



FAIS – UNDERSTANDING THE PRACTICALITIES

A guide for Financial Services Providers

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1. WHAT IS A FSP?:

1.1 Definition of a FSP:

A financial services provider ("FSP") is defined in the FAIS Act as:

"any person, other than a representative, who as a regular feature of the business of such person -

(a) furnishes advice; or

(b) furnishes advice and renders any intermediary service; or

(c) renders an intermediary service;"

1.2 Advice:

The definition of advice can be found under section 1 of the FAIS Act.

Furnishing advice doesn't only refer to the selling of financial products. It includes any recommendation, guidance or proposal of a financial nature. An FSP will therefore still be furnishing advice when they recommend that a client for example invest their money in a fixed deposit, and the client then invests their money in a fixed deposit at their own bank.

1.3 Intermediary Service:

The definition of intermediary service can be found under section 1 of the FAIS Act.

It is very simply where a person acts as an intermediary between the client and the relevant product supplier (the client does not deal directly with the product supplier themselves).

Intermediary services include, *inter alia* :

- any other act (other than giving advice) where a person performs an act on behalf of a client or product supplier;

- the keeping in safe custody of a financial product in which a client has invested
E.g. a share certificate;
- the collection of premiums from clients on behalf of product suppliers;
- receiving, submitting or processing a client's claim against a product supplier;
- buying, selling or dealing in (discretionary or non discretionary basis) financial products ;
- administering any financial product
- maintaining or servicing a financial product e.g. the nomination of a beneficiary on a policy or updating bank details.

2. *STRUCTURE OF THE FAIS DEPARTMENT:*

The FAIS Department has been restructured into three separate departments, namely **Registration, Supervision, Compliance** and **Enforcement**.

2.1. Main responsibilities of the FAIS Registration Department

1. Processing of new license applications
2. Approval of compliance officers.
3. Processing of profile changes on existing licenses
 - a. name changes
 - b. change in ownership
 - c. change in directorship
 - d. approval of new of key individuals
 - e. change of representatives
 - f. addition/removal of financial products
 - g. addition/removal of license categories
 - h. change of contact details and
 - i. any other changes of information of an authorised financial services providers
4. Profile changes on the information of approved compliance officers.
5. Lapsing of license granted to financial services providers.
6. Maintenance of the central representative register.
7. Issuing of licenses and follow-up of unclaimed licenses and cancellation if necessary.

8. Approval of specimen mandates/application forms for Category II, III and Forex financial services provider.
9. Approval of recognised representative bodies and the delegation of functions to the bodies.
10. Handling queries emanating from the above processes.

2.2. Main responsibilities of the FAIS Supervision Department

1. Introduction and maintenance of Risk Based Supervision framework.
2. On-site visits specified in terms of the Risk Based Supervision framework.
3. On-site visits to compliance practices
4. Receipt and perusal of financial statements and audit reports.
5. Receipt, perusal, and follow-up of compliance reports.
6. Application for exemptions arising from authorised financial services providers.
7. Approval of and monitoring of ongoing requirements of nominee companies
8. Liaison with the industry bodies and other regulators
9. Handling queries emanating from the above processes

2.3. Main responsibilities of the FAIS Compliance Department

1. Requesting Inspections and interacting with FSB's Inspectorate.
2. Follow-up on inspection reports (inspection cost / prosecution recoveries)
3. Interaction with FSB's Enforcement Committee.
4. Dealing with and investigating all complaints from client before 30 September 2004 or complaints of misconduct of FSPs
5. Suspension and withdrawals of licenses
6. Handling appeals relating to suspension and withdrawals.
7. Recording of Debarment of representatives.
8. Handling queries emanating from the above processes.
9. Debarment of other persons in terms of Section 14A of the Act.

2.4. Main responsibilities of the FAIS Enforcement Department

1. Handling of all FAIS related affairs pertaining to the Enforcement Committee.

3. OBLIGATIONS OF FSPS TOWARDS THE FSB:

All authorised FSPs have an obligation to ensure compliance with the FAIS Act and its subordinate legislation which amongst other requirements includes:

1. Submission of compliance report
2. Submission financial statements
3. Payment of annual levies

3.1. SUBMISSION OF COMPLIANCE REPORTS

Section 17(4) of the FAIS Act requires that: “A compliance officer or, in the absence of such officer, the authorised financial services provider concerned, must submit reports to the registrar in the manner and regarding the matters, as from time to time determined by the registrar by notice in the Gazette for different categories of compliance officers, after consultation with the Advisory Committee.”

