



DATE OF FIRST APPOINTMENT (DOFA) ENQUIRIES

The FAIS Supervision Department created the FAIS.DOFA@fsb.co.za inbox in June 2012 to address queries relating to DOFA and regulatory examination results.

All queries will be attended to on a strict "First in First Out" basis and queries will be attended to as soon as possible.

The e-mail service is limited to the following:

- The date of first appointment information will only be furnished to an authorised FSP, compliance officer or individual in question.
- All requests to amend the dates of first appointment must be made by the individual in question and must be accompanied by the relevant supporting documents.
- Verification of examination certificates issued by Examination bodies will only be made to authorised FSP's, compliance officers or the individual in question if a copy of the certificate is attached.

Did you know?

The FAIS division has a dedicated e-mail inbox for specific exemption applications. The e-mail address that can be used is FAIS.Exemptions@fsb.co.za

All specific exemption applications i.e. exemption applications in respect of a specific person or FSP can be submitted to this e-mail address.

The e-mail address may also be used for any queries relating to specific exemption applications.

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Disclaimer

The FAIS Newsletter must not be construed as a substitution of the FAIS Act and subordinate legislation. The newsletter is aimed at addressing specified areas and provides a quick reference to the reader. It does not take away the obligations that are imposed on FSPs, key individuals, representatives, compliance officers or any person involved in the rendering of financial services to acquaint himself or herself with the provisions of the FAIS Act.

UPDATING OF CONTACT DETAILS VIA THE FAIS ONLINE SYSTEM

In terms of condition 1 to all FAIS licenses, all Financial Services Providers (FSPs) are required to notify the FAIS Division within 15 days of any changes that have occurred. This means that if a FSP moves offices, changes their telephone number or e-mail address that they have 15 days to notify the FSB.

Many FSPs are unaware that they can **use the FAIS online reporting system to update their contact details themselves** and so it is not necessary to submit a written profile change request.

The process of updating contact details via the FAIS online reporting system was recently enhanced and users who submit a request for their contact details to be updated can now expect to receive written confirmation of the change within 24 hours of the change having been submitted.

DEBARMENTS OF REPRESENTATIVES UNDER SECTION 14(1) of the Act

With effect from 1 September 2012, the FAIS Enforcement became responsible for the debarment of representatives in terms of the FAIS Act. The purpose of this article is to set out the legislative framework that underpins the debarment of representatives and provide clarity with regard to the powers and duties of providers. The primary focus of this article is sec 14(1) and a later article may address the provisions of sec 14A.

The starting point is to look at the scheme of the FAIS Act in regard to authorisation of providers to render financial service and the appointment of representatives by providers. The registrar is required to ensure that providers are fit and proper for the purposes of being authorised to render financial service and in turn, providers must ensure that that requirement is met in respect of its representative(s). That much may be inferred from sec 8 (read with sec 9), as far as providers are concerned, and sec 13(2) (read with section 14(1) as far as representatives are concerned.

Far too often providers in particular and representatives in general make enquires and complaints to the registrar about the application or misapplication of the debarment procedures. It must be borne in mind that it is the responsibility of the provider to ensure that representatives are fit and proper to render financial service on its behalf and similarly, to take steps and sanction a representative who is found to no longer satisfy the fit and propriety requirements. The registrar has no role to play in this assessment by the provider of its representative and may not second-guess the decision of the provider. However, the provider must ensure that the sanction of debarment is for the purpose envisaged by the law and not for ulterior purpose or trivial transgressions of no consequence.

In the discharge of their duties, the provider must always take into account the object of the enabling provision for debarment under the Act and that is, debarment is a regulatory tool aimed at protecting the public. The law compels a provider to prevent or shut out a representative from rendering any new financial service by withdrawing his authority to act on behalf of the provider; and to remove the representative from the provider's register; and within 15 days to inform the registrar and to give reasons for the debarment.

It is submitted that nowhere in the section is there anything which entitles the registrar to interfere in the provider's action, to query it, to test its reasonableness or to override it. The fact that the provider wields so much power does not detract from the requirement that such power must be exercised in order to achieve the objective of the regulation, to rid the industry of incompetent and dishonest representatives. Debarment should not be used to satisfy a provider's contractual or other grievances against a representative, unrelated to fitness requirements. Such use would be an unfair revenge or retaliation on the representative.

