

FINANCIAL ADVISORY AND INTERMEDIARY SERVICES

About

The Financial Advisory and Intermediary Services (FAIS) Division was responsible for the administration of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) (the FAIS Act).

Department	Responsibilities
1 Registration Department	Processing new licence applications for financial services providers Processing profile changes (changes to application details under the licence conditions of financial services providers or FSPs) Approving compliance practices and compliance officers or those that provide these services under supervision Updating the central representative register Approving mandates and voluntary lapsing of licences Approving recognition of qualifications and regulatory examinations
2 Supervision Department	Overseeing FSPs and compliance officers. Department uses a risk-based supervision framework for both on-site and off-site monitoring
3 Compliance Department	Ensuring that all financial services providers are held to a high degree of compliance with the FAIS Act Ensuring that appropriate regulatory and enforcement action is taken against any person, including unregistered persons, who contravene the Act
4 FAIS Legal Unit	Processing exemption applications and developing and maintaining the legislative and regulatory framework applicable to financial services providers

Registration

Financial services providers (FSPs) are classified into the following five categories:

- Category I - financial advisers and those intermediaries who render financial services but don't fall into any of the other categories.
- Category II - referred to as Discretionary FSPs
- Category IIA - hedge fund managers
- Category III - administrative FSPs
- Category IV - assistance business FSPs

Given the different categories and business models of each applicant, the Registration Department adopted different approaches in scrutinising each licence application. On-site visits were conducted with all highly complex categories

Total number of authorised FSPs as at 31 March 2018

Category I (Advise/ Intermediary Services & Foreign FSPs)	Category II (Discretionary FSPs)	Category IIA (Hedge Fund Manager FSPs)	Category III (Administrative FSPs)	Category IV (Assistance Business Administration FSPs)
10 139	670	127	28	111

**It should be noted that some FSPs have multiple licence categories.*

(mainly IIA and III) prior to the Registrar's decision, possibly impacting said decision.

We continuously consulted with both local and foreign regulatory authorities when considering applications. This consultation is on the basis of a memorandum of understanding for information sharing.

NEW APPLICATIONS

During the reporting period, 1 116 new applications were authorised, compared to 1 133 in the prior year, with 90% of the applicants being authorised as category I FSPs, and the remainder for category II and IIA financial services activities. Twenty-one applications were declined due to not meeting the fit and proper requirements for FSPs. A total of 335 FSPs voluntarily requested to have their authorisation lapsed.

PROFILE CHANGES

There was a high volume of profile change applications. During the reporting period, a total of 51 235 profile change applications were received and processed and 48 307 were completed. The department continues to improve the efficiency of this process to ensure adherence to the required service levels.

COMPLIANCE OFFICERS

In terms of the FAIS Act, an authorised FSP with more than one key individual or more than one representative must appoint one or more compliance officers. The compliance officer must meet the minimum prescribed requirements to be approved by the Registrar. The department approved three types of compliance arrangements, namely compliance practices including juristic persons, in-house compliance

officers who monitor compliance for specific FSPs by virtue of their contract of employment, and compliance officers under supervision.