In the case of a sole proprietor who has not appointed any representatives or a second key individual, the annual compliance report must be completed and submitted by the sole proprietor.

In the case where a FSP has appointed a compliance officer, the report must be completed and submitted by the compliance officer (the key individual is still required to review the completed compliance report and sign the declaration attached to the report).

3.1.1. What is a compliance officer?

The phrase “compliance officer” refers to a person who has been approved by the FSB as a compliance officer in terms of the Act. The compliance officer will be appointed by the FSP and the FSB then has the responsibility to approve / reject the appointment of the compliance officer. Refer to Section 8 of this document for additional information on compliance officers.

3.1.2. What is a compliance report?

A compliance report is a predetermined questionnaire prepared by this Office and is used to gauge the level of compliance for each FSP.

3.1.3. Who must submit the report?

All authorised financial service providers are required to submit this Report (if you have been granted a license you must submit the annual compliance report irrespective of whether you are a sole proprietor or the FSP does not have a compliance officer).

3.1.4. When and how should this report be submitted?

This report should be submitted on an annual basis. Providers must submit the compliance reports by the reporting date that applies to them.

The report can either be submitted:

- in “hard copy” whereby a gazetted copy of the report is completed; or
- by way of the online submission option available on our website - www.fsb.co.za

A copy of the government gazette can also be obtained from our website.

To access our website click on:

- go to <http://www.fsb.co.za>
- select FAIS in the top right hand corner.
- Under the heading Supervision Department select the compliance reports option.

No extension will be granted for the submission of compliance reports.

The reporting date is determined by the type of FSP. The financial year-end of FSPs does not influence the reporting date as it was the case with the previous reporting periods. Your reporting date is now dependent on the type of license that was granted and in the case of Category I FSPs, whether you have an approved compliance officer or not.

In the case where an entity is authorised for more than one category, only one report needs to be submitted. For example; an FSP that is licensed for Category I and II only need to submit the Category II report.

3.1.5. Dormant/ newly authorised FSPs

All FSPs are required to submit annual compliance reports, regardless of whether they are dormant or newly authorised.

A dormant FSP will indicate the fact that it is dormant on the compliance reports, the reason(s) for the dormancy, and the expected date on which the FSP will resume its activities. The FSP is required to complete the relevant compliance report in full.

An FSP that has only just been authorised when the reporting period for the FSP is due is required to also submit a fully completed compliance report. The FSP can indicate on the compliance report that it has just been authorised, and therefore very little activity has taken place. It will need to state what action(s) are being taken to ensure that the FSP will be fully compliant by the next reporting period.

3.2. SUBMISSION OF FINANCIAL STATEMENTS

In terms of section 19(2) of the Act all FSPs are required to submit financial statements. This enables us to determine if FSPs comply with the financial soundness requirement in terms of the Fit and Proper Requirements (BN 106 of 2008). A positive statutory solvency level is when assets (excluding goodwill and other intangible assets) exceed liabilities (excluding subordinated loans).

In terms of Board Notice 106 of 2008 all FSPs that were approved before 31 December 2008 will only have to comply with the new statutory solvency requirements published under this board notice by 31 December 2010. Any FSPs approved after 31 December 2008 are required to meet the statutory solvency requirement as from their date of approval.

3.2.1. Exemptions

There are a number of exemptions that apply regarding the submission of financial statements:

3.2.1.1. Board Notice 85 of 2004

This exemption only applies to Category 1 FSPs that are Funeral Parlours and collect clients' premiums. The essence of this exemption is the fact that FSPs can submit the financial statements even if they have been prepared by an accounting officer. NB: This does not apply to FSPs that are companies as they are required in terms of the Companies Act to have their financial statements audited.

3.2.1.2. Board Notice 96 of 2003

This is the exemption from compliance with the financial soundness requirement and submission of audited financial statements. It applies all Category 1 FSPs that do not collect clients' funds and are not required in terms of other legislation to have their financial statements audited. **Please note** that as from 31 December 2009 this exemption will no longer be applicable due to the new solvency requirements published in the New Fit and Proper Requirements (Board notice 106 of 2008).

3.2.3. Responsibilities of financial services providers

All authorised FSPs must submit statutory returns on time to avoid penalties that might be imposed on them. FSPs should ensure that where the statutory solvency levels have not been met, a declaration of insolvency letter is submitted with the financial statements (only applicable for those FSPs approved prior to 31 December 2008 and this will only apply up until 31 December 2010 as explained above).

