

# FAIS NEWSLETTER



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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.

## INTRODUCTION

One of the many challenges faced by this Office and other regulatory authorities elsewhere in the world supervising and regulating the financial services industry, specifically the non-banking financial services industry and the regulation thereof remains ensuring that the regulated entities, authorized financial services (“FSPs”) employ and adopt proper risk management frameworks. These risk management frameworks assist with risk identification, risk assessment, risk measurement, management, mitigation and ongoing review and monitoring of risk.

Risk is in this regard viewed holistically, i.e enterprise-wide as it impacts on the business operations of the FSP. It may be, without limiting the applicability thereof, of a regulatory or legislative and or operational and is referred to in the collective as risk. The challenge for any regulatory authority as already mentioned above remains one of ensuring that proper risk management plans and frameworks are in place, risk management measures are implemented and adhered to by business on an ongoing basis.

The Office of the Registrar of Financial Services Providers (“this Office”) is no exception to the challenges faced by all the other regulatory authorities in ensuring proper risk management within businesses. This Office regulates well in excess of 19 986 FSPs, figure as at 09th July 2010. The sophistication of these FSPs varies widely. This then necessarily suggests and points to the varying risk profiles of these FSPs. As a result, heightened regulation becomes necessary in certain instances while relaxed in some.

This Newsletter is aimed at creating an awareness around risk, risk management and the importance of having proper risk management plans in place. For this Office, the regulation and supervision of a large and diverse continuum of FSPs remains the central focal point. It is for this reason that this Office has deemed it necessary to introduce Risk Based Supervision (“*RiBS*”) onsite visits on FSPs. These onsite visits are performed on FSPs and the key operations or functional areas, the risks in those areas, the control environment, risk management processes, plans and frameworks and the adequacy and effectiveness thereof are assessed.

## THE RISK BASED SUPERVISION APPROACH

The RiBS framework is one of the tools used by this Office in supervising the FSPs and is designed in accordance with the Financial Services Board's ("FSB") wide framework. The RiBS Framework is a proactive and integrated approach adopted and used by this Office in order to assess risk in the operations of FSPs. FSPs are assessed from a risk perspective, on the risk that they pose to the financial services industry in terms of this approach. In other words, the FSPs impact on the FSB's regulatory objective. The risk management frameworks and plans prepared by the FSPs are in line with the RiBS approach. While structured in nature, RiBS takes into account the diverse nature of the FSPs. It prompts the streamlining, careful reviewing and consolidation of processes to ensure synergy in operations while ensuring effectiveness and orderliness.

The need for documentation and implementation of proper risk management frameworks and plans is a legislative requirement. Sections 11 and 12 of the General Code of Conduct make provision for risk management. These sections stipulate that FSPs ensure that they have at all times and employ resources, procedures and appropriate technological systems that can reasonably be expected to eliminate as far as reasonably possible, the risk that clients, product suppliers and other providers or representatives will suffer financial loss through theft, fraud, other dishonest acts, poor administration, negligence, professional misconduct or culpable omissions. FSPs must furthermore structure the internal control procedures concerned so as to provide reasonable assurance that the relevant business can be carried on in an orderly and efficient manner, that financial and other information provided by the provider will be reliable and all applicable laws are complied with.

## RISK MANAGEMENT

Risk management is a process of identification, assessment, quantification and prioritization of risks in a coordinated manner and with optimal application of available resources in order to eliminate, avoid, reduce, mitigate or control the probability and or impact of risk events. This process involves taking logical and proactive steps in order to curb business risk. It is crucially important that this process be a holistic approach, look at enterprise-wide risk and consider the business' overall risk universe. It is therefore vitally important that business adopt an ethos or culture of risk aversion and management.

In light of the above, it is also noteworthy that ethics play a pivotal role in any organization. It is imperative for the providers to maintain an atmosphere that promotes ethical conduct and therefore culture of risk awareness and proper risk management. This will serve to encourage the representatives that are associated with the provider to operate in the culture of ethical conduct. Ethical behavior necessarily encourages constant exercise of care and diligence on the part of providers and their representatives in the course of rendering of financial services to clients. It furthermore sets a standard of professionalism. Care and diligence in turn incorporate risk awareness.

Risk management entails a series of logical steps. The steps are discussed immediately hereunder. These steps should furthermore be considered for all the risks either potential or imminent and or inherent. These include:

### **STEP 1:**

#### **RISK IDENTIFICATION**

This step is about determining the universe of legislation and subordinate legislation, regulations and supervisory requirements that are relevant to the business of the provider. Inherent

The provider will have to take a bird's view of its business and operations as a whole and identify the risks that the business is exposed. At this stage the purpose is not to measure the significance of the risk but to identify and list all possible types of risks material and immaterial faced by the business. The observation that has been made during the onsite visits undertaken by FAIS department is that most providers limit or restrict their risk management plans to compliance risk plans in that they only focus on compliance risk. These plans will disregard risks like operational risk, business risk, credit risk, financial risk just to mention the few.

### **STEP 2:**

#### **RISK MEASUREMENT**

This stage can be characterised by categorisation and prioritisation of identified risks. Categorisation can be labeled Primary, Secondary and Tertiary or any other calibration.

