

FAIS Newsletter



Regulatory Updates:

Draft documents published for comment:

Conduct of Business Report (CoBR):

- The draft FAIS CoBR was published for comment on 6 December 2016. Comments were received from 33 respondents, which include industry associations, compliance practices, FSPs and individual respondents.
- The feedback was collated and the Registrar is considering the comments against the draft document.
- Feedback will be provided to industry in the last quarter of the year.

Fit and Proper amendments (F&P):

- The draft F&P was published for comment in October 2016. Comments were received from 26 respondents, including industry associations, compliance practices and individual FSPs.
- This process should also be finalised in the last quarter of the year.

Exemption notices:

The exemption of Banks in respect of certain clients, also referred to as the Merchant Banking exemption (BN 103 of 2004), was extended by FAIS Notice 16 of 2017 until 30 June 2018.

FAIS Notice 110 of 2017 exempts certain financial services providers from the professional indemnity insurance cover requirements for a further period of 3 years, as the exemption previously granted in terms

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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.

of Board Notice 139 of 2012 expired on 21 August 2017. This specifically addresses FSPs that are only authorised for category 1.1 and/or category 1.19.

From the FIC Desk:

The Financial Intelligence Centre (FIC) Act has been amended to improve the protection of the integrity of South Africa's financial system and strengthen its ability to prevent and sanction money laundering and financing of terrorism.

The FIC Amendment Act was signed into law by the President on 26 April 2017 but the determination of the commencement date was left to the Minister of Finance. The Minister of Finance has signed and gazetted the coming into operation of the various provisions of the FIC Amendment Act.

Different commencement dates were determined as follows:

- The first set of provisions came into effect on 13 June 2017. These provisions do not have any effect on accountable institutions and relate to:-
 - Repeal of the provisions on Counter Money Laundering Advisory Council (CMLAC).
 - Inspections.
 - Appeals.
 - Sharing of information.
 - Arrangements for consultation with industry.
- The next set of provisions will come into operation on 02 October 2017 and relate to:
 - Adoption of a risk-based approach to ensure that institutions understand money laundering and terrorist financing risks they face in their businesses and put

- appropriate measures in place to prevent or mitigate such risks.
- Establish appropriate policies, procedures, systems and controls that are effective for mitigation of money laundering and terrorist financing risk.
- Develop, document, maintain and implement a Risk Management and Compliance Programme.
- Apply appropriate customer due diligence measures to manage money laundering and terrorist financing risks.
- Establish and verify identity of beneficial owners of legal persons, trusts and partnerships.
- Manage relationship with Prominent Persons (i.e. Domestic Prominent Influential Persons and Foreign Prominent Public Officials).
- Keep records of single transactions and business relationships.
- Assign senior person in the business to take responsibility for governance of AML/CTF compliance.
- Provision of ongoing training to employees on the provisions of the FIC Act and Risk Management and Compliance Programme.

- The dates for the last set of provisions relating to targeted financial sanctions and the freezing of assets in accordance with the United Nations Security Council Resolutions will be determined after 02 October 2017.

It must be noted that most sections of the FIC Amendment Act that come into effect on 02 October 2017 require that the current Regulations be amended and that the current Exemptions be withdrawn before or at the same time these amendments come into operation. Guidance must also be in place to assist accountable institutions in complying with the new requirements.

In light of the above, the FIC has published the following documents on its website for noting:

- Notice on commencement dates of the FIC Amendment Act;
- Gazette containing the FIC Amendment Act as signed by the President; and
- Roadmap for institutions and supervisors, detailing action plans and timeframes for implementation of the FIC Amendment Act.

The FIC also published the following set of documents for public comment:

- Draft Guidance on the implementation of new measures introduced by the FIC Amendment Act;
- National Treasury's high-level document titled "A new approach to combat money laundering and terrorist financing" which provides a long-term vision, strategy and overview on implementation of the FIC Amendment Act;
- Draft Government Notice, with an explanatory note, announcing the withdrawal of existing Exemptions; and
- Draft Government Notice, with an explanatory note, announcing amendments to existing Regulations.

It would appear that stakeholders are largely unaware of the above-mentioned documents which were published on the FIC's website and the consultation process in respect of such documents.