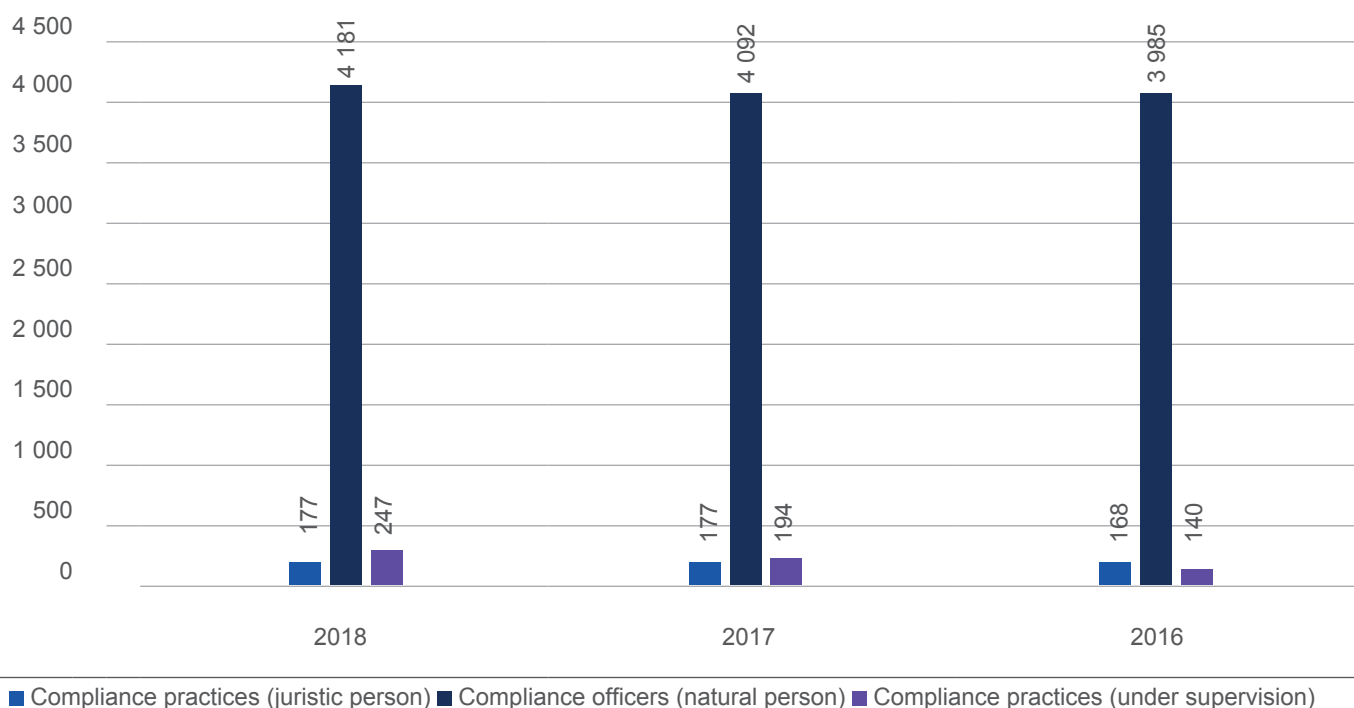
During the reporting period, the department did not receive any phase I compliance practice applications for approval, but received 89 approved phase I applications for compliance officers (both in-house and those employed by compliance practices), and 53 compliance officers under supervision.

Compliance officers under supervision are individuals who do not have the required experience and render services under the guidance, instruction, and oversight of a supervisor in terms an exemption by the Registrar under Board Notice 126. There was an increase in the number of approved compliance officers under supervision, in order to create a pool of compliance officers in the financial services who are fit and proper.

Total approved compliance practices and compliance officers at 31 March 2018

Year	Compliance practices (juristic persons)	Compliance officers (natural persons both in-house and external)	Compliance officers approved under supervision
2018	177	4 181	247
2017	177	4 092	194
2016	168	3 985	140

The increase in number of compliance practices and compliance officers approved



LAPSES

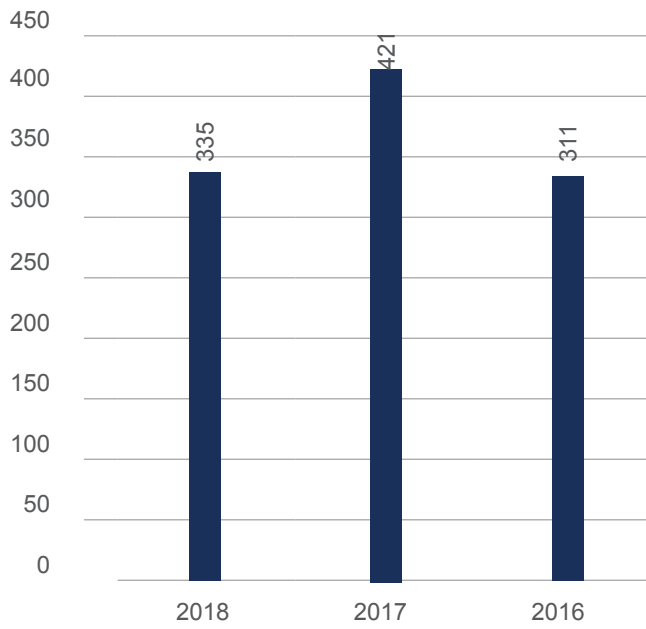
A total of 335 licences were voluntarily lapsed, a decrease from 421 in the previous year. These were due to business mergers, retirements and independent FSPs who decided to provide financial services as juristic representatives under other authorised FSP licences.

Total approved compliance practices and compliance officers at 31 March 2018

2018	2017	2016
335	421	311

Three-year lapse comparison at 31 March 2018

LAPSES



COMPETENCY FRAMEWORK

Consultation with the industry on the amendments to the fit and proper requirements was completed. Comments received were reviewed and incorporated into the final document which was published on 17 December 2017. Implementation of the amendments to the fit and proper requirements will be effected in phases, starting in April 2018.

