

FAIS 2010



Small FSPs without
a compliance officer – 6 September 2010

Authorisation of FSPS - Sections 7, 8 & 11

- Application form
- Fit and Proper requirements
- Approval of key individuals
- Lapsing of a licence

Duties on FSPs - Sections 17 to 19

- Approval of compliance officers
- Compliance reports
- Audit reports
- Recordkeeping requirements

Codes of Conduct - Sections 15 & 16

- General Code of Conduct
- Administrative and discretionary Code of Conduct
- Forex Investment business Code of Conduct
- Specific Code of Conduct for Short-term deposit business

Supervision of FSPs - Section 4

Ombud - Sections 20 to 31

Regulatory action - Sections 9 & 14A

- Suspension of a licence
- Withdrawal of a licence
- Debarment of persons other than representatives

Enforcement - Sections 33, 34 & 36

Exemptions - Sections 44 & 45

Miscellaneous - Sections 32, 35, 40 - 42, 46

- Determination of Fees Payable to the Registrar
- Financial Advisory and Intermediary Services Regulations

Licence certificate

- Legal entity – Name on Certificate
 - Sole proprietor
 - Partnership – partners are key individuals
 - Juristic person – appoint key individuals
 - Close corporation
 - Company
 - Trust
- Trade name on certificate
- Annexure to licence certificate
 - Restrictions to licence – product categories
 - Conditions – what you must do
 - Exemptions

What is most important obligations in terms of the FAIS Act

- Comply with the fit and proper requirements on ongoing basis
- Comply with Codes of Conduct applicable to FSP
- Comply with Financial Intelligence Centre Act
- Keep records
- Submit a compliance report
- Prepare monthly accounts and submit financial statements
- Annual levies payable to the FSB

General Code of Conduct

- All FSPs must comply with the General Code of Conduct
- Recordkeeping
- Complaints
- Advertising
- Client funds
- Advice:
 - Suitability analysis – Section 8
 - Record of advice – Section 9
 - Single needs analysis
 - Replacement of financial products
- Disclosure requirements

Disclosure requirement



Code of Conduct Conflict of interest – BN 58 of 2010

- Avoid conflict of interest – s 3(1)
- Develop conflict of interest management policy - s 3A(2)
- Change disclosure documentation – s 3(2)
- Implement controls to ensure comply with prohibitions on financial interest
 - FSPs dealing with other FSPs – s 3A(1)(a)
 - Financial interest
 - Immaterial interest
 - FSPs representatives – s 3A(1)(b) and (c)
- Compliance officer must ensure that do monitoring on the COI policy

Operational ability

Operational ability

General Code

- FSP must at all times have and effectively employ:
 - the resources,
 - procedures and
 - appropriate technological systemsthat can reasonably be expected to eliminate as far as reasonably possible the risk that:
 - clients,
 - product suppliers and
 - other providers or
 - representativeswill suffer financial loss through:
 - theft,
 - fraud,
 - other dishonest acts,
 - poor administration,
 - negligence,
 - professional misconduct or
 - culpable omissions.
- A provider must compile and maintain an overall risk management framework of the business which must be updated at least annually.

Operational ability – Fit and Proper



Outsourcing



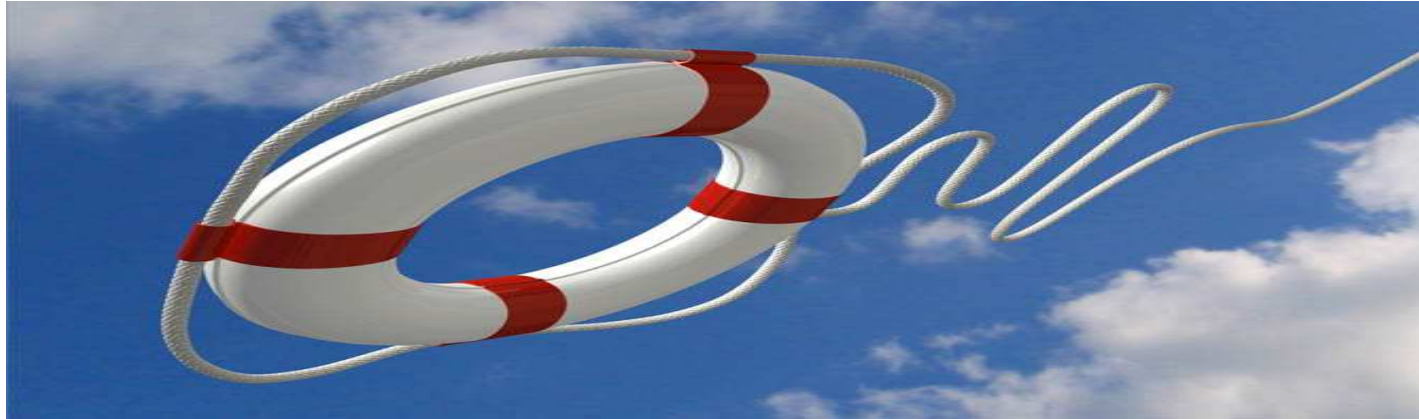
- When an FSP uses a 3rd party to render administrative or system functions relating to rendering of financial services, it must have service level agreement
 - Agreed services
 - Time standards
 - Roles and responsibilities of parties
 - Penalties might be applicable

