

CO REQUIREMENTS



Presented by

**FAIS Supervision Department
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AGENDA

- Cursory overview of Legislation
- Roles: Board, Management & Compliance Officers
- General mistakes COs make
- Reporting material contraventions
- How to report to the Registrar
- Changes to CO Subordinate Legislation



LEGISLATION

- FAIS Regulations
- Sec 17 & 19 of FAIS Act
- Sec 43 of FIC Act
- BN 48 of 2008 (Qualifications & experience of COs in respect of financial services)
- BN 84 of 2003 (Criteria and guidelines for approval of COs)

also

- Take guidance from best practice and international standards



LEGISLATION: FAIS Regulations

Regulation iv: Approval of CO

- FSP must submit CO application for approval as required by Sec 17(2)

Regulation v: Establishment of compliance function

- Authorised FSP shall
 - continuously manage regulatory risk,
 - ensure compliance function exists or is established as part of risk management framework that is supervised by approved CO, or managed under control & responsibility of provider alone
 - compile and maintain compliance manual
- Compliance function must:
 - have adequate resources
 - be exercised with due diligence, care & degree of competency from a person responsible for such function
- Approved CO: must provide FSP with written reports



LEGISLATION: Principle 5 of BIS

Compliance Function

- The primary role of the compliance function is to assist management in discharging their responsibility to comply with applicable Regulatory requirements, through the provision of compliance risk management services



LEGISLATION: Sec 17 of FAIS Act

- Sec 17(1)(a) appoint 1 or more CO/s to monitor compliance with the Act by FSP and its reps in accordance with 17(3) established procedures, and liaise with the Registrar
- Sec 17(1)(b) specifies who can be appointed a CO (suitable qualifications & experience)
- Sec 17(2) approval of CO
- Sec 17(3) Fsp must establish & maintain compliance procedures to be followed by the Fsp & its reps
- Sec 17(4) submit reports to the Registrar



LEGISLATION: Sec 19 of FAIS Act

- Sec 19(4) – report and inform Registrar in writing of irregularities or suspected irregularities
- Sec 19(5) – provide reasons for terminating compliance services,
- Sec 19(6) - Registrar may require FSP to terminate appointment of CO



LEGISLATION: Sec 43 of FIC Act

Training and monitoring of compliance

“An accountable institution must –

- a) Provide training to its employees to enable them to comply with the provisions of this Act and internal rules applicable to them;
- b) Appoint a person with the responsibility to ensure compliance by-
 - i) The employees of the accountable institution with the provisions of this Act and the internal rules applicable to them;
 - ii) The accountable institution with its obligations under this Act”



LEGISLATION: BN 84 of 2003

Whether FSP

- Has compliance function - Chapter iv of Regulations
- Has compliance procedures - Sec 17(3)

Whether CO:

- Has qualifications & experience - Sec 17(1)
- Complies with Fit & proper - Sec 8(1)
- Has sufficient & appropriate knowledge of the provisions of Act, duties & obligations to be discharged by FSP
- Has adequate resources to ensure proper compliance monitoring, given direct access to reps, receive support from management
- Able to function adequately independently & objectively
- As regards internal orgs structure - no actual or potential conflicts of interest as regards duties & functions of employees, and in particular internal audit & control functions as regards reps functions
- Able & enabled to keep written records of all activities undertaken during compliance monitoring, provide written reports to provider at least quarterly on the course and progress of monitoring duties, make recommendations on required compliance & monitoring functions
- Liaise directly with Registrar particularly in respect of Sec 17(4) reporting



ROLE of BOARD: Chapter 6 of KING III

Compliance Governance

- The Board should ensure that the company complies with applicable Laws and consider adherence to Rules, Codes and Standards
- The Board and each individual director should have a working understanding of the effects of the applicable Laws, Rules, Codes and Standards on the company and its business
- Ensure compliance risk form an integral part of the company's risk management process
- The Board should delegate to management the implementation of an effective compliance framework and process



ROLE of MANAGEMENT: Principle 3 of Banking International Standards (BIS)