The new FAIS licence application form and Regulatory Examinations will be among the items to be implemented in April.

NEW LICENCE APPLICATION FORM

A new licence application form was developed to provide, among others for the revised fit and proper requirements and to obtain information regarding the race and BEE status of applicants. The latter will enable statistical analysis of transformation in the financial industry.

REGULATORY EXAMINATIONS

Some of the questions in the question bank will be changed as a result of the amendment to the fit and proper requirements. The question bank is in the process of incorporating the new questions which will be available from 3 April 2018. Key individuals, representatives and compliance officers are required to write regulatory examinations.

Compliance officers are required to write the regulatory exams (RE1) as part of the fit and proper requirement. Compliance officers serving under supervision are required to have passed the RE1 with 24 months from the date of approval.

RECOGNISED QUALIFICATIONS

A total of 173 qualifications were submitted for recognition, during the year under review. The submitted qualifications had to meet specific criteria as published in the current fit and proper requirements, in order to be recognised.

Number of qualifications recognised between 1 April 2017 and 31 March 2018

Total received	Approved	Declined
173	169	4

Supervision

CATEGORISING FSPs

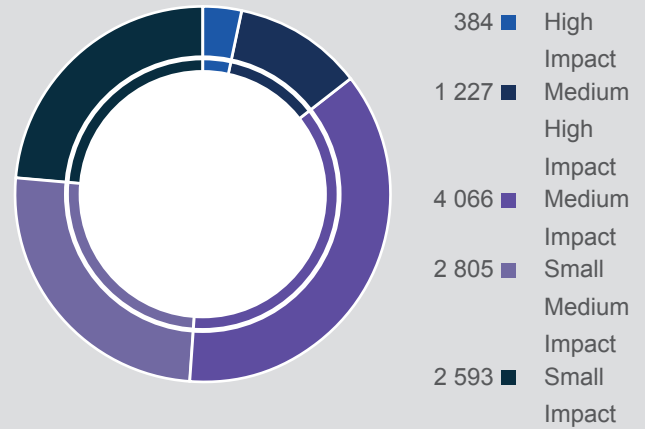
The FAIS Supervision Department was responsible for the oversight of financial services providers and compliance officers and follows a risk-based supervision framework.

The risk-based supervision approach, categorises FSPs (see table and graph below) according to the risks underlying their business activities and the impact thereof on consumers of financial services and products.

Risk categorisation of financial services providers

Risk categorisation	2018	2017
High impact	384	360
Medium-high impact	1 227	1 175
Medium impact	4 066	3 904
Small-medium impact	2 805	2 635
Small FSPs	2 593	2 595
TOTAL	11 075	10 669

Risk categorisation of financial services providers



Supervisory developments

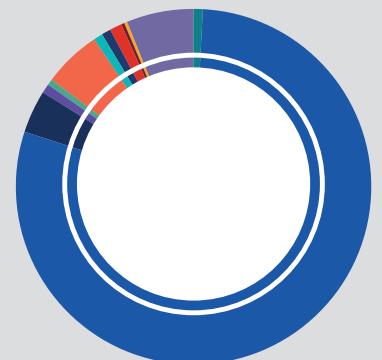
OFF-SITE MONITORING

The off-site monitoring activities for the year under review included:

- Financial statements
Authorised FSPs are required to submit annual

financial statements in terms of the FAIS Act. The risk categorisation of FSPs determines whether or not financial statements have to be audited. A total of 9 479 financial statements were received and analysed during the reporting period. A total of 283 financial statements are pending for further information. Below is a breakdown of information relating to the financial year end of the various FSPs and their respective submission dates.

Financial year-end	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Number of FSPs	111	8 766	414	98	70	594	74	113	120	31	22	662
Submission Date	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr
Percentage (%)	1	79.15	3.74	0.88	0.63	5.36	0.67	1.02	1.08	0.28	0.2	5.99



Extension requests

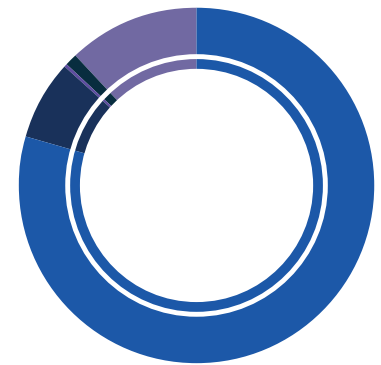
The department granted extensions for the submission of financial statements. For the period under review, 729 extension applications were considered, of which 639 were granted, 45 declined, and 45 are still under consideration. The department follows a stringent criterion when considering extension applications. Extension requests that were not supported by sufficient reasons and motivation, or where there were outstanding financial statements and compliance reports for prior years or missed deadlines for previous submissions were declined. There was a decrease of 6% in the number of extension requests from the previous reporting period.