Operational ability – Fit and Proper



- Documentation relating to business processes, policies and controls
- Segregation of duties and roles and responsibilities
 - Operational risk mitigation perspective
- Application of logical access security
- Access rights and data security on electronic data
- Physical security of assets and records
- System application testing
- Disaster recovery and back-up of electronic data
- System controls and compliance to manage and monitor relevant systems
- Business continuity plan

Insurance



- Adequate Professional Indemnity Insurance – All FSPs
- Adequate Fidelity insurance – FSPs deal with client funds
- Adequate Guarantees – Alternative
- Prescribed minimum requirements between R1 million to R5million

Key individual – operational ability



- Key individuals must be able to maintain the ability to fulfill the responsibilities imposed by Act including oversight over representatives

Compliance framework
Compliance risk management

Risk Management Plans

- Sections 11 and 12 of the General Code
- Look at the risks you face in your FSP
- Draw up a plan that will address your risks
- It includes compliance with legislation, but is not restricted to only deal with legislation
- You must be able to use the plan, it must make sense for your business

How to complete compliance report

- The compliance report is available on the website
- You can submit online or in hard copy
- If you post the compliance report, please obtain a tracking number, as it can be undelivered
- Don't wait until the last day before you complete it, ensure that you give yourself enough time
- The online system is web-based, and is compatible with all operating systems

When do you need compliance officer

- Appoint a compliance officer if:
 - More than one key individual
 - One or more representative
- You don't need a compliance officer is:
 - There is only one person in the FSP
 - When the same person is both the key individual and representative then don't need compliance officer
- It is the FSPs responsibility to apply for approval of compliance officer
- If no compliance officer the sole proprietor or key individual is responsible to submit annual compliance reports

Financial Intelligence Centre Act

Accountable Institutions

- Schedule 1 of FICA:
 - A person who carries on a 'long-term insurance business' as defined in the Long-Term Insurance Act, 1998 (Act 52 of 1998), including an insurance broker and an agent of an insurer.
 - A person who carries on the business of rendering investment advice or investment broking services, including a public accountant as defined in the Public Accountants and Auditors Act, 1991 (Act 80 of 1991), who carries on such a business.

More accountable institutions

- A member of a stock exchange licensed under the Stock Exchanges Control Act, 1985 (Act 1 of 1985).
- A person who has been approved or who falls within a category of persons approved by the Registrar of Stock Exchanges in terms of section 4 (1) (a) of the Stock Exchanges Control Act, 1985 (Act 1 of 1985).
- A person who has been approved or who falls within a category of persons approved by the Registrar of Financial Markets in terms of section 5 (1) (a) of the Financial Markets Control Act, 1989 (Act 55 of 1989).

What must they do?

- **Duty to identify client (s 21)**
- **Duty to record(s 22-26)**
- **Reporting duties and Access to information (s 27-41)**
 - **28A Property associated with terrorist and related activities**
 - **29 Suspicious and unusual transactions**

Establishing a relationship

- An accountable institution:
 - i) may not establish a business relationship, or
 - ii) conduct a single transaction with a new client, unless they have established and verified the identity of the client prior to transacting.
- Clients should have:
 - documentation available confirming their statuses.

Accountable institutions

- **Measures to promote compliance by accountable institutions (s 42-43)**
 - 42 Formulation and implementation of internal rules
 - 43 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 the 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; and
 - (ii) the accountable institution with its obligations under this Act.

Reporting obligations

- All institutions must:
 - Report in terms of section 29 if they think there was a suspicious or unusual transaction
 - Such reporting must be done electronically www.fic.gov.za
 - This applies to all FSPs, even if they are not an accountable institution!

Exemptions

- The following exemptions apply:
- Exemption 4 & 5: from s21 & 22
- Exemption 7: from parts 1 and 2 of chapter 3 of FICA
- Exemptions **do not apply** in the case of suspicious or unusual transactions!