We recommend that FSPs and compliance officers should familiarise themselves with these documents and ensure that they are ready when the different implementation dates of the FIC Amendment Act become effective.

The FIC's website can be accessed on: www.fic.gov.za

Implementation of the FIC Amendment Act

Below are a number of regulatory expectations that the Registrar's office deemed it necessary to clarify regarding implementation of the FIC Amendment Act.

(i) Consultation with stakeholders

Accountable institutions supervised by the Registrar's office may not be fully compliant with the bulk of the provisions of the FIC Amendment Act which take effect on 02 October 2017. The Registrar's office also notes that the ability and capacity to comply with the provisions of the FIC Amendment Act may not be the same for both large and smaller accountable institutions. To this end, the FSB, together with National Treasury and the FIC, has started a consultation process to bring the FIC Amendment Act into operation. Two consultation workshops have already been held with industry bodies and certain stakeholders on 12 June 2017 and 18 August 2017 respectively. Further consultations will be held.

(ii) Readiness assessment

As part of the consultation process, the FSB will also circulate a survey during the month of September to assess the state of readiness by the industry to implement the new provisions of the FIC Amendment Act. We would like to ask for your support and participation in the survey.

(iii) Transitional period

Depending on the outcome of the survey, the Registrar's office may consider a transitional

period for all accountable institutions regulated by it or for different categories of institutions thereby allowing businesses additional time to implement the new requirements. The Registrar's will then engage the industry in setting out clear expectations and milestones.

(iv) Gap in compliance

Accountable institutions should start now and continue throughout the transition period to develop policies, procedures, systems and controls to implement the new requirements of the FIC Amendment Act. We wish to remind the industry that at no point during or after the transition period should accountable institutions not know who they are doing business with and must ensure that proper records of transactional activities with clients are kept at all times.

Accountable institutions will be expected to demonstrate progress towards full compliance with the new requirements at agreed milestones and timelines. We would like to draw your attention to the draft guidance issued by the FIC on the implementation of new measures introduced by the FIC Amendment Act. This draft document on which the FIC seeks input, is still in a draft stage, but it provides the type of information that any institution needs to comply. The document seeks to establish consistent and effective best practices towards implementation of a risk based approach and other elements of the new FIC legislation.

(v) Inspections

The Registrar's office will continue to conduct FIC inspections during the transition period to monitor compliance, provide guidance and

advise accountable institutions on implementation of the new requirements.

(vi) Sanctions

Sanctioning non-compliance with the new requirements of the FIC Amendment Act will be delayed in order to allow sufficient time to accountable institutions to make the necessary adjustments to implement the new requirements. However, administrative sanctions will be imposed on non-compliance with the current provisions of the FIC Act that are not amended, such as registration and reporting obligations.

Debarment of individuals who obtained fraudulent qualifications or regulatory examination results

The industry will have seen an increase in the number of debarments cases over the last year. The main reason for this increase is that qualification and examination fraud was discovered by the Financial Planning Institute of Southern Africa (FPI) which has required the FSB to take action against a large number of individuals.

The fraud case found that specific FPI employees and a number of candidates were involved in a dishonest scheme that resulted in the falsification of their examination and/or qualification results and the issuance of fraudulent certificates.

An initial investigation was conducted by the FPI and criminal charges were laid against the implicated FPI employees. The FSB was informed of the matter in 2014 and launched an inspection to gather evidence against 120 representatives and Key Individuals who had allegedly benefitted from the fraud. Debarment action commenced in 2015 and is ongoing with at least 60 cases still underway.

The FSB also conducted an audit of the FPI Examination Body's internal security measures, systems and processes. Following the audit, the FSB recommended additional security protocols to ensure that a similar situation does not arise in the future – recommendations that the FPI has adopted and implemented.

The FSB continues to work closely with the recognised examination bodies, to ensure that all security measures are fully functional at all times. The FSB sees the regulatory examinations and the authenticity of qualifications as a critical component of the competency requirements for financial services providers, and as such the integrity of the examinations and qualifications must be protected at all times.

Dormancy: Lapsing of a licence

This article focuses on the lapsing of a licence in terms of section 11(1)(c) of the FAIS Act.