Compliance reports

Authorised FSPs are also required to submit compliance reports in the correct manner as well as regarding the correct matters as determined by the Registrar, from time to time. FSPs authorised for category I activities are required to submit compliance reports annually, and FSPs authorised for category II, IIA, and III activities are required to submit reports biannually. A total of 10 391 compliance reports were received and analysed and 450 were pending for further information during the reporting period.

Submission of compliance reports

Category of FSP	Frequency	Number of FSPs	Percentage (%)
■ Category I	Annual	8 824	80
■ Category II & IIA	Bi-annual	797	7
■ Category III	Bi-annual	28	0.25
■ Category IV	Annual	111	1.
■ Funeral Assistance FSPs	Annual	1 315	12



- **Irregularity reports**

In terms of the FAIS Act, compliance officers and auditors must report material breaches (irregularities) to the Registrar. During the review period, 89 irregularity reports were received. These were investigated, with 58 finalised and 31 still under consideration as at 31 March 2018.

- **Conduct of Business Report**

The current compliance report under section 17(4)(a) of the FAIS Act will be replaced by the proposed Conduct of Business Report (COBR).

The proposed COBR was necessitated by the changing regulatory landscape and the focus on outcome-based regulation and proactive supervision. It further seeks to address the inefficiencies created by requiring providers, who are regulated in terms of other laws administered by the FSB, to submit the same information more than once to the FSB.

The COBR was published for comment on 6 December 2016 and the closing date was 28 February 2017. Comments were considered and the relevant amendments made. Due to the extensive changes made to the first draft of the COBR, the Registrar deemed it necessary to publish the COBR for a second round of public consultation.

ON-SITE MONITORING

A total of 151 on-site visits were conducted, comprising 131 thematic on-sites and 20 ad hoc visits during the reporting period. Management meetings were also held with various FSPs, where regulatory matters and developments in their respective businesses were discussed and considered.

- **Thematic reviews**

Thematic reviews were conducted as follows:

- o **Category I FSPs**

- o **(small FSPs without compliance officers)**

The FSB introduced an educational intervention for Category I FSPs who do not employ the services

of a compliance officer, in 2014. The purpose of the intervention is to provide guidance and assistance in developing a sound compliance culture within the affected FSPs to ensure sustainability of licenses. A total of 60 FSPs were visited and participated in this initiative during the period under review.

Eighty percent of FSPs visited were found to be contravening section 42 of the Financial Intelligence Centre Act (FICA), which requires the formulation and implementation of internal rules and 44% of the FSPs contravened section 43B of FICA, which requires an accountable institution to register with the Financial Intelligence Centre (FIC).

Other contraventions related to disclosure requirements; conflict of interest policy; business information not updated within 15 days of change; and business continuity plan.

In addition to these on-site visits conducted, face-to-face workshops were held with the said FSPs, in which the amendments to the FICA were addressed and explained in a practical manner. A total of three workshops were conducted – in Bloemfontein, Port Elizabeth, and Polokwane – and 84 FSPs participated in the workshops. The Registrar intends to continue with this initiative and to support and provide guidance to newly authorised SMMEs and those with existing licenses, to ensure that they comply with their regulatory obligations.

- o **Category I FSPs (with juristic representatives)**

The focus of the theme visits was to identify the way in which FSPs implement the provisions of section 13(1)(c) of the FAIS Act. The original implementation date of section 13(1)(c) was set for 30 May 2014, but the implementation was further extended to 30 June 2015.