An aggrieved representative cannot approach the registrar to seek recourse against the provider as there is no power of intervention on the part of the registrar which will have the effect of undoing the debarment. The aggrieved representative will have recourse in the appropriate forums against the unfair debarment of the provider. It was never the intention of the law that the registrar must come to the relief of an aggrieved representative and to expect otherwise, would be contrary to the spirit and letter of the law.

In conclusion, the practice of the registrar with regard to debarment by providers of representative would remain essentially the same:

- the registrar shall act on a notification received from a provider;
- the registrar may interrogate the reason for the debarment but this does not mean that the registrar has any power to review the debarment;
- the registrar has no power to instruct the provider to lift the debarment or to do himself.
- the aggrieved representative must seek recourse in the appropriate forums against the provider.

PROFESSIONAL INDEMNITY (PI) COVER

Background

Financial advisers based outside of South Africa have reported having issues renewing or purchasing professional indemnity "PI" insurance mentioning that the number of insurers offering PI cover is declining and those that do make it more difficult and expensive to obtain. It has further been mentioned that PI policies often do not cover all the activities of the Financial Services Provider "FSP".

PI insurance is a mandatory requirement in terms of the Financial Advisory and Intermediary Services Act of 2002 "FAIS Act" for FSPs operating in South Africa and for most countries abroad including the UK, Europe, Singapore, Hong Kong and the UAE. A number of financial advisory firms have reported struggling to get the right cover for their business, with some even facing the prospect of temporarily ceasing trading.

Professional Indemnity Insurance for Financial Services Providers

Board Notice 123 of 2009 of FAIS requires that FSPs should have an adequate level of PI insurance. It is the responsibility of the FSP to assess the risk associated with their particular business for professional services and to determine the level of PI insurance cover required over and above the minimum levels set by the FSB.

From the point of view of the client, it should be remembered that PI insurance cover only protects the FSP concerned. What PI Insurance provides for the client is a level of assurance that in the event of a successful claim against the insured (i.e. the FSP) arising out of negligent performance or breach of contractual duty that there is some lessening of the risk of insufficient assets being available to meet the claim.

FSPs must ensure that the following risks are covered in their PI policies:

- Legal defence costs;
- Fidelity guarantee;
- Loss of documents;
- Staff dishonesty;
- Computer Crime.

As with most insurance products, exclusions are incorporated into PI policies. We recommend that all FSPs familiarise themselves with the exclusions contained in their PI schedule. The most notable exclusions, of which FSPs should be aware of are:-

- Fines and penalties (including contractual penalty clauses);
- Defamation;
- Support staff extension;
- Claims preparation.

The FAIS legislation prescribes the minimum PI cover amount that specific FSPs should hold. It is important to note that this is a “minimum” amount that should be in place and that FSPs need to determine whether a higher amount is required, based upon the nature of their business.

In assessing the level of risk, the following general factors should be taken into account:

- Nature of the financial services provided (services vary from pure advise to managing funds);
- Size and complexity of the business (assets under management, type of product , e.g. Hedge Funds);
- Extent of Risk involved;
- Other types of insurance cover in place (e.g. Liability cover).

Summary of PI Cover requirements under FAIS:

CATEGORY OF FSP	COVER REQUIRED
Cat I or IV FSP <i>(FSP doesn't receive client funds)</i>	Suitable guarantee of minimum of R1 million or PI cover for a minimum R1 million
Cat I or IV <i>(FSP receives client funds)</i>	Suitable guarantee of minimum of R1 million or PI and Fidelity cover minimum R1 million
Cat II <i>(FSP doesn't receive client funds)</i>	Suitable guarantee of minimum of R1 million or PI cover minimum R1 million
Cat II <i>(FSP receives client funds)</i>	Suitable guarantee of minimum of R5 million or PI and Fidelity cover minimum R5 million
Cat IIA <i>(FSP doesn't receive client funds)</i>	Suitable guarantee of minimum of R5 million or PI cover for a minimum R5 million
Cat IIA <i>(FSP receives client funds)</i>	Suitable guarantee of minimum of R5 million or PI and Fidelity cover minimum of R5 million
Cat III	Suitable guarantee of minimum of R5 million or PI and Fidelity cover minimum R5 million

THE SUBMISSION OF AUDITED FINANCIAL STATEMENTS

It has been noted that there is still uncertainty as to when an authorised Financial Services Provider (FSP) is required to submit audited financial statements.