Legal Requirements

Section 11 of the FAIS Act states that:

- (1) A licence lapses –
 - a) where the licensee, being a natural person –
 - i) becomes permanently incapable of carrying on any business due to physical or mental disease or serious injury;
 - ii) is finally sequestered; or
 - iii) dies;
 - b) where the licensee, being any other person, is finally liquidated or dissolved;
 - c) where the business of the licensee has become dormant; and

- d) in any other case, where the licensee voluntarily and finally surrenders the licence to the Registrar.

In instances where a natural person who is authorised as a FSP is unable to continue with the business of the FSP, dies or is finally sequestered, then the FSP's license lapses. The FSP is required to have procedures in place to notify the Registrar's office of the situation. The FSP must also have procedures in place to notify all clients with unfinished business, and to notify all product suppliers. The notification to the Registrar must be sent to faispfc@fsb.co.za

What is a dormant licence?

Section 7 of the FAIS Act requires any person (*natural or juristic*) who intends rendering a financial service to be authorised as a FSP.

A licence becomes dormant when an authorised FSP's business remains dormant as no activity in respect of the rendering of financial services has taken place.

Lapsing of a dormant licence

The FAIS Supervision Department embarked on an on-going project that sought to identify persons that are authorised as financial services providers but whose business remains dormant as no activity in respect of the rendering of financial services has taken place. The following three (3) sources of information were used to identify the dormant FSPs:

- i. Outcome of the analysis of compliance reports and financial statements; and

- ii. Dormancy letters received from auditors and/or FSPs for non-submission of financial statements.

Once the dormant FSPs are identified, the following process is followed:

- a. A notice of intention to lapse in terms of section 11(1)(c) of the FAIS Act is issued to an affected FSP.
- b. The Registrar reviews the submission of the affected FSP relating to their dormant status and makes a decision whether or not the licence should remain active or be lapsed.
- c. Should the FSP fail to respond to the notice within the prescribed period, the Registrar then proceeds with the lapse of the FSP's licence in terms of section 11(1)(c) of the FAIS Act.
- d. Once the lapse is finalised, the Registrar informs the affected FSP accordingly.

Inheriting a FSP

What happens if a person inherits the 100% membership in a FSP that is a legal person (close corporation or private company)?

When a FSP is a legal person where one natural person holds the 100% membership or 100% shares, such person is by law, required to be authorised as a key individual. The definition of key individual in the FAIS Act states that:

“key individual”, in relation to an authorised financial services provider, or a representative, carrying on business as—

- (a) *a corporate or unincorporated body, a trust or a partnership, means any natural person responsible for managing or*

overseeing, either alone or together with other so responsible persons, the activities of the body, trust or partnership relating to the rendering of any financial service; or

- (b) *a corporate body or trust consisting of only one natural person as member, director, shareholder or trustee, means any such natural person;*

It is thus very important for FSPs to conduct proper business continuity and/or succession planning. Remember that the person who inherits the FSP (either as the 100% member or 100% shareholder) will be required to be approved as a key individual, and will have to meet the competency requirements as a key individual.

Compliance officers and the regulatory examinations:

A total of 4084 compliance officers must successfully complete the relevant regulatory examination(s) by 31 August 2017. The table below sets the requirements out:

Explanation of Transitional Arrangements Contained In Board Notices 148 and 149 Of 2016

Compliance Officer	
Approved before 1 September 2016	Approved on or after 1 September 2016
Must pass RE exams by 31 August 2017.	Must have passed the RE exams before approval, unless working under supervision.
Compliance Officer (under supervision)	

<p>Approved prior to 31 August 2013</p>	<p>Working under supervision on 1 September 2016 and approved between 1 September 2013 and 31 August 2015</p>	<p>Working under supervision on 1 September 2016 and approved between 1 September 2015 and 31 August 2016</p>	<p>Approved on or after 1 September 2016</p>
<p>Should already have completed the maximum period under supervision (3 years). Must pass the RE exams by 31 August 2017.</p>	<p>Must pass the RE exams by 31 August 2017.</p>	<p>24 months from the date of approval to complete RE exams.</p>	
<p>Regulatory Exams (RE) applicable</p>			
<p>REs are dependent on the category for which the particular FSP is authorised to render.</p> <p><u>Example 1</u> I am a compliance officer for a Cat I FSP, which exam should I write? RE1.</p> <p><u>Example 2</u> I am a compliance officer for a Cat I, II and IIA FSP, which exam should I write? RE1 and RE3.</p> <p><u>Example 3</u> I am a compliance officer for a Cat III FSP,</p>			

which exam should I write? **RE1 and RE4**.

