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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 provision of the FAIS Act.

INTRODUCTION

The theme of this Newsletter is compliance officers, compliance function, compliance reports and the relationships between compliance officers, financial services providers ("FSPs") as well as this Office ("the Registrar").

The applicable sections of the Financial Advisory and Intermediary Services Act and its subordinate legislation is as follows:

- Section 17 of the FAIS Act.
- Sections 19(5) and 19(6) of the FAIS Act.
- Regulation 3 of Chapter III of the FAIS Regulations (published as Notice 879 in Government Gazette No 25092 dated 13 June 2003 and amended by Notice 297 of Government Gazette No 26112 dated 12 March 2004).
- Qualifications and experience of compliance officers in respect of financial services business (published as Notice 83 in Government Gazette No 25299 dated 08 August 2003).
- Determination of the criteria and guidelines for approval of compliance officers (published as Notice 84 in Government Gazette No 25299 dated 08 August 2003).
- Exemption of sole proprietors and partners from compliance officers qualifications and experience requirements (Published as Notice 99 in Government Gazette No 26844 dated 29 September 2004).
- Determination of compliance reports by compliance officers and authorised financial services providers.

THEME VISITS - COMPLIANCE FRAMEWORK IN SMALL FSPs

The FAIS Supervision Department is currently performing theme visits relating to compliance framework on small FSPs. The purpose of these visits is to determine whether all compliance measurements are in place, the level of compliance of a reviewed entity and identify problematic areas. Later in the year the results of theme visit will be communicated to all Small FSPs.

The Department has also started with evaluation of compliance practices that outsource their functions to FSPs to ensure that compliance practices fulfill its duties in terms of the Act.

CHANGES TO THE DETERMINATION OF FIT AND PROPER REQUIREMENTS

The Determination of Fit and Proper Requirements for Financial Service Providers, 2006 (the Determination) and the Exemption Regarding Certain Minimum Qualifications, 2004 has been amended. The purpose of the amendment to the Determination is to extend the period by which financial services providers, their key individuals and representatives must comply with the relevant conditional qualification requirements as detailed in Column Four of Table A and Column Three of Tables B and C of the Determination.

The Determination now requires that the aforesaid persons must within a period ending 31 December of the fourth year from the date of licensing or first appointment, as the case may be, complete the relevant conditional qualification requirements that applies to them. In other words, persons who would have had to comply with the requirements by 30 September 2007 have now until 31 December 2008 to obtain the required qualifications.

An exemption from the minimum qualifications was previously granted to providers who render financial services in respect of assistance policies as defined in the Long-term Insurance Act, No. 52 of 1998 and who had applied for authorisation on or before 31 December 2004. The latter Exemption would have expired on 30 September 2007. This Exemption has also been amended the result of which is that this category of providers now only have to comply with the qualification requirements by 31 December 2009.

REQUIREMENTS FOR APPOINTMENT OF COMPLIANCE OFFICERS

Section 17(1) of the FAIS Act prescribes that an FSP with more than one key individual or one or more representatives must appoint a compliance officer. This means that an FSP with only one key individual and no representative is allowed to conduct business without appointing a compliance officer. Such FSP is however not precluded from appointing a compliance officer should it so wish. A per-

son who opts not to appoint a compliance officer as per section 17(1) is expected to execute all the functions that would have been executed by a compliance officer if one was appointed. Such appointment of a compliance officer must first be approved by the Registrar.

COMPLIANCE OFFICER APPROVAL PROCESS

Application for approval of a compliance officer must be submitted on Form FSP 13 and must be accompanied by all the information required for the purpose of assessing such application. The following information or proof thereof is required:

- Completed Form FSP 13.
- Details of employment history that shows that an applicant has at least three years experience in the financial services industry.
- A certified copy of a accounting or legal university degree or its equivalent or proof that a person is already appointed as a compliance officer by virtue of other Law or that the applicant is a member of the Compliance Institute of South Africa.
- Information that shows that the applicant complies with personal character qualities of honesty and integrity.
- Proof that the applicant has sufficient knowledge of the FAIS Act as well as the duties and obligations imposed on compliance officers by the said act.
- Proof that the applicant has adequate resources to ensure proper compliance monitoring, support and direct access to management.
- Proof that the applicant has ability to operate objectively and independently.
- Proof that the applicant has ability to function in a manner that ensures that there is no actual or potential conflict of interest.
- Proof that the applicant has ability to keep written records of all activities undertaken in the course of compliance monitoring.
- Proof that the applicant has the ability to liaise directly with the Registrar.

A person who is a sole proprietor, partner, member, trustee, director, auditor, principal officer, public officer or company secretary of a financial services provider may apply and be approved as a compliance officer without complying with the qualification and experience requirement (but must comply with other requirements specified above).

A list of approved compliance offices may be viewed on our website (www.fsb.co.za on the homepage, click on the word "FAIS" thereafter on "[List of Approved Compliance Officers](#)").

