limited number of Examination Bodies. The Registrar published a Board Notice called the Determination of Examination Body Criteria which clearly sets out the criteria that these Examination Bodies must meet in order to fulfill the function of an Examination Body.

NOTE THE FOLLOWING IMPORTANT INFORMATION:

4.5 Competence Requirements for a sole proprietor FSP beyond 2010

A sole proprietor FSP authorised from 2010 onwards would have to meet the following competence requirements at the time that he/she applies for approval:

- 1 year practical experience in the management and oversight of a business.
- The management experience **may not** be gained under supervision. The individual must have gained the required experience prior to approval.
- Must also have **product specific experience** in respect of the subcategories that the FSP is responsible for.

More information on enrollment procedures, roll-out dates, and all the related activities of the Examination Bodies, will be communicated via newsletter, circulars, FSB website and other available media to the financial services industry as it becomes available.
5. Operational Ability

Operational ability requirements apply to ALL Category I to Category IV FSPs. The regulations have expanded and considerably strengthened the previous “Operational Ability” requirements of the Act. A FSP must be able to maintain the operational ability to fulfil the responsibilities imposed by the Act on authorised financial service providers. Requirements now include:

<table>
<thead>
<tr>
<th>A FSP must be able to show that the following is in place and operational:</th>
</tr>
</thead>
<tbody>
<tr>
<td>A fixed business address.</td>
</tr>
<tr>
<td>Adequate access to communication facilities - at least a full-time telephone or cell phone service, typing and document duplication facilities.</td>
</tr>
</tbody>
</table>
A FSP must be able to show that the following is in place and operational:

An account with a registered bank including, where required by the Act, a separate bank account for client funds.

Where the FSP is an accountable institution as defined in the FICA all the necessary policies, procedures and systems to ensure full compliance with FICA and other applicable anti-money laundering or terrorist financing legislation.

In addition if an FSP makes use of a third party to render administrative or system functions then there must be a detailed service level agreement (SLA) in place specifying agreed services, time standards, roles and responsibilities and penalties that might be applicable.

**IMPORTANT NOTICE FOR FSPs**

The operational ability of an FSP

The new operational ability requirements came into effect on 1 January 2010.

An FSP must ensure that structures and controls are in place that includes at least the following.

- Appropriate segregation of duties, roles and responsibilities within a risk mitigation framework.
- Adequate security access.
- Access rights and electronic data security where applicable.
An FSP must ensure that structures and controls are in place that includes at least the following.

1. **Physical security of assets and records.**
2. **Documentation relating to business processes, policies, controls and technicalities.**
3. **System application testing where applicable.**
4. **Disaster recovery and back-up procedures on electronic data where applicable.**
5. **Appropriate training of all key individuals and/or representatives regarding requirements of the Act and regarding advice giving and/or rendering of intermediary services.**
6. **A business continuity plan and the necessary system controls and compliance measures must be in place.**
7. **Recording of all financial and system procedures to ensure that the FSP can report in terms of applicable accounting requirements.**
8. **General administration processing and accounting transactions and risk control measurements in place to ensure accurate and complete and timeous processing of data, information reporting with an assurance of data integrity.**

An applicant must have suitable guarantees, professional indemnity insurance or fidelity insurance. – this must be in place by 21 September 2010 – refer to Board Notice 123 of 2009, Notice on requirements for professional indemnity and fidelity insurance cover for providers, 2009.

A key individual must be able to maintain the operational ability of the FSP to fulfill the full responsibilities of the Act.
6. Financial Soundness

The financial soundness requirements are applicable to the FSP and not the key individual or the representative.

**IMPORTANT NOTICE FOR FSPs**

The financial soundness requirements for Fit and Proper have been considerably expanded upon and clarified in Board Notice 106 of 2008. This is effective from:

- 1 January 2011 for all FSPs authorised between 2004 and 2008, and
- Already applies to all FSPs authorised from 2009 onwards.

The financial soundness requirements are as follows:

- Where a FSP is authorised for multiple categories, it only needs to meet the most onerous (most difficult/ highest) requirements in terms of the financial soundness requirements.

- A FSP must not be an unrehabilitated insolvent or under liquidation or in provisional liquidation.

- A KI or representative does not need to meet the financial soundness requirements, it only applies to the FSP.