FSP's responsibility – management involvement

- Senior Management is responsible for establishing a written policy
 - Basic principles to be followed by management and staff
 - Explains the main process by which compliance risks are to be identified and managed
- Clarity and transparency promoted
 - General standards for all staff members and rules that apply to specific rules
- The duty of senior management
 - Ensure that compliance policy is observed
 - Remedial or disciplinary action is taken if breaches



ROLE of MANAGEMENT: Principle 3 of BIS

- Senior management should (with the assistance from compliance)
 - Identify and assess the main compliance risks and the plans to manage them (at least annually)
 - Such plans should address any shortfalls (policy, procedures, implementation or execution)
 - Report to the board or committee on the management of compliance risk
 - Report directly to the board or committees on any material compliance failures (significant risk of legal or regulatory sanctions, material financial loss or loss to reputation)

ROLE of MANAGEMENT: Sec 12 of General Code of Conduct



What about risk management

- A provider must at all times have and effectively employ the resources, procedures and appropriate technological systems that can reasonably be expected to eliminate as far as reasonably possible, the risk that clients, product suppliers and other providers or representatives will suffer financial loss through theft, fraud, other dishonest acts, poor administration, negligence, professional misconduct or culpable omissions.
- A provider must, in co-operation with its compliance officer, compile and maintain a risk management framework which should include a compliance manual that is reviewed and updated as frequently as required but at least annually

Role of Compliance Officer: Compliance Institute Standards



- Design, assist in implementing and maintaining a compliance risk management framework
- Define, maintain and advise on regulatory universe
- Develop, facilitate compilation and review compliance risk management plans
- Conduct compliance monitoring
- Compile and submit internal and external compliance reports
- Interact with industry regulator, supervisor and stakeholders



Roles of Compliance Officer

Summary

- Assist management to establish a risk management framework/compliance function
- Oversight of compliance function
- Support management to discharge compliance duties
- Advice management on regulatory universe
- Training
- Monitoring (compliance with Act, financial services rendered, limit monitoring to FAIS & FICA?)
- Ongoing liaison & reporting



GENERAL MISTAKES

STANDARDISED DOCUMENTS

- CO's provide FSP's with generic documents e.g. internal rules, conflict of interest policy, risk management plans, but the FSP does not customise the document or familiarize themselves with its content

DELEGATION OF DUTIES

- Compliance practices appoint individuals that have not been approved by the Registrar as compliance officers. Duties of the approved CO are delegated to these individuals.

SERVICE LEVEL AGREEMENTS

- SLA doesn't specify the roles and responsibilities of the parties to the contract and the legislation for which the CO is responsible to monitor.



GENERAL MISTAKES

BACK UPS

- Not stored offsite

REPORTING

- No formal feedback given to FSP on at least a quarterly basis or feedback is not FSP specific but general feedback for all FSPs.
- Frequent email and telephonic interaction does not replace reporting duties.

MONITORING

- No sampling or insufficient sample base.
- No onsite conducted at the premises of the FSP / electronic monitoring.
- Failure to check receipt of clients funds / premiums
- Failure to include FSP's compliance with Sec 8 & 9 of the Code in monitoring



GENERAL MISTAKES

KNOWLEDGE

- Insufficient understanding of risk management
- Not keeping abreast of changes to legislation

BUSINESS CONTINUITY

- Not providing for the ongoing servicing of FSPs in the event of death, disability or retirement.

RESPONSIBILITY FOR COMPLIANCE

- Failing to remind FSPs that compliance is ultimately the responsibility of the FSP as there is an increased reliance on the CO



GENERAL MISTAKES

APPROVAL OF CO

- In instances of non payment by FSPs, CO's ceased rendering compliance services but, failed to notify the Registrar of the resignation.
- In cases of resignation / practice restructuring the CO fails to submit a Section 17(1)(c) report.

ROLE OF CO

- COs performing dual roles may neglect one of the roles. E.g. CO / Auditor / Legal advisor



GENERAL MISTAKES

ANNUAL COMPLIANCE REPORTS

- CO submits reports for reporting periods in which they were not the approved CO.
- Copy of annual Compliance Report not provided to FSP.
- Using the compliance report as a means of reporting unregistered business & other irregularities (immediate) and profile changes (within 15 days).
- Completing the report prior to the reporting date.



