



Financial Sector
Conduct Authority

Irregularity reporting 2022



Presented by:
Conduct of Business Supervision

Topics to be discussed

1. Applicable provisions
2. Definitions
3. S19(4) Auditor's irregularity report guidelines
4. S19(4) Materiality assessment
5. IRBA Guidelines on Section 19(4) reports
6. Reportable events - section 19(4) of the FAIS Act
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8. Method of submission
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10. Submission Considerations
11. Contents of an irregularity report
12. Declaration Form
13. Reportable events
14. Beneficial Ownership Update

Applicable provisions

Financial Advisory and
Intermediary Services Act
("FAIS Act")

Two instances

- Section 17(1)(c)
- Section 19(4)
- The provisions of section 19(4), (5) and (6), relating to an auditor of an authorised financial services provider,
- apply with the necessary changes to a compliance officer.

Provisions make reference
to **must** and *not may*

It is a **statutory obligation**
to submit an irregularity
report.

Definitions

❖ Irregularity

- An event of non-compliance with or a breach of the FAIS Act and any event that has, or has a potential to have an adverse effect on the authorisation of the FSP, or the clients of such provider.

❖ Material

- May be defined as being of real importance or great consequence.
- Reportable matters are those that will have a significant adverse effect on the authorisation of the FSP or the clients of such provider.

❖ Sec 17(1)(c)

- The provisions of section 19(4), (5) and (6), relating to an auditor of an authorised financial services provider, apply with the necessary changes to a **compliance officer**. *(the reference to “auditor” in sections 19(4), (5) and (6), is replaced by “compliance officer” for purposes of a section 17(1)(c) report)*

❖ Section 19(4)

- Despite anything to the contrary contained in any law, **the auditor** of an authorised FSP must report to and inform the Authority in writing of any irregularity or suspected irregularity in the conduct or the affairs of the authorised FSP concerned of which the auditor became aware in performing functions as an auditor and which, in the opinion of the auditor, is material.

S19(4) Auditor's irregularity report guidelines

In terms of Section 19(4) of the Act, the auditor must inform the Authority **directly in writing** of any irregularity or suspected irregularity, in the conduct or the affairs of the FSP concerned, which the **auditor became aware of in performing functions** as auditor and which, in the opinion of the auditor, **is material**.

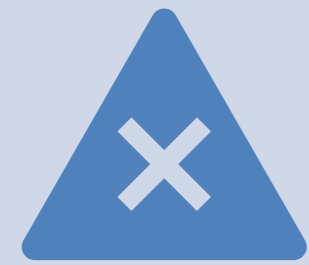
The Authority requires the auditor to report Section 19(4) irregularities as and when they are identified during the auditor's relationship with the FSP. The Authority may:

- by notice direct that person—
 - the control of that person and which relate to the subject matter of such contravention or failure;
 - to appear before the Authority at a specified time and place for the purpose of discussing such matter with the Authority; or
 - arrange for the discharge of all or any part of that person's obligations in terms of This Act;

if satisfied that in the case concerned significant prejudice or damage to clients has occurred or may occur, apply to a Court for an order restraining such person from continuing business or dealing with the funds or other property held by such person on behalf of clients or other persons, pending the institution by the Authority of an application or action contemplated in section 33 (1) and (2), or the exercising by the Authority of such other legal remedy as may be available to the Authority;

if prejudice or damage may have occurred to a client, refer the matter, together with any information or documentation in the Authority's possession, to the Ombudsman to be dealt with as a complaint by the client concerned.

S19(4) Auditor's irregularity report guidelines



A report is made regardless of steps taken by management to correct the irregularity and does not allow for a 30-day period within which members of the management board are allowed to make representations in respect of the report in accordance with IRBA guidelines.



The irregularity does not need to be a proven occurrence, as indicated by “*any irregularity or suspected irregularity*”. Where the auditor suspects that an irregularity would have been reported had sufficient proof been available to conclude that it was a reportable irregularity, the auditor will report that suspected irregularity and provide the Authority with the basis for the suspicion. It is advisable in circumstances of uncertainty to obtain legal advice.



Any reportable irregularity reported in terms of Section 45 of the APA would constitute an irregularity in terms of Section 19(4) of the Act. However, an irregularity in terms of Section 19(4) of the Act is not necessarily a reportable irregularity in terms of Section 45 of the APA - the auditor shall also consider whether Section 45 of the APA applies.

S19(4) Materiality assessment

The Act leaves the determination of whether an irregularity is material or not up to the opinion of the auditor.

The materiality factors that are to be considered for the purposes of the fair presentation of the financial statements may not be relevant when determining the materiality factors for the purpose of Section 19(4). Materiality, in the context of Section 19(4), is unlikely to exceed materiality for financial statement purposes, and in most instances will be of a lesser value or may be qualitative in nature.