- Where the sole proprietor is operating the business as a natural person (i.e. Joe Soap was authorised to provide financial services) then there is no difference between the person and the FSP. In this case the obligation for the FSP to be solvent also applies to the person. If Joe Soap has financial problems, it will also affect the FSP, and Joe needs to notify the Registrar’s Office immediately. Notifications can be sent to Faispfc@fsb.co.za or faxed to (012) 422 2973, attention Registrations Department.
The financial soundness requirements are as follows:

- A Category I FSP that does not hold client assets or receive premiums or money must AT ALL TIMES have assets (excluding goodwill, other intangible assets and investments in related parties) that exceed the FSP’s liabilities (excluding loans validly subordinated in favour of all other creditors).

- Subordinating a loan means that if the business has financial problems, other debt or loans will be repaid first before the subordinated loans will be repaid. Subordinated loans usually refer to a situation where the members of the closed corporation or the directors of the company invests money in the business in the form of money lent to the business, and this is reflected as a members or directors loan.

- Subordinating this loan means that the members or the directors will be paid back last, and only if there is money left to repay their investment in the business.

A Category I FSP that holds client assets or receive premiums or money must AT ALL TIMES:

- have assets (excluding goodwill, other intangible assets and investments in related parties) that exceed the FSP’s liabilities (excluding loans validly subordinated in favour of all other creditors);

- maintain current assets which are at least sufficient to meet current liabilities and

- maintain liquid assets equal to or greater than 4/52 weeks of annual expenses.
  
  - This means that the FSP must establish how much they spend in a year (52 weeks) and then calculate the value of 4 weeks of expenses, or stated differently, what they need to spend every month to stay in business.
  
  - 4/52 weeks is thus equal to one month’s expenses such as rent, salaries, etc.

The importance for this type of FSP is to ensure that there are adequate systems and procedures in place that these requirements are met AT ALL TIMES – not only on application for a license. The risk lies in the fact that the FSP holds or receives client’s money, therefore the more stringent requirement to meet current and liquid asset ratios.

A Category II FSP must AT ALL TIMES:

- have assets (excluding goodwill, other intangible assets and investments in related parties) that exceed the FSP’s liabilities (excluding loans validly subordinated in favour of all other creditors);
The financial soundness requirements are as follows:

<table>
<thead>
<tr>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>• maintain current assets which are at least sufficient to meet current liabilities and</td>
</tr>
<tr>
<td>• maintain liquid assets equal to or greater than $\frac{8}{52}$ weeks of annual expenditure.</td>
</tr>
</tbody>
</table>

A Category IIA and III FSP must AT ALL TIMES:

<table>
<thead>
<tr>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>• have assets (excluding goodwill, other intangible assets and investments in related parties) that exceed the FSP’s liabilities (excluding loans validly subordinated in favour of all other creditors) BY AT LEAST R3 MILLION;</td>
</tr>
<tr>
<td>• maintain current assets which are at least sufficient to meet current liabilities and</td>
</tr>
<tr>
<td>• maintain liquid assets equal to or greater than $\frac{13}{52}$ weeks of annual expenditure.</td>
</tr>
</tbody>
</table>
7. Continuous Professional Development (CPD)

Within the context of Fit and Proper the purposes of CPD are to ensure the following happens and/or to assist an FSP (who is a sole proprietor) to:

- Develop and maintain professional competence in order to provide financial services of a high quality in the public interest that will support the professionalisation of the financial services industry.
- Understand that the primary responsibility of competence vests in the individual, and that they have an obligation to develop and maintain their professional competence.
- Render financial services with due care, competence and diligence with an ongoing duty to maintain knowledge and skill at a level required to ensure that the client receives competent professional service based on up-to-date developments in legislation and the financial services industry.

**What type of programme / activity will be recognised as relevant for CPD purposes?**

Examples of verifiable CPD programmes and/or activities include, but are not limited to:

- Courses, conferences or seminars;
- Studies leading to formal assessments such as additional qualifications;
- Workshops;
- Structured self-study programmes including web-based, computer-based or paper-based delivery that assess knowledge.

**How do I know if a programme / activity is recognized by the FSB?**

In order for a programme and/or activity to be approved by the Registrar the following institutions may apply to the Registrar for recognition of their offering of CPD programmes and/or activities:

- Industry associations;
- Statutory or voluntary professional bodies;
- Employers;
- Institutions of higher education & accredited training providers.

You would therefore have to ensure, and obtain confirmation from the relevant institution, that the programme / activity that you enroll for has been approved by the Registrar as a CPD programme / activity.
**Fit and Proper Requirements in Plain Language for FSPs/Sole Proprietors**

**When does CPD begin?**

The three year cycle will start on completion of the highest level (First or Second Level) of the Regulatory Exam, but not later than a six year period from date of approval of an FSP (who is a sole proprietor).