Example 4
I am a compliance officer for a Cat IV FSP, which exam should I write? **RE1**.

Applying for an exemption

We often receive requests from people who wish to apply for an exemption from a provision of the FAIS Act. Please note that there is a specific form (Form 12) that must be completed. There is also a prescribed process to follow. The mere fact that an exemption application is lodged does not guarantee that the exemption will be granted.

If a person applies for an exemption, the following process must be followed:

1. Complete Form FSP 12, which is attached to the newsletter and is available on the FSB’s website.
2. Each application must be accompanied by proof of payment of the prescribed fee that is payable to the Registrar of Financial Services Providers (Registrar). The exemption fees are annually determined by the Minister of Finance and are published under the heading ‘**Schedule of Fees Payable**’ under the FAIS Department’s Registrations Tab on the official website of the Financial Services Board (www.fsb.co.za). The Tab can be directly accessed through the following link:

<https://www.fsb.co.za/Departments/fais/registration/Pages/Schedule-of-fees-payable.aspx>
3. If an applicant seeks exemption from the requirement to pay the prescribed fee, the applicant must apply for such exemption by including it on Form FSP 12.

4. Timeframes for the processing of exemption applications differ depending on the quality of the motivation and the evidence submitted.

B. Required Information

The application for exemption must contain the following information:

1. The applicant's name, surname, ID number and FSP number (where applicable).
2. The applicant's contact details. Where the applicant is a representative, the personal contact details must be provided.
3. The period for which the exemption is required and the reasons for such period.
4. A detailed explanation / motivation of why the exemption should be considered and, where applicable, evidence in support of the motivation must be provided. For example, if an applicant is stating that he/she requires an exemption based on medical grounds, then a letter from the relevant specialist or doctor must be submitted.
5. If the applicant applies for exemption from the competency requirements, it is recommended that the applicant include in the explanation / motivation any previous attempts made to meet the competency requirements. If no attempts have been made, the applicant must provide an explanation as to why no attempts have been made.
6. A copy of the applicant's ID / passport must accompany the application.
7. If the applicant seeks exemption from the prescribed fee and relies on affordability as the reason, the applicant must submit bank statements of all bank accounts of the applicant for the last 3 months as

evidence that the applicant cannot afford the fee.

8. The application and **all the supporting documents** together with the **proof of payment** must be submitted simultaneously.

C. Banking Details

1. There are different bank accounts that may be used for the payment of the fees.
2. Contact any of the following persons in the FSB's Finance Department to obtain the banking details:
 - a. Jacqueline Street 012 422 2894,
 - b. Ayanda Mgagula 012 367 7155,
or
 - c. Kefilwe Mushi 012 428 8193.

D. Applications must be submitted in one of the following ways:

Hand delivery:

For attention: FAIS Exemptions
Riverwalk Office Park, Block B
41 Matroosberg Road (Corner of Garsfontein and Matroosberg Roads)
Ashlea Gardens, Extension 6
Menlo Park, Pretoria, South Africa, 0081

Electronic mail

E-Mail address: FAIS.Exemptions@FSB.co.za

Postal address:

For attention: FAIS Exemptions
The Registrar of Financial Services Providers
PO Box 35655
Menlo Park
0102

Contact Details

Contact Centre:	0800 11 04 43 0800 20 20 87
Switchboard:	+27 12 428 8000
Facsimile:	+27 12 346 6941
Media Queries:	+27 12 422 2823
Email Us:	info@fsb.co.za
Anonymous Fraud & Ethics Tip Offs Hot-Line:	0800 31 36 26
Anonymous Fraud & Ethics email:	fsb@whistleblowing.co.za
For technical queries:	web.master@fsb.co.za

Addresses

Physical	Riverwalk Office Park, Block B 41 Matroosberg Road (Corner Garsfontein and Matroosberg Roads) Ashlea Gardens, Extension 6 Menlo Park Pretoria, South Africa, 0081
Postal	P.O. Box 35655 Menlo Park 0102

