

FINANCIAL SERVICES BOARD



**FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002
("FAIS ACT")**

**GUIDELINE ON THE DETERMINATION OF REAPPOINTMENT OF
DEBARRED REPRESENTATIVES**

DATE : 13 JULY 2011

1. PURPOSE OF THE GUIDELINE

The purpose of this guideline is to explain the rationale and process followed with regards to the reappointment of debarred representatives from the moment the Registrar of Financial Services Providers ("the Registrar") receives information from the reappointing Financial Services Provider ("provider").

2. BACKGROUND

A debarment in terms of section 14 (1) of the FAIS Act, means that the provider stops the representative who no longer complies with the fit and proper requirements from rendering financial services and removes his name from the register of representatives. The debarment stops the representative from functioning as a representative of any provider and not only for the provider who

brought about the debarment. However, if the representative is subsequently of the view that he is fit and proper, he may request the financial services provider to reappoint him.

Before reappointing the representative, the provider must comply with the requirements stipulated in section 13 (1) (b) (ii) of the FAIS Act. as follows: 'A person may not act as a representative of an authorised financial services provider, unless such person if debarred as contemplated in section 14, complies with the requirements determined by the Registrar, after consultation with the Advisory Committee, by notice in the *Gazette*, for the reappointment of a debarred person as a representative.

It is the duty of the provider to ensure that their representatives are fit and proper. The Registrar does not assess the fitness and propriety of representatives. If the Registrar is of the view that a representative is not fit and proper, the Registrar must take an action against the provider for not complying with section 13 (2) of the Act.

Furthermore it appears that there is a misconception that as soon as a period of twelve months has elapsed, the debarred representative is automatically reinstated or qualifies for being reappointed as a representative.

3. REQUIREMENTS FOR REAPPOINTMENT OF DEBARRED REPRESENTATIVES

In terms of section 13(2) (a) of the FAIS Act a provider may not appoint a person as a representative unless it is satisfied that such person complies with the fit and proper requirements as contemplated in section 8(1) of the Act. Furthermore

a provider may not appoint a debarred person as its representative unless the requirements for the reappointment of debarred representative as contemplated in Board Notice 82 of 2003 have been complied with.

Board Notice 82 of 2003 stipulates that an applicant for reappointment as a representative must be a person who, on the date of reappointment, complies with the following:

- At least 12 (twelve) months since the debarment date must have elapsed, unless the debarment was consequent on the applicant not having qualified as contemplated in section 13(2)(a) of the Act, and the applicant has within that period qualified as so contemplated;
- All unconcluded business of the applicant as former representative, referred to in the proviso to section 14(1) of the Act, has been properly concluded;
- All complaints or legal proceedings (if any) submitted by clients to the applicant or the debarring provider, or the Ombud or any court of law; or
- All other administrative or legal procedures or proceedings in terms of the Act or any other law, arising out of any acts or omissions in which the applicant was directly or indirectly involved prior to the debarment date, have been properly and lawfully resolved or concluded, as the case may be, and that the applicant has fully complied with any decision, determination or court order in connection therewith, given or issued in respect of the applicant;
- All fit and proper requirements as contemplated in section 8(1)(a) and (b), read with section 13(2), of the Act are complied with.

4. THE IMPLICATION OF THE REAPPOINTMENT OF DEBARRED REPRESENTATIVES:

We draw your attention to the fact that the representative will not be removed automatically from the list of debarred representatives as soon as a period of twelve months has elapsed. The reappointing provider, being regarded as the applicant in this instance, must request the Registrar of Financial Services Providers ('the Registrar') to remove the debarred representative from the database of debarred representatives.

The provider, must before requesting the Registrar to remove a debarred representative from the database of debarred representatives, be satisfied that the representative is a person who is honest and has integrity. The provider must do so by submitting satisfactory evidence, affidavits or testimonials, in order to support the proposition.

The onus rests on the applicant, as a first step to convince the Registrar on a balance of probabilities that there has been a genuine, complete and permanent reformation on the part of the representative and that the defect of character, attitude or other aspect that led to the representative being considered not fit and proper no longer exists. Furthermore, that if reappointed as a representative, she or he will in future conduct her or himself in a professional manner and will be someone who can be trusted to perform the duties of a representative in a satisfactory way and in the interest of the clients and the industry.

It must also be clear when the Registrar peruses the documents supplied by the provider, that the latter is aware of the details of the applicant's transgression and the provider is satisfied that the representative will not commit the offence again.

Given that the applicant may have satisfied the Registrar in all respects, the application may still be turned down if the contravention of such a serious nature

that the profession could not be seen to accommodate the representative within its ranks.

5. THE RE-APPOINTING FINANCIAL SERVICES PROVIDER ('FSP') MUST SUBMIT THE FOLLOWING DOCUMENTS TO THE REGISTRAR:

An affidavit stating reasons why the FSP is satisfied that the representative is now fit and proper;

An affidavit from the debarred representative also stating reasons why he/she is of the view that he/she is now fit and proper

6. PROCEDURE TO BE FOLLOWED BY THE REGISTRAR OF FINANCIAL SERVICES PROVIDERS

As soon as the Registrar receives an application, in a form of an affidavit from the re-appointing provider for re-appointment of the debarred representative, the Registrar will follow the procedure set out hereunder:

- The Registrar will contact the financial services provider that debarred the representative in the first place (if it is not the same provider) to establish that all the unconcluded business of the person as a former representative has been properly concluded. This information should be submitted to the Registrar in the form of an affidavit.
- The Registrar of Financial Services Provider will first consider all facts and information available to him before deciding to remove the said person from the list of debarred persons.

- Once the Registrar is satisfied that the applicant meets all the requirements, then the Registrar will consider removing the said person from the list debarred of persons.
- The Registrar will then notify the debarred person/ representative in writing of his decision.

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by several wavy, horizontal strokes. The signature is enclosed within a hand-drawn oval.

DEPUTY REGISTRAR OF FINANCIAL SERVICES PROVIDERS