Who must submit audited financial statements:

- All **Category II, IIA, III and IV** FSPs are **required to submit audited financial statements** on an annual basis, without exception.
- **Category I FSPs that receive client funds and / or premiums** are required to submit audited financial statements.

Who is exempted from submitting audited financial statements?

- **Category I FSPs that don't receive client funds and / or premiums** are not required to submit audited financial statements on an annual basis (as per the exemption published under Board Notice 193 of 2011) however, they **need to register** with the FAIS Department to make use of this exemption. This registration process is discussed in more detail below.
- **Category I FSPs that are approved in subcategory 1.1 and / or 1.19 only** (assistance business FSPs) are not required to prepare audited financials however, their financial statements may be prepared by an accounting officer. These FSPs also **need to register** to make use of the exemption published under Board Notice 193 of 2011.

Board Notice 193 of 2011 and the Registration process:

As explained above Board Notice 193 of 2011 exempts certain Category I FSPs from submitting audited financial statements. FSPs that wish to make use of the exemption are required to register for the exemption and submit the registration form that is available for download on the FSB website under the FAIS homepage:

The screenshot shows a document search interface with a navigation bar at the top containing links for Actuarial Information Center, Capital Markets Inspectorate, C.I.S Insurance, Communications Legal Policy, Consumer Education Market Abuse Department, and FAIS Retirement funds. Below the navigation bar is a search bar with the text 'Document Search' and a dropdown menu set to 'ALL'. The search results are listed below, including 'Profile Changes', 'Schedule of fees payable', 'Levies payable by financial services providers', 'Excel spread sheet for submitting of representatives (Last Modified 01/06/2013)', and a section for 'Supervision Department' with items like 'Financial Statements and Audit Requirements', 'Compliance Reports', 'FAIS Guides for small FSPs', 'Application for exemption from auditing requirements as provided for in Board Notice 193 of 2011', and 'Nominees Companies'. The 'Application for exemption from auditing requirements as provided for in Board Notice 193 of 2011' link is circled in red.

The completed registration form should be e-mailed to Faisfins4@fsb.co.za

NOTE: Where a FSP has been registered to be exempted from submitting audited financial statements they are still required to submit financial statements to the FAIS Department on an annual basis, the financial statements are just not required to be audited.

IMPORTANT FAIS CONTACT DETAILS

General FAIS related queries	Faisinfo@fsb.co.za
Extensions on the submission of annual financial statements	Faisfins2@fsb.co.za Faisfins3@fsb.co.za
Queries relating to qualifications	Fitandproper@fsb.co.za
Queries on Fit and Proper requirements	Fitandproper@fsb.co.za
Specific exemption applications	Fais.exemptions@fsb.co.za
Updating details on a license (Profile Changes)	Faispfc@fsb.co.za
Debarment of representatives	Debarment@fsb.co.za
Queries on Date of First Appointment (DOFA)	Fais.Dofa@fsb.co.za
Submission of complaints against a FSP	FaisComplaints@fsb.co.za
Queries relating to the suspension / withdrawal of licenses	Fais.Compliance@fsb.co.za
Correspondence relating to specific exemptions	Fais.Exemptions@fsb.co.za
Queries on the FAIS online reporting system	Faiscomp1@fsb.co.za
Queries relating to compliance reports	Faiscomp2@fsb.co.za Faiscomp3@fsb.co.za Faiscomp4@fsb.co.za

FSB Call Centre: Are you aware that the Financial Services Board has a Call Centre / Contact Centre that is dedicated to resolving all your queries? The following toll free numbers may be used to contact the FSB Call Centre:

0800110443 or 0800202087

Per email: info@fsb.co.za

Website : All the important information applicable to financial services business is posted on our website. You are encouraged to frequently visit our website for latest information and updates. Our website address is www.fsb.co.za.

On the homepage select “FAIS” from the list of departments.