The Registrar had received information indicating that FSPs who appointed juristic representatives were allowing such representatives to act in a principal

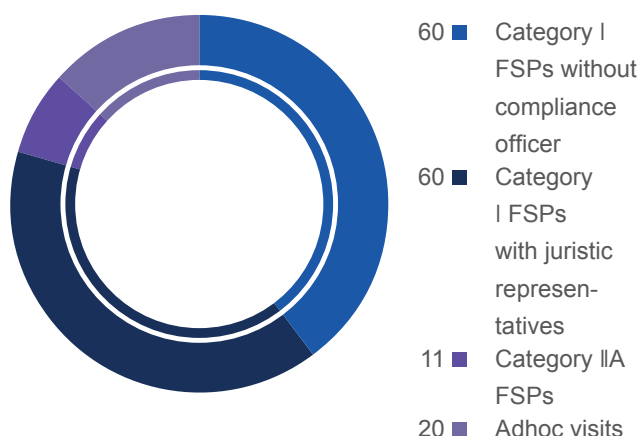
capacity rather than in an agent capacity. This created the undesirable business practice of “renting a licence” where the FSP had little insight into the activities performed by the juristic representative. A secondary consequence was that when the representative contracted with product suppliers in a principal capacity, the FSP was not necessarily informed of such contractual agreements. And a third area of concern was that juristic representatives were collecting premiums or receiving funds from clients, which were not reflected in the financial statements of the FSP and thus not reported on by the auditor.

The implementation of section 13(1)(c) has in general been complied with by the FSPs visited. However, the main area of concern remains the collection of premiums in bank accounts held in the name of the FSP. The Registrar published two exemption notices addressing the collection of premiums by juristic representatives.

o Hedge funds and discretionary FSPs (category II and IIA):

The primary objective of the project was to review the overall compliance culture of the FSPs authorised for activities under this category. During the 2018 financial year, a total of 11 hedge fund FSPs were visited. There were no material findings from this project that necessitated regulatory action against any of the FSPs that were visited. However, there were areas of noncompliance that were observed, including failure to timeously inform the Registrar of the changes in the profile of the FSPs and prescribed professional indemnity insurance for the category of FSPs.

Thematic risk assessment visits conducted



• Ad hoc visits

The ad hoc visits were informed by the complaints received by the Registrar, and focused on the operational ability of the key individual and compliance officers of the affected

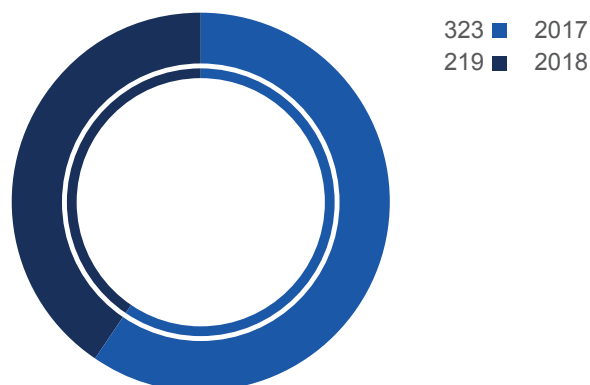
FSPs. The findings of these visits highlighted the practice of renting licences by the key individual of various FSPs. The recent amendment to the fit and proper requirements, with particular reference to the operational ability of key individuals, is aimed at addressing this practice.

Referrals for regulatory action

A total of 219 FSPs were referred for regulatory action due to various contraventions of the FAIS Act and subordinate legislation including:

- **Failure to meet fit and proper requirements in respect of:**
 - o personal character qualities of honesty and integrity;
 - o competence;
 - o operational ability;
 - o financial soundness
- Failure to comply with the General and Specific Code of Conduct for financial services providers.

Referrals for regulatory action – comparison between year-end 31 March 2017 and year-end 31 March 2018



There was a decrease of 32% in the number of referrals for regulatory action

COMPLIANCE WITH GENERAL CODE OF CONDUCT

There has been general improvement in the compliance culture of FSPs. This is supported by the decrease in the number of FSPs referred for regulatory action. The open communication lines between the Registrar’s office and FSPs through various platforms has been an effective tool in ensuring that FSPs have a good understanding and appreciation of their regulatory obligations.

FSPs who failed to comply with the legislation, despite being afforded ample opportunities to address identified areas of noncompliance, were referred for regulatory action.