GENERAL MISTAKES

FICA COMPLIANCE

- No ongoing or refresher training (access to internal rules only is not sufficient)

DISCLOSURE

- Failure to disclose upfront to clients that CO has own FAIS license / operates as KI or Rep under another FSP's license.

CLIENT-BASE

- Client base too big for CO to manage.



MATERIAL CONTRAVENTIONS

- Section 17... read together with Section 19(4) states that irregularities or suspected irregularities must be reported
- When in doubt - report and the Registrar will assess the information and investigate
- Examples of matters that the Registrar has seen that should have been reported:
 - FSPs conducting unregistered business in a category or subcategory.
 - Operating without an approved KI.
 - FSP's failure to update central rep register.
 - FSP's medical accreditation lapsed but, Registrar not informed to remove health benefits from license.
 - Manipulation of rep register to reduce payment of levies
 - Accepting client funds but, not advising Registrar.
 - Appointing reps that don't satisfy the qualifications requirements and honesty and integrity in terms of Fit and Proper



REPORTING TO THE REGISTRAR

- Any irregularities or suspected irregularities must be submitted in writing together with any relevant supporting documentation to the FAIS Enforcement Department:

Fax: 012 422 2973

- Report immediately, don't wait until compliance report is due for submission



PROPOSED CHANGES TO CO SUBORDINATE LEGISLATION

Need for increased regulation

- Amendment to Sec 17(1) now requires COs to meet certain minimum competency requirements
- Undesirable practices by COs/practices
- Changes to fit & proper requirements and the need to align these requirements to COs



NEW DEFINITIONS

- Compliance services
 - The performance by a compliance officer of functions contemplated in Sec 17 of the FAIS Act
- Compliance officer:
 - A Natural person appointed to render compliance services
 - A compliance practice appointed to render compliance services
- Compliance practice
 - Company, close corporate or partnership that appoints one or more natural persons to render compliance services in respect of a particular provider and such natural persons are approved by the Registrar
 - Partnership - all the partners must be approved as compliance officers
 - Company and close corporation - the directors and members must be compliance officers and have Phase I approval only



NEW DEFINITIONS

- Applicant
 - Natural person applying to the Registrar for approval as a compliance officer including the natural person appointed by a compliance practice to render compliance services in respect of a particular provider
- Compliance manual
 - Written document setting out information regarding the policies, procedures and processes a provider employs to ensure compliance with this Act
- Internal compliance officers
 - Natural person in permanent employ of
 - Provider
 - Another company in the same group of companies as provider
- External compliance officer
- Compliance officer other than an internal compliance officer

AMENDMENTS TO FAIS REGULATIONS



Provides for:

- approval of both appointed compliance officer and compliance practice
- ongoing management of regulatory risks
- compilation and maintenance of compliance manual as part of compliance function
- compliance function must have adequate resources.

NEW QUALIFICATIONS, EXPERIENCE AND CRITERIA FOR APPROVAL AS COMPLIANCE OFFICER



- A distinction is made between an internal and external compliance officer as well as between a compliance officer and compliance practice.
- Introduces a Phase I approval (qualification, experience and operational abilities) and Phase II approval (specific to Fsp)
- Introduces regulatory examinations and CPD requirements.
- Provides for the recognition of qualifications of compliance officers on a list of recognized qualifications. (not yet finalized)

NEW QUALIFICATIONS, EXPERIENCE AND CRITERIA FOR APPROVAL AS COMPLIANCE OFFICER



Application criteria for approval as Compliance Officer

- No person may render compliance services without obtaining Phase I & Phase II approval
- Applicant and compliance practice must submit applications on prescribed forms
- Entities that may apply as compliance practices: partnership, company or close corporation
- Consider application and grant/refuse Phase I or Phase II approval