E-mail inboxes:

Purpose	Inbox
General FAIS related enquiries.	Faisinfo@fsb.co.za
Submission of profile change requests specifically relating to FSPs.	Faispfc@fsb.co.za
Submission of the excel rep import spread sheet. This e-mail address should only be used where the person submitting the excel spreadsheet is registered to submit on behalf of the FSP. Where the person is not registered to submit an excel spreadsheet on behalf of the FSP then the request should be sent to the faispfc@fsb.co.za inbox.	Reps@fsb.co.za
Submission of any requests to lapse licenses and	Fais.Lapse@fsb.co.za

Purpose	Inbox
enquiries relating to lapse requests that have been submitted.	
Requests for duplicate copies of FAIS licenses and annexures. Please ensure that proof of payment accompanies the request for a duplicate license copy.	Fais.Licensecopies@fsb.co.za
E-mail submissions of new license applications for FSPs.	Fais.Newlicense@fsb.co.za
E-mail submissions for application for phase 1 approval of compliance officers	Fais.COapprovals@fsb.co.za
Submission of specimen mandates for approval.	Fais.Mandates@fsb.co.za
All queries relating to the regulatory examinations e.g. queries related to duplicate certificates, how to register for exams, authentication etc.	Fais.Exams@fsb.co.za
Queries relating to qualifications e.g. credits, recognition of qualifications.	Fais.Qualifications@fsb.co.za
Queries relating to the Fit and Proper Requirements e.g. new entrants wanting to know what competency requirements they have to meet.	Fitandproper@fsb.co.za
Submission of documents and queries in response to an intention to suspend or suspension letter sent to an FSP.	Fais.Compliance@fsb.co.za
Extension requests for the submission of annual financial statements.	Faisfins2@fsb.co.za
Extension requests for the submission of annual financial statements.	Faisfins3@fsb.co.za
Queries on compliance reports and queries related to the FAIS online reporting system.	Faiscomp1@fsb.co.za
Submission of FAIS related complaints against key individuals, representatives and FSPs.	FaisComplaints@fsb.co.za
Submission of debarment notifications relating to representatives.	Debarment@fsb.co.za
Submission of exemption applications for exemptions specific to a person or FSP.	Fais.Exemptions@fsb.co.za
Submission of excel spread sheets to register for the regulatory examination exemptions that published under Board Notice 102 of 2012.	Fais.Examexemptions@fsb.co.za
Submission of proof that conditions associated with exemptions that were granted have been complied with.	Fais.conditions@fsb.co.za
Submission of DOFA related enquiries and requests for DOFA reports.	Fais.Dofa@fsb.co.za

APPLICATION FOR SPECIFIC EXEMPTIONS



FSP Name

FSP No

Instructions:

In terms of section 44 of the Act the Registrar may, on reasonable grounds, grant exemptions if satisfied that the factors referred to in subsection (1) has been complied with. Two types of exemptions may be granted by the Registrar namely, generic exemptions which will affect all FSPs or categories of FSPs or specific exemptions that will only apply to a specific FSP.

As regards specific exemptions a FSP is required to specifically make a request for such exemption and provide the necessary justification.

A. Exemptions from the Act (excluding exemptions from subordinate legislation)

The FSP must clearly indicate all the relevant sections of the Act (excluding subordinate measures promulgated there under) where an exemption is sought. Reasons for requesting the exemptions must be provided in a separate document that is numbered and attached to the application. Please note that the Registrar will consider the exemptions sought on a case-by-case basis, provided that full motivation for the exemption is furnished.

B. Exemptions from subordinate legislation

The FSP must clearly indicate all the relevant sections of the subordinate measures promulgated under the Act from which an exemption is sought. Reasons for requesting the exemptions must be provided in a separate document that is numbered and attached to the application. Please note that the Registrar will consider the exemptions sought on a case-by-case basis, provided that full motivation for the exemption is furnished.

A. Exemptions from the Act				
No.	Section	Description of exemption required		Documentation attached containing motivation
A1				
A2				
B. Exemption from other subordinate measures promulgated under the Act				
No.	Subordinate legislation	Section	Description of exemption required	Documentation attached containing motivation
B1				
B2				