A guideline of a declaration of insolvency can be found on the FSB's website:

- under FAIS, select Financial Statements and Audit Requirements
- select Insolvency Declaration FSP Response Letter.

3.2.4. Dormant/ newly authorized FSPs

In cases where the authorised FSP is dormant or has just been granted authorization, and must still begin to trade, we require the following:

- **If the FSP is a company**

A letter from the external auditor stating the background and reasons for lack of business activity should be furnished.

- **If the FSP is a close corporation**

A letter from the accounting officer stating the background and reasons for lack of business activity should be furnished.

- **In the case of any type of FSP**

A letter from the key individual stating the reasons and circumstances surrounding lack of business activity should be furnished.

3.2.5. Prescribed period of submission of financial statements

As from 1 May 2009 all authorised FSPs should submit their annual financial statements within four months after their financial year end. This means that FSPs who use accounting officers or auditors must ensure that they submit their documentation timeously to the accounting officer or auditor, and agree a time-frame for completion of the financial statements with them. It remains the responsibility of the FSP and Key Individual to ensure that these reports are submitted within the prescribed period.

The financial statements can either be hand delivered / posted to the FSB or they can be submitted using the online reporting system.

3.2.6. Types of reports to be submitted:

There are a number of documents that together form the set of financial statements. These documents are briefly described below.

3.2.6.1. Section 19(1) (a) & (b) - Accounting and audit requirements

This section applies to all FSPs.

All FSPs need to ensure that they maintain up to date accounting records that are brought up to date on at least a monthly basis.

A full set of financial statements and notes thereto must be prepared on an annual basis and submitted to the Registrar. Such financial statements should reflect the financial position of the FSP at the last day of the financial year in question, and the results of the operations and cash flow information for the period.

- A FSP that is a sole proprietor (natural person), and who does not collect premiums or hold client's money, only needs to submit an income statement and balance sheet in terms of this section. He/she can prepare these documents, using the template that is available on our website:
 - ❖ www.fsb.co.za
 - ❖ Select FAIS
 - ❖ Select Supervision Department
 - ❖ Select Submission of financial statements and audit requirements
 - ❖ Select Example of financial statements for sole proprietors
- A FSP that is a close corporation and who does not collect client premiums or hold client's money needs to submit financial statements prepared by an accounting officer (The Close Corporations Act requires that the annual financial statements of a Close Corporation be prepared by an accounting officer).
- A FSP who is a company will need to submit audited financial statements as this is a requirement of the Companies Act.

3.2.6.2. Section 19 (2) External Auditors Report

This is known as the report of the independent external auditor and it forms part of all audited financial statements.

3.2.6.3. Who needs to submit a Section 19(2) report?

1. Category II, IIA, III and IV FSPs
2. Any registered company (the Companies Act requires the financial statements of a company to be audited).
3. Any FSP who receives client funds and / or premiums (excluding those FSPs who receive long term insurance premiums but are only approved in Long Term A and / or Friendly Society Benefits. These FSPs are required to have their financial statements prepared by an accounting officer).

3.2.6.4. Section 19 (3) Audit Report

This is known as the report of the separate banking account (Trust Account).

1. The purpose of the Section 19(3) Report is to:
 - a. ensure that clients' assets and or monies held by an FSP are protected from unauthorised use;
 - b. kept separate from the FSP's business funds; and
 - c. to detect any noncompliance in respect of these monies and assets.
2. It is a separate report that has to be prepared by an external auditor. In the case of an FSP authorized only for category 1.1 and/or 1.19 a similar report compiled by an accounting officer can be submitted (as provided for in Board Notice 85 of 2004).
3. It should be submitted by FSPs that collect clients' funds.

3.2.6.5. Who needs to submit a section 19(3) report?

1. Any FSP who receives client funds and / or premiums or who holds assets on behalf of a client with the exception of short-term insurance brokers who hold a valid IGF.

2. Those FSP's who are only approved in the Long-term Insurance: Category A and Friendly Society Benefits subcategories still need to submit a section 19(3) report however, the report must be signed off by their accounting officer (Board Notice 85 of 2004)

The only exceptions for the submission of the 19(3) report are as follows:

Those FSP's who are only approved in the short term insurance personal and commercial lines subcategories and who are exempted from Section 10 of the General Code of Conduct.

