



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 ;
- administrating 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 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 Enforcement 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.

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.

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.

3.1.5. 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.

3.1.6. 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.

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) and (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.

An 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

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 faisfins@fsb.co.za or faxed for the attention of "FAIS Supervision Financial Statements".

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

1. 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.
2. Do not submit the financial statements that have not been signed by all the relevant persons (directors, members, accounting officer, auditor etc).
3. Do not submit IRP5 tax certificate.
4. 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.
5. 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 can not 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”.

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. 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.

Where an FSP 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”.

9. 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	Faisfins@fsb.co.za

Submission of financial statements for Category I FSPs Faisfins@fsb.co.za
Submission of financial statements for Category II FSPs Faisfins2@fsb.co.za
Submission of financial statements for Category IIA FSPs Faisfins3@fsb.co.za
Submission of financial statements for Category III FSPs Faisfins3@fsb.co.za
Submission of financial statements for Category IV FSPs Faisfins4@fsb.co.za

(Please note that financial statements and extension for submission of financial statements can be done on the FSB online financial statement 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 indicate the relevant FAIS department that the fax is addressed for on the fax