The underlying intention of Section 19(4) is to direct the auditor's attention to:

- Matters that that cannot be tolerated in the conduct of **or** in the affairs of a Provider acting under the FAIS Act, if all the objectives are taken into consideration; and
- The Authority relies on the auditor's assistance and judgement in identifying the non compliances
- Matters which, in particular, constitute contraventions of provisions of section 19(3) of the FAIS Act and reporting requirements of section 19(4) of the FAIS Act that directly
 - threaten the continued maintenance of the Provider's licence,
 - or constitute conduct contrary to the public interest in the proper exercise of the rights granted by a FAIS licence.

Reportable events - section 19(4) of the FAIS Act

The irregularities identified below are examples of irregularities that would typically be reported to the FSCA in terms of Section 19(4) of the Act. The list is not exhaustive.

1. The audit client is acting as a Provider, as defined in the Act, but is not licensed as required by Section 7(1).
2. The Provider has dealt in a financial product for his own benefit, account or interest based on advance knowledge of pending transactions for its clients; or on any *non-public information*, the disclosure of which would be expected to affect the prices of such product.
3. The Provider appoints key individuals and representatives to manage and oversee the business of the Provider, but these individuals and representatives do not meet the fit and proper requirements, or they do not hold the necessary qualifications.
4. Conduct contravening any provision of the Act, the General Code of Conduct or any other subordinate measure promulgated under the Act will constitute an “irregularity” and includes matters pertaining to the Provider’s internal financial administration, where this appears irregular or improper in relation to industry practice.
5. An irregularity may not always lead to financial loss for the Provider or an outsider, but might, among others, represent a serious regulatory breach of which the Authority must become aware.

Reportable events - section 19(4) of the FAIS Act

The irregularities identified below are examples of irregularities that would typically be reported to the FSCA in terms of Section 19(4) of the Act. The list is not exhaustive.

6. The provider receives commission income for product categories that it is not authorised for on its license.
7. The provider has recorded cash or unreferenced cash deposits that cannot be traced to a related transaction or service. Auditors must consider money laundering and terror financing triggers when auditing bank statements.
8. The provider maintains varying financial statements for different regulators.
9. Non-compliance with the financial soundness requirements.
10. A provider is declared insolvent/provisionally insolvent or in the process of being declared as such.
11. A provider is placed under liquidation, provisional liquidation or is in the process of being declared as such.
12. A provider not reporting non-compliance with financial soundness early warning non-compliance.
13. A provider that holds, controls or has access to client assets or that collects, holds or receives premiums or other monies in respect of a financial product not maintaining a separate bank account in accordance with S10 of the General Code.
14. A provider under business rescue or business rescue proceedings and has not disclosed this to the authorities.

S17 Irregularity guidelines

The provisions below apply to both internal and external compliance officers.

Section 17(1)(c) of the FAIS Act read together with section 19(4) provides that the compliance officer of an authorised financial services provider (FSP) **must**

- report to and inform the Authority in writing of any irregularity or suspected irregularity in the conduct or the affairs of the authorised FSP concerned of which the compliance officer became aware in performing functions as compliance officer,
- and which, in the opinion of the compliance officer, is material.

An authorised FSP must ensure that the reports referred to in paragraph (a) are submitted in accordance with the provisions of that paragraph.

This type of reporting should not be delayed to form part of the periodic compliance reports to the Financial Services Conduct Authority (FSCA). Reporting of material irregularities assists the FSCA in its supervisory duties and contributes valuable information in identifying trends of non-compliance.

S17 Irregularity guidelines

The compliance officer must report irregularity to the client, if the compliance officer is under supervision, to his/her supervisor, without undue delay. In the notification to the client, it must be stated that the matter will be reported to the FSCA, the details of the matter and give them reasonable opportunity to provide written comments as to why the irregularity is not material and/or the steps that will be taken to address it.

Thereafter, the matter must be reported to the FSCA without undue delay, including any response by the client as to why the irregularity should not be considered material and steps taken by the client since being informed of the irregularity, to rectify it.

A Guide on reporting of material irregularities was published by the Compliance Institute of Southern Africa for additional information.

Delayed reporting

- events of a lesser serious nature, this will include, but is not limited to, failing to notify the FSCA of a name, address or management change.
- the compliance officer can allow an appropriate time for the FSP to rectify the breach.
- The appropriate period will depend on the individual circumstances surrounding the irregularity
- must be appropriate to the nature, scale and complexity of the business of an FSP.
- Once the allocated period has lapsed and nothing has been done to rectify the breach, further action will be taken, and the compliance officer will submit a delayed irregularity report to the FSCA.

Method of submission

The report must be submitted in writing

Preferred method of submission:

- Electronic submission through the e-portal
- Necessary attachments must be uploaded, where applicable

May submit a hard copy together with supporting documents

What happens after the irregularity report is submitted to the Authority?