3.2.7 Examples of information required for Section 19(3) reports

We have included some scenarios below where it is indicated what information needs to be submitted to the Registrar in terms of Section 19 of the Act:

3.2.7.1 Category I FSP:

1. A close corporation who does not receive client funds or premiums – Financial statements should be drawn up by their accounting officer.
2. A close corporation who receives long term insurance premiums - Audited financial statements including Section 19(2) report as well as Section 19(3) report.
3. A close corporation that only receives short term insurance premiums and holds a valid IGF - Audited financial statements including the Section 19(2) report.
4. A company who does not receive client funds or premiums – Audited financial statements including Section 19(2) report.
5. A company who receives premiums in respect of long term insurance policies – Audited financial statements including the Section 19(2) report as well as a Section 19(3) report.
6. A funeral business (who is authorised in the Long-term Insurance: Category A or Friendly Society Benefits or both) – Financial statements drawn up by an accounting officer including the report of the accounting officer as well as a Section 19(3) report which has been completed by the accounting officer.

7. A sole proprietor who does not receive client funds or premiums – An income statement and balance sheet.
8. A sole proprietor who receives long term insurance premiums - Audited financial statements including the Section 19(2) report as well as Section 19(3) report.
9. A sole proprietor who receives short term insurance premiums on behalf of the insurer (in terms of Section 45 of the Short Term Insurance Act) and holds a valid IGF needs to submit audited financial statements including a Section 19(2) report.

3.2.7.2. Category II FSP:

1. A category II FSP who does not receive client funds and / or premiums – Audited financial statements including a Section 19(2) report.
2. A category II FSP that receives client funds and / or premiums – Audited financial statements including a Section 19(2) and Section 19(3) reports.

3.2.7.3. Category III FSP:

1. A category III FSP that doesn't receive client funds and / or premiums – Audited financial statements including a Section 19(2) report.
2. A Category III FSP that receives client funds and / or premiums – Audited financial statements including the Section 19(2) and Section 19(3) reports.

NB: It needs to be noted that an accounting officer and an auditor perform different duties and where audited financial statements are required, this Office will not accept financial statements drawn up by an accounting officer where audited financial statements are required.

3.2.8. Request for an Extension of submission of statutory returns

If there are valid and reasonable grounds for failure of timely submission of statutory returns, a request for an extension in terms of section 4(1) should be sent to faisfins2@fsb.co.za or alternatively you may apply for an extension by way of the online reporting system (preferred method).

Kindly note it is not guaranteed that the licensee will be granted this extension as it is dependent upon the Registrar's discretion and the circumstances detailed in the request.

3.2.9. Hints and Tips

- I. Do not submit monthly financial records. Section 19 (1) requires all authorised FSPs to maintain proper accounting records brought up to date monthly in order to prepare annual financial statements.
- II. Do not submit the financial statements that have not been signed by all the relevant persons (directors, members, accounting officer, auditor etc).
- III. Do not submit IRP5 tax certificate.
- IV. Do not send the financial statements by facsimile as we cannot take responsibility in the case of where the financial statements are illegible or have not been received.
- V. All short-term insurance intermediaries should ensure that they renew their IGF certificates on an annual basis.

4. LEVIES

All authorised FSPs are required in terms of Section 15A of the Financial Services Board Act 97 of 1990 to pay levies due to the Board. The purpose of these levies is to enable the Board to perform its regulatory functions. These levies are payable on an annual basis to the Board. A base formula is used to calculate the amount to be paid by each FSP.

The Finance Department will issue two invoices to each FSP. One invoice will be for the FSB levy and the other one will be for the Office of the FAIS Ombud.

FSPs are encouraged to communicate information such as the number of key individuals and representatives that needs to be added or removed from their FSP license. This information is very important as it would have an impact on their levy amount.

This information can either be sent by e-mail to faispfc@fsb.co.za or faxed for the attention of "FAIS Profile changes"

Please be advised that in the case where a key individual is also a representative the FSP will not be levied twice.

FSPs are again encouraged to inform this Office in respect of any changes pertaining to their e-mail and postal addresses. This information can be communicated to the Registrar in the same manner indicated above.

Further communication with regards to payment of Levies can be directed to the Finance using the contact number or e-mail address reflected on the levy invoice.

5. *BUSINESS CONTINUITY*

It is important to take note of the following in case of the passing away or any other limiting factor of a key individual:

5.1. Sole Proprietors (Natural Persons)

The sole proprietorship is attached to the key individual. If the key individual passes away or any situation occurs that will lead to the key individual not being able to perform his/her duties in terms of the FAIS Act, the license will be lapsed and the business will cease to exist.

The FSB needs to be informed of the above situation or of the passing away of the key individual. The license cannot be transferred to another person. The license can therefore not be inherited by anyone.