In terms of prioritisation we are referring to Seriousness and Probability.

Seriousness refers to the level of impact and effect of non compliance on the provider's business. Impact could be in monetary terms or reputation. Also seriousness can be calibrated in terms of

Insignificant impact,

Minor impact,

Material impact and

Disastrous impact

Probability refers to likelihood of occurrence. Occurrence of a risk identified could as a result of Technology (extent to which compliance is ensured by current systems),

People (extent to which staff is properly skilled and trained)

Information (extent to which knowledge is sufficient)

Procedures (extent to which compliance is ensured by present processes)

Policies (extent to which requirement is supported by policies)

## RISK MANAGEMENT

### **STEP 3:**

#### RISK MANAGEMENT PLAN

The risk universe has been established through the process of risk identification and risk grading has also been done. The Risk Management Plan now has to be documented highlighting the risk identified, the control measures developed to mitigate the identified risk, the people responsible for effective functioning of the controls. It is important to point out at this point and also while on section 11 and 12 about the need to document processes, procedures, policies and controls that are within the FSP. Processes and procedures are reinforced and strengthened when supported by policy statement.

Also from regulator's viewpoint when processes and procedures are documented within the FSP it becomes possible for the regulator to assess risk areas during the onsite visit. Remember that effective controls are controls that are written in a manner that is simple that they can be performed by an ordinary person who can read and follow instructions to the letter.

Controls in their nature can be classified as follows:

- 3.1 Preventative controls- prevents the risk of non-compliance from occurring;
- 3.2 Contingent controls – detects the possibility of non compliance before it occurs;
- 3.3 Detective controls – detects non-compliance after it occurred.

### **STEP 4:**

#### RISK MONITORING AND REPORTING

This is where segregation of duties should be employed. People designated to perform controls should have someone superior ensuring that the controls are performed and performed adequately.

The external compliance officer were required should also be utilised for the purpose of monitoring.

The onsite visits conducted by supervision department of FAIS can also be relied on for monitoring but to a limited extent.

## **IMPLEMENTATION OF THE RISK MANAGEMENT PLAN.**

It is important for the FSPs to implement their risk management plan effectively. The risk assessment onsite visits undertaken by FAIS Supervision Department reveal the fact that most of the FSPs do not have documented risk management plans in place. This therefore suggests the lack of process to constantly review the business and its processes and procedures and where and if necessary, the streamlining and consolidation of the processes and procedures.

The compliance industry has since developed generic risk management plans that are given to FSPs that they offer with compliance assistance services. This is a welcome development in the industry but it is important for each provider to customize and localize these generic plans to suit their own business operations. The ultimate responsibility for documentation and implementation of the risk management plan rests with financial the FSPs and not the compliance officer.

It is imperative that Key Individuals as well the Representatives of the FSPs become involved in the risk management process and therefore become fully knowledgeable of the process and the framework. The involvement of other personnel in the process also encourages buy-in from the persons.

## NEWSFLASH

- **Notice on Requirements on Professional Indemnity and Fidelity Insurance Cover For Providers**  
On the FAIS website — Under Legislation — FAIS Subordinate legislation, regulations, exemptions and guidance notes — Codes of Conduct — Notice on Requirements on Professional Indemnity and Fidelity Insurance Cover For Providers, 2009
- **FAIS Compliance report online user guide**  
On FAIS website — Supervision Department — FAIS Compliance report online user guide
- **Guide on preparation of financial statements for small FSPs**  
On the FAIS website — Supervision Department — Financial Statements and Audit Requirements — Under Documents relating to submission of financial statements — Guide on preparation of financial statements for small FSPs — Example of financial statements for sole proprietors
- **Change of contact detail**  
In future, FSPs will be able to change the contact details on the online compliance report and financial statement submission programme. FSPs are encouraged to use the online facility to update their contact details to ensure that they receive regular communication and that they also comply with Condition 1 on their license.
- **Extensions on submission of financial statements**  
FSPs will be able to apply for automatic extension on the submission of financial statements provided that all other previous financial statements and compliance reports have been submitted to this Office. FSPs are encouraged to apply for extension to ensure that they are not penalized R150 per day from the date that the financial statements were due until the date the financial statements are submitted. It should also be noted that the non-payment of penalties can lead to the suspension of FSP's license.
- **FAIS Annual Conference and workshops**  
We urge FSPs to be on the look-out for the opening of our annual conference and workshop bookings that will also be communicated in due course. As with previous years, the conference is free of charge. This year will have one main conference and for those that cannot attend, a telematic mini-conference will be broadcast from Stellenbosch to centres in all nine (9) provinces. There will also be a number of other workshops that will be transmitted to these centres following the conference. We encourage FSPs to participate and get first-hand knowledge from regulatory staff and experts in the industry on a wide variety of topics that we will cover this year.

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# COMMENTS & SUGGESTIONS

We invite comments on this Newsletter and suggestions as to which topics you wish us to address in the coming publications. Any person who wishes to be included in the FAIS Newsletter circulation must forward an e-mail to [faiscomment@fsb.co.za](mailto:faiscomment@fsb.co.za). The FAIS Newsletter is for free.

**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](mailto: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](http://www.fsb.co.za). On the homepage click on the word "FAIS".