General compliance with the General Code of Conduct by authorised FSPs

Description	2018	2017	2016
1 Sections 4 and 5 of general code of conduct (code): disclosure documentation non-compliant	29	29	35
2 Licence conditions: business information not updated within 15 days of change occurring	21	48	42
3 Non-compliance with part VIII of the determination of fit-and-proper requirements – FSP does not have a business continuity plan	17	23	30
4 Sections 11 and 12 of code: FSP's risk management plan is inadequate	10	15	27
5 Sections 16-19 of code: FSP does not have complaints handling policy and resolutions system in place	13	18	22
6 FSP has not adopted, maintained and implemented a conflict of interest management policy	23	11	18
7 Areas of concern / non-compliance raised with the FSP in the FICA inspection feedback letter	32	42	-
8 BN 123 of 2009: FSP does not have the required PI cover	16	10	-
9 Section 13(1)(c) of the Act: The FSP does not comply with this section of the Act	9	10	-
10 Section 9(1) of GCOC: FSP doesn't keep a copy/record of the advice furnished	18	-	-

NOMINEE COMPANIES

A nominee company that holds assets on behalf of financial institutions or their clients must be approved under the requirements of Board Notice 63 of 2007. This notice also prescribes the obligations for nominees to operate in South Africa. The approval of nominee companies was delegated to the Deputy Registrar of FSPs. One nominee company was approved during the reporting period.

EXEMPTIONS

During the reporting period, a total of 31 financial soundness exemption applications were received.

Exemption application status at 31 March 2018

Status	2018	2017
Exemptions granted	11	10
Exemptions declined	2	0
Pending applications	8	39
Withdrawn applications	4	4
Extensions of exemptions previously granted	6	-
TOTAL	31	53

Financial Intelligence Centre Act 2001

SUPERVISION OF COMPLIANCE WITH THE FINANCIAL INTELLIGENCE CENTRE ACT

The Supervision Department is responsible for the oversight and supervision of compliance with the Financial Intelligence Centre Act 2001 (FICA). Various supervisory tools are used in the department to monitor the level of compliance with the FICA by authorised FSPs such as on-site inspections and desk based analysis of compliance reports.

IMPLEMENTATION OF AMENDMENTS TO THE FINANCIAL INTELLIGENCE CENTRE ACT

During the period under review, the department participated in a process to review the FICA. The amendments are intended to strengthen SA's AML/CFT regime and to ensure full compliance with the Recommendations and Standards of the Financial Action Task Force.

The Act was signed into law on 26 April 2017 and came into operation on 13 June 2017 and 2 October 2017 respectively. The cut-off date for enforcing compliance with the above-mentioned new provisions has been delayed until 2 April 2019.

SUPERVISORY ENGAGEMENTS

During the reporting period, the Supervision Department engaged in a range of supervisory activities in order to achieve its legal mandate. These included:

- **On-site inspections**

FICA inspections were conducted on all FSPs visited by the department during the review period. The inspections were conducted on an ad hoc or targeted basis in order to proactively assess compliance with the FICA. Not all of the FSPs visited received the same level of scrutiny. The scope and intensity of the inspections were determined using a risk-based approach.

The outcome of the inspections was communicated to relevant FSPs. There were no findings against 54 FSPs. A total of 55 FSPs were given the opportunity to apply remedial actions in terms of section 43 of FICA. These FSPs were also assisted with methods of correcting the non-compliance. The affected FSPs have addressed all identified shortcomings. The department also imposed administrative sanctions in terms of section 45 of the FICA against two FSPs. The sanctions included cautions, reprimands, and directives to remedy the non-compliance.

- **FICA workshops**

During the period under review, the department continued with its efforts to raise awareness – by informing, supporting, and educating authorised FSPs regarding their FICA obligations. To that effect, the department conducted interactive workshops for category I FSPs in Bloemfontein, Port Elizabeth, and Polokwane.

- **Cooperation with relevant stakeholders**

The department continued to collaborate with other supervisory bodies, by sharing and exchanging relevant information during meetings and FICA Enforcement Forums. The department also participated in several workshops hosted by the FIC and National Treasury on implementation of the FIC Amendment Act. These cooperation efforts are seen as an effective tool for strengthening supervisory oversight.

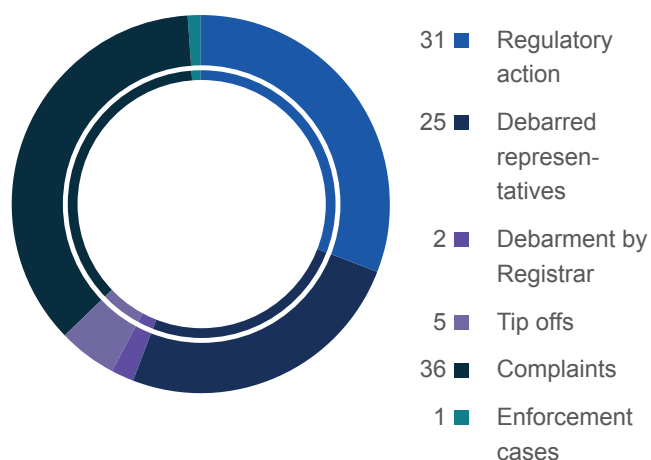
Ensuring compliance with the Financial Advisory and Intermediary Services Act

The Compliance Department’s goal was to ensure that all FSPs were held to a high degree of compliance with the Financial Advisory and Intermediary Services Act (FAIS). It considered complaints on contraventions of the FAIS Act and referrals of non-compliance from other departments on evidence of misconduct and non-compliance.