FUNCTIONS OF COMPLIANCE OFFICERS

The role of a compliance officer is to assist management of an FSP to establish and maintain a compliance function within the risk management framework of the FSP. The role of a compliance officer can be defined into three main functions namely support, monitoring and training.

In terms of the FAIS Act the following roles are explicitly mentioned in the legislation:

- Monitor compliance with the FAIS Act;
- Submit compliance reports and other compliance related reports to the Registrar;
- Take responsibility for liaison with the Registrar;
- Supervise the compliance function which is established by the FSP;
- Act with diligence, care and degree of competency required from a compliance officer;
- Provide the FSP with written reports at least quarterly indicating the course of, and progress achieved with, compliance monitoring duties and make recommendations to the FSP;

Compliance officers play a very important role in the regulation of FSPs. Their functions complement the Registrar's functions and therefore make it easier for the Registrar to carry out its regulatory functions. Their expected interactions with the FSPs and their knowledge of the business of the FSP places them in a better position to be able to identify issues of non-compliance as they so occur and put in place appropriate controlling and/ or remedial measures.

Compliance officers are expected to liaise with the Registrar and report to the Registrar any irregularities or suspected irregularities that they become aware of in the course of performing compliance functions.

The management (owners or directors) of an FSP is ultimately responsible for the overall compliance with the provisions of the FAIS Act, this applies whether or not a compliance officer has been appointed.

Currently the Registrar is considering the role of compliance officer in FSPs as well as the role of external compliance officers. In this regard the Supervision department is conducting onsite visits to compliance practice that outsource their functions to FSPs. The current criteria and guidelines for appointment of a compliance officer as well as the provisions of section 17 are being reconsidered and might have to change to ensure that the compliance officer's role in FSPs is clearly defined and the industry standards that has been developed by the Compliance Institute of South Africa become part of the criteria when measuring the effectiveness of a compliance function in FSP.

For more information on the compliance standards visit the Compliance Institute of South Africa's website www.compliancea.org

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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. 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

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 click on the word "FAIS"

PROCEDURES FOR APPOINTING OR TERMINATING SERVICES OF A COMPLIANCE OFFICER

First time appointment of a compliance officer:

An FSP that needs to utilise the services of an already approved compliance officer must apply to Registrar for approval of such appointment. Such appointment must be accompanied by:

- completed Form FSP 6,
- motivation why the compliance officer is of the view that it will function independently and objectively from an FSP and
- proof of payment of R300,00.

Appointment of new compliance officer as a replacement for the previous or old compliance officer:

The following information must be submitted to the Registrar:

- completed Form FSP 6,
- motivation why the compliance officer is of the view that it will function independently and objectively from an FSP and
- proof of payment of R300,00.
- A statement from the old compliance officer on what they believe to be the reasons for termination of compliance relationship with the FSP. (It may be that the "old" compliance officer has resigned or that their contract has been terminated by the FSP).
- confirmation as to whether or not there is any information that the old compliance officer needs to bring to the attention of the Registrar (and would have done so if their services had not been terminated).

Currently the Registrar receives thousands profile change requests wherein it is requested for replacement of an old compliance officer for new compliance officer. The problem that is been encountered is that virtually none of these profile changes include a statement detailing reasons for termination. It is also a concern to this Office that compliance officers seems to be unaware of this requirement regardless of it being clearly stated in the FAIS Act (section 17(1)(c) read with section 19).

PURPOSE OF COMPLIANCE REPORTS AND THE METHODS OF SUBMISSION THEREOF

A compliance report is submitted annually or within such period as the Registrar may indicate. The purpose of compliance reports is to determine and assess the level of compliance with issues identified in the compliance report

A format and contents of the 2007 compliance report is being deliberated on. It will, however, not be a significant departure from the previous compliance reports excepts for sections applicable to discretionary, administrative and Forex FSPs. There is a possibility that the reporting dates and period will not change. Once the 2007 compliance report is finalised it will be published in the government gazette, on our website and emailed to those that have registered for electronic compliance reporting.

Compliance reports may be submitted by hardcopy (where a physical report is manually completed and submitted) or electronically (where completion and submission of a report is done online).

Hard copy submissions

Step 1: Obtain a copy of compliance report from:

- our website www.fsb.co.za. (on the homepage click on the word "FAIS", thereafter click on the word "Compliance Reports").
- The Government Printer. Its telephone is (021) 465-7531 or (012)3344500.
- Butterworth publishers

Step 2:

1	Carefully complete the compliance report, ensuring that all the relevant sections are completed.
2	Ensure that all the questions within a section are correctly answered.
3	Review your answers in the compliance report and check that no contradictory answers are provided.
4	If satisfied, submit the complete report to the Registrar by ordinary post, registered post or hand deliver at:

The advantage of electronic submissions

A compliance officer or a key individual as the case may be need to register in order to be able to submit compliance reports online. We encourage compliance officers and financial services providers to utilise electronic submission of compliance reports for the following reasons:

- The software is user friendly.
- The software is free (all that is needed is for the user to register).
- The software has built-in safety measures and check lists to assist the user in the completion of the compliance report. (e.g. the software will notify the user if there are any fields that were omitted or where contradictory answers are provided).
- Electronic submissions saves time in that the information submitted is automatically captured onto the system.
- The software automatically reports errors that may have been made when validate button is clicked .
- A completed report is automatically submitted to the registrar at a click of a button.
- An acknowledgement of receipt is automatically e-mailed to the sender upon receipt of the compliance report.