The sole proprietor can make an arrangement with another FSP to take over the client book in the case of the above circumstances occurring and clients must be notified of this transfer.

5.2. Close Corporations and Companies

A close corporation is a legal entity. The business is therefore not attached to the key individual. In a close corporation with more than one key individual the passing away or occurrence of any situation that will lead to the key individual not being able to perform his/her duties in terms of the FAIS Act will not have any affect on the status of the FSP.

Where the close corporation only has one key individual and one of the above circumstances occurs the business will continue to exist. For this business to continue as an authorised FSP, a new key individual will have to be appointed and authorised as such by the FSB. It is important to take note that the FSP is not allowed to perform any regulated function until such time as the new key individual is approved by the FSB.

The same principle applies to companies.

5.3. Partnerships

In the case of a partnership if a partner in the partnership passes away then the partnership would dissolve and the license would need to be lapsed.

6. *THE GENERAL CODE OF CONDUCT*

The General Code of Conduct for authorised financial services providers and their representatives was published under board notice 80 of 2003. The General Code of Conduct for Administrative and Discretionary FSPs (Category II and Category II FSPs) was published under board notice 79 of 2003.

All authorised financial services providers need to ensure that they comply with the provisions of the applicable Code of Conduct. Copies of the abovementioned Codes can be obtained from our website – www.fsb.co.za.

On accessing our website please click on “FAIS” in the top right hand corner. Select “subordinate legislation” under the heading “legislation” and then select “Codes of Conduct”.

Below we have discussed Sections 4, 5 and 7 of the General Code of Conduct in more detail however, it should be noted that these aren't the only sections of the General Code of Conduct which you are required to comply with.

6.1 Disclosures in terms of Section 4, 5 and 7 of the General Code of Conduct

It has become apparent from the analysis of the compliance reports for the smaller Financial Services providers ("FSPs") and the risk assessment visits conducted, that there is still limited compliance with the disclosures required by Sections 4, 5 and 7 of the General Code of Conduct ("the Code").

If you have to look at sections 4 and 5 of the Code there is certain information that needs to be given through to your clients "*at the earliest reasonable opportunity*". You have the option to give the information to your clients verbally but then you need to ensure that you confirm this information to the client in writing within 30 days.

There have been different approaches adopted by the industry as to how this information is conveyed to clients for example some FSPs make use of a standard document in the form of a "one pager" where all the information is listed (this is often referred to as an introduction document) whereas others may make use of a company profile document which also contains the required information.

It needs to be noted that the FAIS legislation doesn't prescribe the format in which the information is given through to your clients however, you need to ensure that it is in fact given to your clients and it would be to your benefit to be able to illustrate that the information has been provided to your clients.

The Code requires that at least the following information about your FSP be provided to your clients in writing:

6.1.1. Section 4: Information on Product Suppliers

- Whether your FSP directly or indirectly holds more than 10% of the relevant product supplier's shares, or has any equivalent substantial financial interest in the product supplier; and
- Whether your FSP in the last 12 months received more than 30% of your total remuneration (including commissions) from a product supplier.

6.1.2. Section 5: Information on Providers

- Your full business name and trade names;
- registration number (if applicable);
- Postal and physical addresses;
- Telephone and where applicable your cell number;
- Internet and e-mail addresses;
- Name and contact details of the appropriate contact person / offices;
- Details of the product suppliers that the FSP contracts with;
- In the case of a representative which FSP and product supplier they have a contract with and this needs to be provided in a manner which makes it clear to the client which entity accepts responsibility for the actions of the representative;
- Name and contact details of the relevant compliance department (in the case of a FSP without a compliance officer the details of the key individual may be provided);
- Details of the financial services that you have been approved for in terms of your license E.g. to render advice and intermediary services in respect of Health Service benefits and Collective Investment Schemes;
- Whether your FSP holds guarantees, professional indemnity or fidelity insurance or not (if you don't hold any of these then you need to specify this to your client);
- Where applicable if the relevant representative is rendering financial services under supervision; and

- The existence of a specific exemption that the Registrar may have granted to the provider.

It needs to be noted that the above disclosures are applicable to FSP's who:

- are not direct marketers; and
- render financial services in respect of the products offered by a product supplier.