Non-compliance can result in the suspensions or withdrawal of licences, debarment of any person or referral to the enforcement committee for the imposition of an administrative penalty. The department opened 5 343 cases during the reporting period. The department’s responsibilities included the following:

- Complaints handling.
- Anonymous tip-offs.
- Regulatory action.
- Register of debarred representatives (debarred by FSPs).
- Debarment by the FSB.
- Enforcement cases.

Summary of activities of the Compliance Department at 31 March 2018



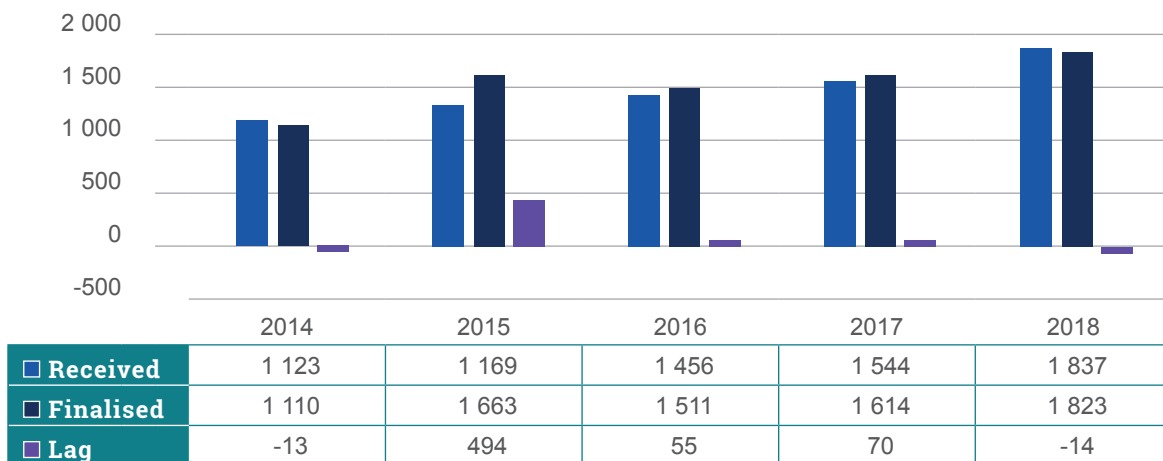
COMPLAINTS

There was an upward trend in complaints received during the five-year period between 2014 and 2018, while at the same time the number of complaints that the department managed to resolve also increased significantly. Cases received increased by 714, from 1 123 to 1 837 (an increase of 64%), and the number of cases resolved increased from

1 110 to 1 837 (also an increase of 64%). The increases are largely attributable to increased stakeholder awareness of the regulator’s functions, as a result of consumer education awareness programmes. The improvement in the turnaround of received complaints is attributed to the department’s concerted effort to prioritise complaints and optimally allocate cases. During the reporting period, complaints received increased by 19%, from 1 544 in 2017 to 1 837 in 2018.

Summary of activities of the Compliance Department at 31 March 2018

Cases



REGULATORY ACTION

Regulatory action cases opened against authorised FSPs, who failed to comply with the provisions of the Financial Advisory and Intermediary Services Act declined by 36% during the reporting period – from 2 542 to 1 636. The number of licences that were suspended and withdrawn declined by 29%, and 5%, respectively, during the same period in 2017. The decline in these cases is attributable to improvement in compliance culture, as more key individuals and sole proprietors pass the regulatory examinations.

The percentage of licences that were able to comply with the conditions for the lifting of a suspension decreased by 44% during the period. This decline has been due to the timing of regulatory action – as 91% of the 581 suspensions representations were made in February 2018.

DEBARMENTS

There are two categories of debarments; a debarment by the Registrar, and a debarment of representatives by the FSPs.

The Registrar is empowered in terms of section 14A of FAIS Act to debar any person from rendering financial services for a specified period if satisfied, based on available facts and information, that the person does not meet or no longer meets the requirements contemplated in section 8(1), or has

contravened or failed to comply with any provision of the FAIS Act.