Monthly accounting records and
submission of financial statements

Monthly accounting records

- FSPs must maintain accounting records which are updated at least monthly
- Accounting records relate to business expense if you are a sole proprietor all personal expenses will go to your personal drawings account
- Must monitor compliance with section 9 of Fit and proper – financial soundness requirements

Financial soundness



- All FSPs must comply with solvency requirement
 - Assets excluding:
 - Goodwill
 - Other intangible assets
 - Investments in related parties
 - Must exceed Liabilities
 - Excluding subordinated loans

Financial soundness



- Maintain current assets that is sufficient to meet current liabilities
- All Category I FSPs that hold clients assets or receive premiums

Financial soundness



- Category I FSPs that hold clients assets or receive money or premiums
- Liquid assets equal to 4 weeks annual expenditure

Preparation of financial statements

| Type of FSP | Preparation of Financial Statements | Audit reports |
|--|---|--|
| Category I FSP that does not receive client funds or premium | Not in accordance with South African Generally Accepted Accounting Practices (“GAAP”) or International Financial Reporting Standards (“IFRS”) | No audit required, exempted in terms of Board Notice 96 of 2003. |
| Category I FSP receive client funds or premium | In accordance with SA GAAP or IFRS | Audit report in terms of section 19(2)(a) and 19(3) of Act. |
| Category I FSP receive premium in relation to long-term insurance category A (assistance business policies) only | Not in accordance with SA GAAP or IFRS | No audit is required, exempted in terms of Board Notice 85 of 2004, provided that an ‘accounting officers’ report must be submitted. |

Income Statement - example

| | |
|--|--|
| <u>INCOME</u> | |
| COMMISSION RECEIVED | |
| FEES RECEIVED | |
| INTEREST RECEIVED | |
| <u>EXPENSES</u> | |
| ADVERTISING | |
| BANK CHARGES | |
| CELLPHONE | |
| COMMISSIONS PAID TO | |
| <i>PROFIT / LOSS BEFORE TAX</i> | |

Balance Sheet - example

ASSETS

NON CURRENT ASSETS

MOTOR VEHICLES

INVESTMENTS

OFFICE EQUIPMENT

CURRENT ASSETS

BANK

TOTAL ASSETS

EQUITY AND LIABILITIES

OWNERS EQUITY

NON CURRENT LIABILITIES

MORTGAGE BOND

LONG TERM LOAN

CURRENT LIABILITIES

CREDITORS

BANK OVERDRAFT

TOTAL EQUITY AND LIABILITIES

Fit and Proper requirements

Fit and Proper

Competence =

–Experience +

–Qualifications +

–Regulatory examinations

Health Service Benefits

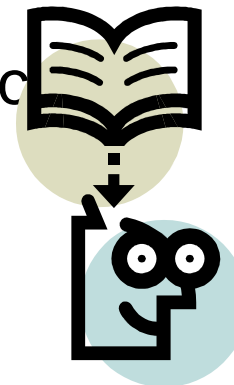
- FSP & representatives that render service
i.r.o HSB
 - accredited as at least an apprentice broker
 - Regulation 2B of Medical Schemes Act, 1998
- CMS accreditation in place and valid

Experience

- Representative:
 - Product related
 - Can obtain under supervision
- Sole Proprietor and Key individual:
 - Need both management & product
 - At application for authorisation / approval by FSB

Qualifications

- KI & Sole Proprietor:
 - Must meet qualification (not entry level) at application for authorisation/ approval
- Representative:
 - Entry level at appointment
 - Cat I & IV: Matric or equivalent
 - Cat II, IIA & III: Bachelors degree or equivalent
 - 5 Years from appointment to obtain qualification
 - Different qualifications recognised
 - Services under supervision applies



Qualifications: Cat I & IV

- Entry level qualification –
Representatives
 - Matric
 - Grade 12
 - Equivalent certificate @ NQF level 4
- Cat 1.1. & 1.19
 - ABET level 1 or
 - Proven ability to:
 - Read
 - Write
 - Calculate

Regulatory Examinations

- Unlimited attempts
- Level 1:
 - Sole Proprietor & KI: At application for authorisation/ approval
 - Rep: within 2 years of appointment
 - Legislation: FAIS, FICA, Codes of Conduct
- Level 2:
 - Product Specific
 - Similar types are grouped together
 - May write multiple examinations
 - Within 6 years of appointment
- Preparation important
 - Have to link the qualifying criteria and make it practical to your situation
 - Must understand FAIS as the testing is based on the practical situations with in FSPs regardless of the products you are registered for
 - Multiple question exam and close book



Continuous Professional Development (CPD)

- Sole Proprietors, Key Individuals and Representatives
- Applies after Competence requirements are met
- 15 – 60 hours over a 3 year cycle
- Variety of activities recognised
- Log with FSB:
 - As part of rep register; or
 - Individual log via website

Questions asked during the satellite session for small FSPs held on 6 September 2010