If you look at Section 7 of the Code, there is certain information needs to be given to your clients. This section is different to the Sections 4 and 5 disclosures referred to above in that the section doesn't state that the information must be provided at the earliest possible opportunity. The reason for this is that the information contained in Section 7 needs to be given to your clients when furnishing advice to them i.e. before they take out a financial product / enter into a contract in respect of a financial product. The Section 7 disclosures are as follows:

6.1.3. Section 7: Information about Financial Service

- Provide your client with a reasonable and appropriate general explanation of the nature and terms of the contract / transaction and also disclose any information that would reasonably be expected in order for your client to make an informed decision;
- If it is reasonable and appropriate you should provide your client with any material contractual information and any material projections or forecasts that you may have;
- Information on the name, class or type of financial product E.g. retirement annuity;
- The nature and extent of the benefits to be provided by the product and how the benefits are calculated and when and how the benefits will accrue or be paid;
- Where the financial product is marketed or positioned as an investment or having an investment component you would need to provide information such as:
 - I. Concise details as to how the value of the investment is determined;
 - II. Concise details of any underlying assets or financial instruments;

- III. A separate disclosure on the charges and fees that will be levied against the product including the frequency thereof, the identity of the person who will receive the charges or fees, the services or purpose for which the charges and fees are levied. Where the charges or fees will be levied in respect of investment performance of the product then you need to provide the details of the frequency, performance measurement period, performance benchmarks and any other criteria; and
- IV. Where the structure of the product entails other underlying financial products, disclosure must be made in such a manner to enable the client to determine the net investment amount which will ultimately be invested for their benefit.

- If requested you must provide information regarding the past investment performance of the product over periods and intervals which are reasonable to the type of financial product as well as a warning that past performances are not necessarily an indication of future performances;
- The nature and extent of monetary obligations taken on by the client, directly or indirectly, in favour of the product supplier, including the method of payment, the frequency, the consequences of non-payment and any contractual escalations, increases or additions e.g. a premium of R500 monthly, payable by debit order to Company X, with a 10% compulsory premium growth on policy anniversary and the policy will lapse if the client fails to pay their premiums for more than two consecutive months;
- The nature and extent of monetary obligations assumed by the client, directly or indirectly, in favour of the provider, including the manner and method of payment, the frequency and the consequences of non-payment E.g. a monthly fee paid by the client to the FSP;
- The nature, extent and frequency of any incentive, remuneration, consideration, commission, fee or brokerages (referred to as “valuable consideration”) which will or may become payable to the FSP, directly or indirectly, by the product supplier or any other person other than the client, or for which the FSP may become eligible, as a result of rendering the financial service to the client, as well as the identity of the product supplier or other person offering the valuable consideration E.g. The FSP

will receive R2 000 in commissions from company X if the client takes out the financial product in question. In the situation where the maximum amount or rate of valuable consideration is prescribed by any other law (E.g. the Long Term Insurance Act), the FSP may choose to disclose either the actual amount applicable (E.g. R2 000) or the prescribed maximum amount or rate (E.g. 3%).

- The concise details of any special terms or conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which the benefits of the financial product won't be provided.
- Any other guaranteed minimum benefits or other guarantees;
- To what extent the product is easily realizable or the funds concerned are accessible E.g. if the client has an unforeseen medical event, will they be able to access the funds easily?;
- Any restrictions on or penalties for early termination of or withdrawal from the product, or any other effects of a termination or withdrawal E.g. if the client has to surrender their policy before the end of the term of the policy, penalties would be applicable.
- Material tax considerations E.g. tax relief applicable to taking out a retirement annuity and the tax implications applicable on retirement;
- Whether cooling off rights are offered and, if so, the procedure for exercising these rights E.g. client may decide after 2 weeks that they want to cancel the policy, how should they go about this?;
- Any material investment or other risks associated with the product, including any risk of loss of any capital amount(s) invested by the client as a result of market fluctuations;
- In the case of an insurance product where the product makes provision for an increase in premium, the amount of the increased premium for the first 5 years and thereafter on a 5 year basis but for not more than 20 years;
- Fully inform a client in relation to the completion or submission of any transaction requirement:

- I. That all material facts must be accurately and properly disclosed, and that the accuracy and completeness of the answers, statements or other information provided by or on behalf of the client, are the client's own responsibility