During the period under review, the Registrar debarred 122 persons as compared to 140 in the previous year, representing a decline of 13%.

A FSP is required in terms of section 14(1) of the FAIS Act to debar any of its representatives who no longer comply with the fit and proper requirements, or have contravened the Act, and to inform the Registrar of such a debarment within 15 days, to enable the Registrar to update a central register of representatives. The role of the Registrar is merely to update the central register.

During the period, there were 1 334 representatives compared to 1 200 during the previous reporting period that were debarred by the FSPs in terms of section 14(1). This represents an increase of 11%.

ENFORCEMENT ORDERS

Five enforcement orders were issued against FSPs for contravening the Financial Advisory and Intermediary Services Act, with penalties totalling R430 000.

Enforcement orders for contravening the Financial Advisory and Intermediary Services Act

Name of FSP	Section Contravened	Penalty imposed
DELL Computer (Pty) Ltd FSP 47015	7(1)	R100 000
AEGIS Outsourcing SA FSP 25021	7(1)	R250 000
REFINERY 5 (Pty) FSP 47387	7(1)	R20 000
MZALA and Company FSP 45629	7(1)	R20 000
Tendai Nyadombo FSP 26918	7(1)	R40 000

LEGISLATIVE AMENDMENTS

The Financial Advisory and Intermediary Services (FAIS) Division was responsible for supervising and enforcing the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), to achieve the regulatory objectives of creating a responsible and safe environment for consumers of financial services and for ensuring that consumers are treated fairly by regulating the conduct of financial services providers and their representatives. During the year under review, the legislative framework was continuously enhanced by embedding market conduct requirements aimed at supporting fair treatment of and good outcomes for clients.

- **Amendments to Financial Advisory and Intermediary Services Act**

On 29 March 2018, the Minister of Finance determined the dates on which the various amendments to the FAIS Act that was published in Schedule 4 of the Financial Sector Regulation Act, 2017, came into effect. The Minister determined 1 April 2018 as the date on which representatives who were debarred by their FSPs in terms of section 14 of the FAIS Act may apply for a reconsideration of that debarment by the Financial Services Tribunal. In addition, from 1 April 2018 authorised agents of managers as contemplated in the Collective Investment Schemes Control Act, 2002, are required to be authorised as financial services providers.

- **Revised fit and proper requirements**

During the reporting period, the fit and proper requirements applicable to persons rendering financial services were reformed. This was to provide for an effective and proportionate framework to ensure that FSPs have the right level of operational ability, financial soundness, honesty and integrity, and competency, while meeting appropriate standards of professionalism and undergoing continuous professional development.

The reforms built on existing requirements, and shifted from predominantly rules to requirements that are more principle in nature and focused on outcomes. Additional requirements, related to good standing, training, operational ability, governance, outsourcing, financial soundness, and early warning requirements, were introduced. The new requirements were published on 15 December 2017, coming into effect on 1 April 2018.

- **Amendments to General Code of Conduct**

Proposed amendments to the General Code of Conduct were published on 1 November 2017 for public comment. The amendments, inter alia, seek to allow for enterprise development contributions to promote transformation and inclusion, and to give effect to a number of proposals published in the Retail Distribution Review – in which reforms to the regulatory framework for financial advice and distribution of financial products were proposed. It further seeks the alignment of advertising, marketing, and complaints handling requirements with similar requirements in the Long-term and Short-term Insurance Policyholder Protection Rules, as well as the prohibition of the use of a person's authorisation status to market other services.

EXEMPTIONS AND APPEALS

The Division received 1 625 applications for exemptions, of which 1 477 were granted during the review period. This was a significant decrease from the previous review period, mainly to due to the absence of bulk applications by financial institutions on behalf of their representatives.

Exemptions were only granted for a limited period, to allow a person to meet the regulatory obligations and to promote and facilitate transformation in the financial services sector – particularly through the promotion of the inclusion of previously disadvantaged persons in the economy by direct participation without compromising the fair treatment of or good outcomes for clients.

Conditions are imposed on all exemptions, to provide for additional safety measures and more intensive oversight. To promote transparency, all exemptions were published on the website, and disclosure of the exemption to clients – prior to the rendering of financial services – was made a condition of the exemption.

The number of appeals lodged against the Registrar's decisions during the review period decreased slightly from 25 appeals during the previous year to 22 appeals during the reporting period. Most of the appeals lodged were related to decisions by the Registrar to take regulatory action due to a lack of honesty and integrity.