NEW QUALIFICATIONS, EXPERIENCE AND CRITERIA FOR APPROVAL AS COMPLIANCE OFFICER



Criteria for Phase I approval – FSP Form 13

- Applicant must:
 - Qualification – from list of recognized/approved qualifications (generic or specific) work same as Fit and Proper requirements for FSPs
 - Passed Regulatory Exams
 - 3 years experience
 - Compliance or Risk management – 3 years
 - Related to specific categories – 1 year
 - Honesty and integrity – Sec 8(1)(a)
 - Operational abilities
 - Not be unrehabilitated insolvent or provisionally liquidated/sequestered

Approval lapses after 12 months if Phase II approval is not obtained

NEW QUALIFICATIONS, EXPERIENCE AND CRITERIA FOR APPROVAL AS COMPLIANCE OFFICER



An External Compliance Officer must:

- Have fixed business address
- Maintain operational ability to render compliance services e.g.
 - adequate storage & filing systems, safe keeping of records, correspondence and communication
 - Controls, processes and procedures (segregation, data security, business policies, disaster recovery, business continuity, back ups etc)

NEW QUALIFICATIONS, EXPERIENCE AND CRITERIA FOR APPROVAL AS COMPLIANCE OFFICER



Criteria for Phase II approval – FSP Form 6

Applicant and compliance practice must satisfy Registrar:

- Have adequate resources
- Direct access to and support from FSP's management
- Independently and objectively
- Avoid conflict of interests
- Keep records and supporting docs of reviews, visits or monitoring
- Assist in compilation of compliance risk management
- Liaise with Registrar
- Conduct will monitor and conduct regular reviews of financial services to premises, business units and branches of provider and its reps (different intervals apply depending on FSP category)

NEW QUALIFICATIONS, EXPERIENCE AND CRITERIA FOR APPROVAL AS COMPLIANCE OFFICER



- External Compliance officers
 - Category I and IV – Regular at least quarterly monitoring to all business premises, units or branches of provider and in respect of juristic representatives at least twice a year
 - Category II, IIA and III – Regular at least monthly
- Internal Compliance officers
 - Category I and IV – Regular monitoring to all business premises, units or branches of provider and in respect of juristic representatives at least once a year
 - Category II, IIA and III – Regular at least quarterly
- Provide reports to the provider at intervals stipulated above
- Compliance practice must ensure that number of clients allocated to any compliance officer of such practice is at all times sufficient to render proper and appropriate compliance services

NEW QUALIFICATIONS, EXPERIENCE AND CRITERIA FOR APPROVAL AS COMPLIANCE OFFICER



CPD Requirements

- CO must comply with CPD requirements as determined
- May (in prescribed form and manner) apply for recognition of qualification (generic or specific)
- List of recognised qualifications to be published

NEW QUALIFICATIONS, EXPERIENCE AND CRITERIA FOR APPROVAL AS COMPLIANCE OFFICER



- No CO (except internal CO) may delegate rendering of compliance functions to another person
- Internal may delegate subject to following conditions:
 - Natural person, permanent employ of provider
 - Meets paragraph 3(1)/Phase 1 or conducts monitoring in terms of documented procedure: no judgment in performance of procedure
 - Appropriate oversight
 - Accountability
 - Maintain register of names of such persons, description of delegated compliance services, and confirmation of ii above
- Withdrawal of approval – no longer complies with provision of Notice



EXEMPTION IN RESPECT OF SERVICES UNDER SUPERVISION RENDERED BY CO

- Addresses the skills shortage in the compliance industry.
- Relieves persons rendering services under supervision of the Sec 17(1)(b) obligation
- A supervisee that meets qualification requirements only, may render services under supervision whilst obtaining required experience and regulatory examinations
- It makes provision for the requirements and conditions under which supervision is conducted.
- Exemption is in respect of experience, CPD and regulatory examination requirements only, and not qualification requirements.
- Stipulates requirements for both supervisor and supervisee.
- Differentiates between supervision in respect of categories I & IV as well as categories II, IIA and III.



2010 COMPLIANCE REPORTS

- Handover report
- Category I FSP without CO
- Category I FSP with CO
- Category II, IIA and Forex
- Category III - two reports submitted per annum
- Category IV
- Foreign FSPs
- Interim report for category IIA – Quarterly basis

Thank you