- II. That if the provider completes or submits any transaction requirement on behalf of the client that the client should be satisfied that the details are accurate and complete;
 - III. Of the possible consequences of misrepresentation or non-disclosure of a material fact or the inclusion of incorrect information E.g. information on the clients claims history when entering into a short term insurance contract or correctly disclosing medical information when taking out a life insurance policy to ensure that a claim isn't repudiated at a later stage; and
 - IV. That the client must on request be supplied with a copy or written or printed record of any transaction requirement within a reasonable time.
- A provider may not, when rendering a financial service to a client, request a client to sign any written or printed form or document unless all details required to have been inserted on the document by the client or on behalf of the client have already been inserted E.g. a FSP can't ask a client to sign a blank application form and then the FSP fills in the information on behalf of the client later. A FSP can complete the application form on behalf of the client, have the client check the information on the form and then have the client sign;
 - A FSP must, where applicable, at the request of their client, provide the client with a statement of account in respect of any financial services rendered to the client;
 - A provider who has provided advice to a client or is rendering ongoing financial services to the client in respect with one or more financial products must on a regular basis (but not less than once a year) provide the client with a written statement identifying the products that are still in existence, and where applicable provide brief current details such as:
 - I. Any ongoing monetary obligations that the client has in respect of the product;
 - II. The main benefits provided by the product;
 - III. Where the product was marketed as being an investment or as having an investment portion, the value of the investment and how much of the investment value is accessible to the client;
 - IV. Any ongoing incentives, consideration, commission, fee or brokerage payable to the provider in respect of the product.

It must be noted that the written statement is not required where the client is aware or ought reasonably to be aware that the provider doesn't render or has ceased rendering ongoing financial services in respect of the client or products concerned.

Notes:

- I. Obviously not all of the Section 7 disclosures listed above would be relevant to all FSPs for example a short term insurance product wouldn't have an investment portion nor would there be forecasts available. There are however a number of the disclosures which would be relevant and a FSP can therefore not ignore the Section 7 disclosures.
- II. In many cases the information required by Section 7 will be contained in the product supplier quotation presented to the client. The FSP must however ensure that they have gone through the information contained in the quote in detail with the client and highlighted all the disclosures which are required to be made to the client (it is not sufficient to merely provide the client with a copy of the quotation).
- III. In the case of a product supplier Section 5 of the Code contains the information that is required to be disclosed by the product suppliers to clients.

7. PROFILE CHANGES:

In terms of condition 2.1 of all licenses an authorised FSP is required to notify the Registrar within 15 days of any changes in the business information of the FSP. This means that a FSP must notify the Registrar if for example their names, address, telephone number, directors, members, shareholders, information relating to the key individual, auditor, nominee, representatives, compliance officer etc changes.

Notification of these changes can either be e-mailed to Faispfc@fsb.co.za or faxed through for the attention of "FAIS Profile Changes". Certified copies of qualifications or skills programmes that have been successfully completed by the key individual since the license was granted to the FSP can also be forwarded to Faispfc@fsb.co.za .

Additional information on the different types of profile changes and the documentation required for the processing of the changes can be obtained on our website – www.fsb.co.za . On accessing our website please click on the “FAIS” tab in the top right hand corner and then select “profile changes” under the Registration Department’s heading.

8. COMPLIANCE OFFICERS

Section 17(1)(a) of the FAIS Act provides that:

“Any authorised financial services provider with more than one key individual or one or more representatives must, subject to section 35(1)(c), appoint one or more compliance officers to monitor compliance with this Act by the provider and such representative or representatives, particularly in accordance with the procedures contemplated in subsection (3), and to take responsibility for liaison with the registrar.”

This means that in a situation where an authorised FSP:

- has two or more approved key individuals; and / or
 - has appointed one or more representatives
- they are required to appoint a compliance officer.

If you have to look at it logically:

- where a FSP is a sole proprietor and only has one approved key individual and no representatives, the key individual is quite aware of what functions he performs on a daily basis and his own level of compliance with the legislation. Therefore there would be no need to appoint a compliance officer;
- where a FSP has more than one key individual and one or more representatives the key individual/s now has to make sure that other individuals are complying with the legislation and there is now a need to monitor the compliance and actions of other KI / representatives. Therefore there would be a need to appoint a compliance officer.

NOTE:

- I. The compliance officer who is appointed by the FSP must have been approved by the Registrar; and
- II. The compliance officer can be appointed even if the FSP doesn't require one.