**What are CPD notional hours?**

The concept of notional hours involves time taken for an ‘average learner’ to achieve the desired outcome, taking into account:

- contact time,
- time spent in structured learning and
- individual learning.

**How many hours of CPD will I need to do?**

A sole proprietor FSP will be required to complete 15 to 60 notional hours of Continuous Professional Development (CPD) over a three year cycle as provided for in Table D of the Determination. This is determined by the product category/ categories the FSP is authorised for.

**What happens if I change my license conditions?**

If a sole proprietor FSP already complies with the qualification and regulatory requirements and you amend your license to include additional categories or subcategories, you may need to do more CPD hours over a three year cycle.

**What about multiple subcategories?**

If a sole proprietor FSP is approved in multiple Categories or subcategories, the highest requirement in terms of notional hours will apply.

**Will there be any exemptions?**

The Registrar may recognise a person’s CPD by virtue of their membership of a statutory or voluntary professional body where they already comply with similar CPD requirements. The professional body must record the CPD requirements and advise the Registrar that they are being monitored and enforced. There will thus not be an exemption as such, but there will be recognition of other CPD related activities and achievements.

**What is the role of the Compliance Officer in terms of CPD?**

A sole proprietor FSP should familiarise himself/herself with the compliance officer’s responsibilities with respect to CPD:
A compliance officer will be required to report to the Registrar on CPD activities, and reporting requirements will be included in the annual compliance report.

Compliance officers of FSPs are required to report (via the annual compliance report) on the sample used to determine the accuracy of the required reporting, and the findings of the sample testing of the compliance report.

**What is the application process for recognition of CPD programmes?**

- Must use the CPD application form which is contained in the Annexure to Board Notice 103 of 2008;
- Accredited training providers, institutions of higher education, professional bodies, employers and industry associations may apply to the Registrar for the recognition of a programme for CPD purposes;
- A CPD reference list of approved programmes will be developed and published to make it easier to identify which programmes are relevant for CPD;
- This list of approved programmes will be updated and/or amended regularly;
- Application can be made to add a programme and/or activity to the CPD list of approved programmes;
- Application can also be made to apply for a programme to be removed;
- The application is made on the prescribed form together with any other required documents, directly to the Registrar in hard copy form OR it can be submitted electronically;
- The Registrar will approve such applications based on the programme application and its suitability for CPD purposes;
- The application form will require:
  - Business information about the applicant;
  - CPD programme/activity details
  - CPD programme applicability;
  - CPD programme content.

The application will be considered, and the result of the application will be communicated to the applicant within a period of 4 to 6 months.
8. Services Under Supervision

In the new Fit & Proper requirements, services under supervision which primarily applies to representatives, plays a much bigger role than previously. The main difference is that supervision now covers BOTH experience and qualification requirements within the Fit and Proper regulations.

Please consult the Plain Language Guide for representatives for more information on services under supervision.

9. Transitional Arrangements

The development of the suite of Fit and Proper requirements has sensibly evolved in distinct stages. This has required that TRANSITIONAL ARRANGEMENTS had to be put in place to enable a sole proprietor FSP in the system when the FAIS Act was enacted, to move seamlessly toward the goal of the Fit and Proper requirements published in 2008.

The transitional arrangements apply to all FSPs and sole proprietor FSP who were authorised by the Registrar during the period September 2004 to 31 December 2009.

Before discussing the transitional arrangements in more detail, the following must be clarified:

Date of first appointment / approval

The concept of “Date of First Appointment in an authorised FSP” is absolutely critical – it matters hugely (in terms of deadlines) whether you are approved as a key individual in 2004 or 2008, for example.

This concept is NOT new and is very definitely interpreted to be what it says: the date of 1st appointment! So if you were 1st appointed in 2005 in an authorised FSP and then you join another authorised FSP in 2008, you CARRY your 1st appointment date (2005) with you with respect to FAIS credit deadlines.