Hardcopy submissions are not encouraged due to the following reasons:

- Hardcopy compliance reports are prone to errors.
- All hardcopy compliance reports that are found to have errors are returned to the sender via ordinary post and are regarded as not being received.

We will be engaging in a drive to encourage registration of electronic submission of compliance reports.

Electronic submissions

The procedure for registration is as follows:

Step 1 Log into our website; www.fsb.co.za. On the home page click on the word "FAIS", thereafter click on the word "2006 compliance reports" and then scroll down to;

"Financial service providers and compliance officers are encouraged to use the electronic submission method, to register for the program please [click here](#) " To register for the program please [select](#) "click here". You will then be taken to a screen that looks like this:

Step 2 Compliance Software Registration
Please click [here](#) to view a list of registered users.

Registration Type	FSP without <input type="button" value="v"/>
Compliance Practice No	<input type="text"/> Press (TAB) to submit number.
Compliance Practice Name	
Compliance Officer	<input type="button" value="v"/>
Compliance Officer Name	
Compliance Officer Address	
Compliance Officer Tel No	
Compliance Officer eMail Address	
Registration Validation	<input type="text"/> (ex."3kbRQxuGWhAkEsPP" without the quotes)

Registration Type	Your options are: "Compliance Practice/Officer" for those that are approved compliance officers or "FSP without Compliance Practice" for those FSPs without compli-
Compliance Practice NO	Input your compliance number on this field (if you are an approved compliance officer) OR FSP number (if you are a key individual of an FSP that is permitted to operate without a compliance officer).
Compliance Practice Name	The information on this field will appears automatically. Please
Compliance officer	Press the dropdown menu to reveal the identity number of the person that you want to register. Note that the identity number appears automatically in this field. You need to verify the correctness
Compliance Officer Name	This information appears automatically. You need to verify the cor-
Compliance Officer Address	This information appears automatically. Please check if the ad-
Compliance Officer Tel No:	This information appears automatically. Check the correctness
Compliance Officer e-mail Address	This information appears automatically. Please ensure that you check the correctness of the email address as it appears here. This is important as transmission of electronic compliance report is
Registration Validation	Leave blank for now

Electronic submissions

If your e-mail address and any contact details is displayed incorrectly, please send through a profile change to correct it before registration. E-mail this to faispfc@fsb.co.za.

- Step 3 Click on the "Register" button once you have verified the correctness of the information appearing on the above fields.
- Step 4 An email will be sent to the email address that was shown above. Attached to this email will be a Registration validation code.
- Step 5 On receipt of this email repeat the steps specified above until the Registration validation field stage. Please input the registration validation code (leave out the quotation marks) and then click on "Software". The compliance report software will be emailed to you with instruction on how to download it into your computer.

FREQUENTLY ASKED QUESTIONS RELATING TO THR COMPLIANCE REPORT

- **Do the contents of the compliance report change from year to year?**
The contents of the compliance report changes from year to year. Therefore the 2006 compliance report may not be used for 2007 reporting.
- **Should my financial statements and my compliance reports be submitted simultaneously?**
Not necessarily, financial statements are submitted within 6 months after financial year end while compliance reports are submitted within the period specified on the report.
- **My compliance officer changed during the course of the year (reporting period), who should complete and sign the compliance report?**
Your new compliance officer may only complete and sign the compliance report if his/her appointment was communicated and approved by the Registrar.
- **I have changed my financial year end during the reporting period, do I use the "old" or the "new" financial year end for the purpose of submission of compliance reports?**
Utilise the new year-end only if the change was communicated and approved by the Registrar
- **My business is dormant I am still required to submit a compliance report?**
The submission of a compliance report is not dependent on whether the FSP business is dormant or active. All FSPs who hold a FAIS license must submit compliance reports.
- **I have requested my FSP license to be lapsed, am still required to submit the Compliance Report or Financial statements?**
You will be required to submit your compliance report if your request to lapse your license was submitted after your reporting period.
- **I have submitted my compliance report electronically and I have also received an e-mail back saying "Import Successful". I have now received a letter from your office stating I that I have not submitted my compliance report and there will be penalties charged. Will I be held accountable for this mistake?**
You be will requested to submit the print of the e-mail which will be verified against our records. Any email that cannot be traced to our records may attract penalties.