1. Is AIIISA a S, SP or G qualification
 - a. We're not quite sure which qualification you refer to. Please check the list of qualifications on the website:
 - b. www.fsb.co.za
 - i. Select FAIS n the top right hand corner
 - ii. Select : search for recognized qualifications
 - iii. Click on list 1 – 9, and search for the qualification on the list that is displayed
2. Is a short term license sufficient for hospital gap cover?
 - a. This will depend. Hospital gap cover is a typical risk product, and this can be provided as either a short-term insurance product or a long-term insurance category B1 or B2 product. It will depend on the product supplier or the underwriting manager which license category is required for a specific type of hospital gape cover product. The same applies to any other risk product.
3. If an accountant advises his clients in terms of their business does he need to keep a record of advice and do a needs analysis?
 - a. It would depend on whether the accountant is a FSP, and does this as a regular feature of business
 - b. If the answer is yes, then a record of advice and the needs analysis must be kept, as the same rules applies to all FSPs
4. Do direct insurers disclose and keep advice records?
 - a. Direct insurers are also subject to the same rules and requirements as other FSPs. Their disclosures are done in terms of section 15 of the General Code of Conduct.
5. Medical aids – how do they comply when there is a merger, in terms of replacements?
 - a. Replacement products must be offered to a client in such a way that the client is not prejudiced in any way. The rules for replacement products are provided in section 8(1)(d) and (e) and section 8(3) of the General Code of Conduct. Any business that as a result of a merger or any other business transaction offers clients replacement products, need to ensure that it adheres to these requirements.
6. Would the concept of Conflict of Interest apply to a product such as Herbalife sold by an independent distributor.
 - a. The Conflict of Interest rules apply to situations where the financial product or service falls within the scope of the FAIS legislation. Products such as Herbalife dot not fall in the scope of FAIS.
7. If all file documents are scanned in and back-ups are made, do I have to keep paper files?
 - a. No, you are required to maintain records, and you must be able to retrieve it and provide it in a printable format. If you keep scanned copies, the security is in place, and you can retrieve the records within the allowable timeframes, you can scan it.

8. As a sole proprietor, what can I do to protect my client base and my income for my family in case of death, as my license will expire?
 - a. If you are a true sole proprietor (you were authorised as financial services provider in your own name) there isn't much you can do, as the license lapses in the event of your death or retirement.
 - b. Check the contracts you have with your product suppliers, as there may be some relief there.
 - c. You would need to apply the same long-term financial planning for yourself as you would with a client, or ensure that your financial planner helps you to look at long-term wealth creation plans. This can include considerations such as income protection, retirement annuities etc.
 - d. You can also consider whether it would be worth your while to create a legal entity that is authorised as a financial services provider, and then set that up in such a way as to ensure long-term financial stability.
9. How do you submit the last page of the report as a physical signature is needed?
 - a. Please print the page and sign it
 - b. If you have access to a scanner, please scan it and attach it to the online submission, as there is an option to attach it
 - c. If you can't attach and e-mail, please post it to us, for attention the FAIS Supervision Department.
10. Why do you not have a reference guide f each of the sections you refer to in the questions of the compliance report?
 - a. Part of your licensing conditions is that you must familiarize yourself with the requirements of the legislation.
 - b. We have addressed many of the sections in the newsletters we have published since 2007. They are all available on the FAIS homepage.
11. Will I have to submit a copy of my PI certificate with my compliance report, and will I have to sign the PI certificate?
 - a. Yes, you are required to do this, and from 2011 it will be compulsory.
12. I only do short-term insurance, does FICA apply to me?
 - a. As a short-term insurance broker you are not regarded as an accountable institution.
 - b. You are only required to understand section 29 of FICA, which deals with the identification and reporting of suspicious and/or unusual transactions.
13. What about rental income and maintenance?
 - a. When you report your financial statements, you only report the items that form part of the FSPs income and expenditure.
 - b. You would need to check whether the rental income is earned by the FSP, in which case you would include it.
 - c. The same is true for maintenance expenses – does it relate to the FSP? If yes, you report it and include it in your financial statements.
14. Please explain CPD points

- a. CPD is calculated on a 3 year cycle, and you have to complete a certain number of hours of CPD activities over the 3 years. Please read Board Notice 103 od 2008 (available on the website) for more detail.
 - b. You will also find some guidelines in the plain language guides we have on the website.
15. Does a fraud conviction exclude a person indefinitely, even if you served a sentence?
- a. We deal with every case on its own merits, and would take the situation, time period and rehabilitation into consideration. Such a person would not be allowed to be in a position where they can access client funds.
16. Will the exams be available in other languages?
- a. Unfortunately we are unable to provide the exams in other languages due to the fact that the legislation is only available in English. The terminology exists in English.
 - b. We will make sure that the exam questions are developed in easy English.