All individuals appointed or approved between September 2004 and December 2009 will be grouped into the following groupings:

<table>
<thead>
<tr>
<th>Group 1:</th>
<th>Appointed / Approved between September 2004 and 31 December 2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group 2:</td>
<td>Appointed / Approved between January 2008 and 31 December 2009</td>
</tr>
</tbody>
</table>

It is important to know which group applies to you in order to identify the competence requirements and the deadlines that apply to you correctly.
The table below sets out the competence requirements for each of these two groups:

<table>
<thead>
<tr>
<th>TRANSITIONAL ARRANGEMENTS FOR GROUP 1: A SOLE PROPRIETOR FSP (2004 – 2007)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EXPERIENCE</strong></td>
</tr>
<tr>
<td>• 1 year practical management experience at the time of authorisation, and</td>
</tr>
<tr>
<td>• Product experience as per Table A of the Determination of Fit and Proper</td>
</tr>
<tr>
<td>Requirements, 2008.</td>
</tr>
<tr>
<td><strong>QUALIFICATION</strong></td>
</tr>
<tr>
<td>• Complete a relevant qualification or a registered skills programme of 30 / 60 credits by 31 December 2009.</td>
</tr>
<tr>
<td>• Where a sole proprietor FSP is responsible for more than one product, only the most onerous qualification requirement should be met, as per Table E of the Determination of Fit and Proper Requirements, 2008.</td>
</tr>
<tr>
<td><strong>REGULATORY EXAMINATIONS</strong></td>
</tr>
<tr>
<td>• Complete the regulatory examination level 1 by 31 December 2011.</td>
</tr>
<tr>
<td>• Complete the relevant regulatory examination(s) level 2 by 31 December 2013.</td>
</tr>
<tr>
<td><strong>CPD</strong></td>
</tr>
<tr>
<td>• CPD applies from 1 January 2014.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TRANSITIONAL ARRANGEMENTS FOR GROUP 2: A SOLE PROPRIETOR FSP (2008 – 2009)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EXPERIENCE</strong></td>
</tr>
<tr>
<td>• 1 year practical management experience at the time of authorisation, <strong>AND</strong></td>
</tr>
<tr>
<td>• Product experience as per Table A of the Determination of Fit and Proper</td>
</tr>
<tr>
<td>Requirements, 2008.</td>
</tr>
<tr>
<td><strong>QUALIFICATION</strong></td>
</tr>
<tr>
<td>• Complete a relevant registered skills programme of 30 / 60 credits by 31 December 2011.</td>
</tr>
<tr>
<td>• Where a sole proprietor FSP is responsible for more than one product, only the most onerous qualification requirement should be met, as per Table E of the Determination of Fit and Proper Requirements, 2008 OR</td>
</tr>
<tr>
<td>• Complete a full qualification from the list of recognised qualifications (Determination of Qualifying Criteria and Qualifications, 2008 Annexure 2), by 31 December 2013</td>
</tr>
<tr>
<td><strong>REGULATORY EXAMINATIONS</strong></td>
</tr>
<tr>
<td>• Complete the regulatory examination level 1 by 31 December 2011.</td>
</tr>
<tr>
<td>• Complete the relevant regulatory examination(s) level 2 by 31 December 2013.</td>
</tr>
<tr>
<td><strong>CPD</strong></td>
</tr>
<tr>
<td>• CPD applies from 1 January 2014.</td>
</tr>
</tbody>
</table>
Where do I start to check my Fit and proper status?

1. Make quite sure that your date of first approval is accurately recorded on your skills register and establish the FAIS deadline that applies to you, i.e. do you fall into group 1 or group 2?
2. Establish from the Determination for Fit & Proper regulations exactly how many FAIS credits (or in some cases which qualification) is required for the most ‘onerous’ subcategory or category for which you are approved.
3. Begin with your current academic status i.e. Matric; plus any other credit bearing studies; e.g. a Diploma or Certificate or a Degree such as a B.Com. Degree or the UNISA/INSETA once-off assessments done in 2004 or a skills programme etc.
4. Check that your skills programme / qualification is appropriate. To do this look at the unit standards included in the skills programme – they unit standards must be relevant and must not consist of fundamental unit standards. The subjects of a qualification must also be appropriate. For guidance, look at the Determination of Qualifying Criteria and Qualifications, 2008. It contains a list of appropriate subjects, and a qualification must at least contain three of these subjects in order to be deemed appropriate.
5. Be careful of duplication!! (You can’t get credits twice!)
6. If the above process identifies that you have a FAIS credit/qualification shortfall take immediate steps to enroll with an accredited training provider to obtain the necessary credits.

10. References

Board Notice 103 of 2008
Board Notice 104 of 2008
Board Notice 105 of 2008
Board Notice 106 of 2008
Board Notice 151 of 2008
Board Notice 154 of 2008
Board Notice 169 of 2009
Board Notice 44 of 2010

Financial Advisory and Intermediary Services Act 37 of 2002