8.1 Example of how to check whether it is necessary to appoint a compliance officer:

Type of FSP	Compliance officer required?
Sole proprietor with no representatives	No
Sole proprietor with one representative	Yes
Close corporation with one approved key individual and no representatives	No
Close corporation with one approved key individual and one representative	Yes
Company with two approved key individuals and no representatives	Yes
Company with one approved key individual and no representatives	No
Company with two approved key individuals and one representative	Yes

8.2 FSP's who are not required to appoint a compliance officer:

- An FSP who is not required to appoint a compliance officer may decide to appoint a compliance officer to assist them with their compliance. This choice lies with the FSP and there is nothing prohibiting them from taking this decision to outsource their compliance function.
- An FSP who is not required to appoint a compliance officer and who hasn't appointed a compliance officer:

- I. is still required to comply with the Act;
 - II. is still required to comply with all subordinate legislation; and
 - III. the key individual will be the person responsible for ensuring compliance .
- The key individual would be responsible for establishing the compliance function; and
 - The key individual would therefore be responsible, amongst other things, for completing and submitting the annual compliance report to the FSB.

8.3 FSP's who are required to appoint a compliance officer:

An FSP who is required to appoint a compliance officer has two options available to them:

- I. appoint an internal compliance officer (in-house); or
- II. appoint an external compliance officer (outsourced)

An **external** compliance officer would be a compliance officer who has been approved by the FSB to render compliance functions for one or more FSPs and / or acts independently in a personal capacity.

An **internal** compliance officer is an employee of a specific FSP and will only act as the compliance officer of that specific FSP. It may happen that a person may be the internal compliance officer of more than one FSP but this would only happen where the compliance officer is an employee of more than one FSP.

8.4 Approval of compliance officers

As indicated above, a compliance officer needs to be approved by the FSB before they can be appointed as the compliance officer of an FSP.

The documentation for the approval as a compliance officer can be obtained on the FSB website:

- Go to: www.fsb.co.za;
- click in “FAIS” in top right hand corner;
- select “profile changes” under the heading Registration Department; and
- scroll down to the heading “Compliance Officers”.

It must be noted that an application must also be submitted to the FSB to have the appointment of a compliance officer for a FSP approved.

The final decision lies with the FSB as to whether the appointment of a compliance officer is approved or not.

For example:

- If an application is received for the approval of an external compliance officer for a hedge fund but the compliance officer doesn’t have sufficient experience in respect of hedge funds then the application for approval may be declined.
- If the person applying for the approval as a compliance officer doesn’t satisfy both the qualification and experience requirements.

9. LAPSING YOUR LICENSE

A license will be lapsed where:

- a sole proprietor who can no longer carry on doing business due to physical or mental disease, serious injury, death or the fact that they have been finally sequestered;
- a FSP is finally liquidated or dissolved;
- where the business of a FSP has become dormant; and
- any other case where the FSP or sole proprietor voluntarily cancels their license.

NOTE:

- I. In all of the above scenarios a written lapse request will still need to be submitted wherein you notify the Registrar of the event that occurred which has resulted in the license having to be lapsed (The license will not be lapsed automatically).
- II. In the case of a dormant FSP where the FSP doesn't want to lapse the license, the license may remain active but the FSP is still required to pay the annual levies, submit the compliance reports and submit the annual financial statements.

Where a FSP would like to voluntarily cancel its license, the license will only be lapsed:

- on receipt of a written request from the key individual of the FSP or another person in control of the affairs of the license holder;
- if all levy payments are up to date;
- if all annual compliance reports have been received; and
- if all annual financial statements have been received.

All requests to lapse a license can be addressed to Faispfc@fsb.co.za or faxed to (012) 422 2973 for the attention of "Profile Changes".

10. SUMMARY OF IMPORTANT CONTACT DETAILS

E-mail addresses:

Profile change requests	Faispfc@fsb.co.za
Requests to lapse licenses	Faispfc@fsb.co.za
Qualifications related queries	Fitandproper@fsb.co.za
Applications for recognition of qualifications	Fitandproper@fsb.co.za
General Enquiries	Faisinfo@fsb.co.za
Requests for financial statements extensions	Faisfins2@fsb.co.za

(Please note that financial statements must either be posted or submitted using the FSB online financial statement system. Extension requests may also be submitted using the online system)

Compliance report related queries for Category I FSPs	Faiscomp1@fsb.co.za
Compliance report related queries for Category II FSPs	Faiscomp2@fsb.co.za
Compliance report related queries for Category IIA FSPs	Faiscomp3@fsb.co.za
Compliance report related queries for Category III FSPs	Faiscomp4@fsb.co.za
Compliance report related queries for Category IV FSPs	Faiscomp4@fsb.co.za

(Please note that we only except original copies of compliance reports or reports submitted through FSB online compliance system)

Postal Address:

PO BOX 35655
Menlo Park
0102

FAIS Department direct fax number:

(012) 422 2973 Please ensure that you clearly indicate the relevant FAIS department / person that the fax is intended for on the fax