The information contained in the report is analysed by the responsible Analyst

Analyst may request further information from the compliance officer, where necessary

Check non-compliance with the financial sector laws

Notify the FSP about the irregularity report and/or request further information from the FSP where necessary

The facts of the case will determine the action taken by the Authority

Submission Considerations

CO submit IR for own FSP:

Section 17(1) (c) irregularity report will be handled by the **FAIS Supervision Department**.

CO submit IR for another FSP:

Section 17(1) (c) irregularity report will be handled by the **FAIS Compliance Department**.

When making a report and having given due regard to the facts of the report,

the compliance officer should proceed to complete the **Material Irregularity Report**

which can be accessed on the FSCA's website under the FAIS tab & sign the declaration accordingly.

Once the report is submitted, an automated receipt will be received by the FSCA.

Compliance officers are required to check that the report reflects on the client profile correctly and keep the receipt for future reference.

Contents of an irregularity report

The irregularity report must include the following:

- ❖ The personal details of the compliance officer
- ❖ Report type: Immediate or delayed
- ❖ Category of the irregularity:
 - Licence,
 - product,
 - finance/capital,
 - litigation/disciplinary,
 - custody of funds and other
- ❖ Details of the irregularity
- ❖ Date of occurrence of the irregularity
- ❖ Date of discovery of the irregularity
- ❖ Whether the key individual has been notified of the irregularity or not
- ❖ Whether the matter been resolved or not
- ❖ Supporting documents must be attached, where applicable



Declaration Form

- ❖ The irregularity report must be accompanied by a *declaration* which includes the following information:
 - Compliance practice number
 - Compliance practice name
 - Compliance officer Identity number
 - Name of compliance officer
 - Name of the FSP
 - FSP number
- ❖ The declaration *must be signed and dated* by the compliance officer
- ❖ Contents of an irregularity report



Reportable events - section 17(1)(c) of the FAIS Act

The following list of events are examples of material irregularities that need to be reported immediately. This is not an exhaustive list of material events:

1. An FSP continuing to conduct business after its authorisation has been refused, suspended or withdrawn or after the authorisation has voluntarily lapsed.
2. Misrepresentation/manipulation of information submitted in support of the FSP's application for authorisation.
3. An FSP rendering financial services in respect of a category or product for which the FSP has not authorised.
4. An FSP purporting to be licensed to render financial services as an authorised FSP in respect of a product if that product is not defined in the FAIS Act and the authorisation of the FSP is thus not relevant to services being rendered in respect of such product e.g. crypto assets (before been declared a financial product).
5. Representative rendering financial services on behalf of the FSP in respect of product(s) for which he/she is not appointed for.
6. An FSP conducting financial services related business with a person rendering financial services if that person is not authorised/licensed as an FSP or representative to render financial services.
7. A person who acts as a key individual but is appointed as a director/shareholder to conceal that such person does not meet the fit and proper requirements for a key individual.
8. Non-compliance with licensing conditions.

Reportable events - section 17(1)(c) of the FAIS Act

9. False or misleading declarations in respect of the fit and proper status of a key individual.
10. Non-declaration of an adverse change in a key individual's status in respect of compliance with the Fit and Proper Requirements in terms of FAIS e.g., the key individual is sequestered An FSP operating without a key individual where the FSP is not a sole proprietor.
11. Non-compliance of juristic representatives with the FAIS requirements.
12. Any act of fraud, corruption, undue influence or an act deemed illegal by any that will affect the fit and proper requirement of the FSP involved.
13. An FSP preventing its compliance officer(s) from performing the functions of the compliance officer(s).
14. The FSP provides false or misleading information to the clients during the rendering of financial services
15. Where the accreditation of an FSP with the Council for Medical Schemes has been lapsed or suspended and the FSP continues to render financial services in respect of Health Services Benefits.
16. The FSP/Representative continues to render financial services in respect of health service benefits despite the CMS accreditation having expired
17. An FSP not maintaining records as required in terms of section 18 of the FAIS Act.

Reportable events - section 17(1)(c) of the FAIS Act

18. An FSP not maintaining full and proper accounting records.
19. Non-compliance with the operational ability of the FSP requirements.
20. Non-compliance with handling of clients' funds/money/premiums held on behalf of clients.
21. Non-compliance with the complaints handling requirements.
22. Non-compliance with the termination of agreements or business requirements.
23. Non-compliance with the suitable guarantees or professional indemnity or fidelity insurance cover requirements.
24. Non-compliance with the services under supervision requirements.
25. Non-compliance with the financial soundness requirements.
26. An FSP declared insolvent or provisionally insolvent or in the process of been declared insolvent or provisional insolvent.
27. An FSP placed under liquidation, provisional liquidation or in the process of being liquidated or provisionally liquidated
28. An FSP not reporting non-compliance with financial soundness early warning non-compliance.
29. Non-submission of Annexure Six: Form A: Liquidity Calculation
30. An FSP under business rescue or business rescue proceedings.

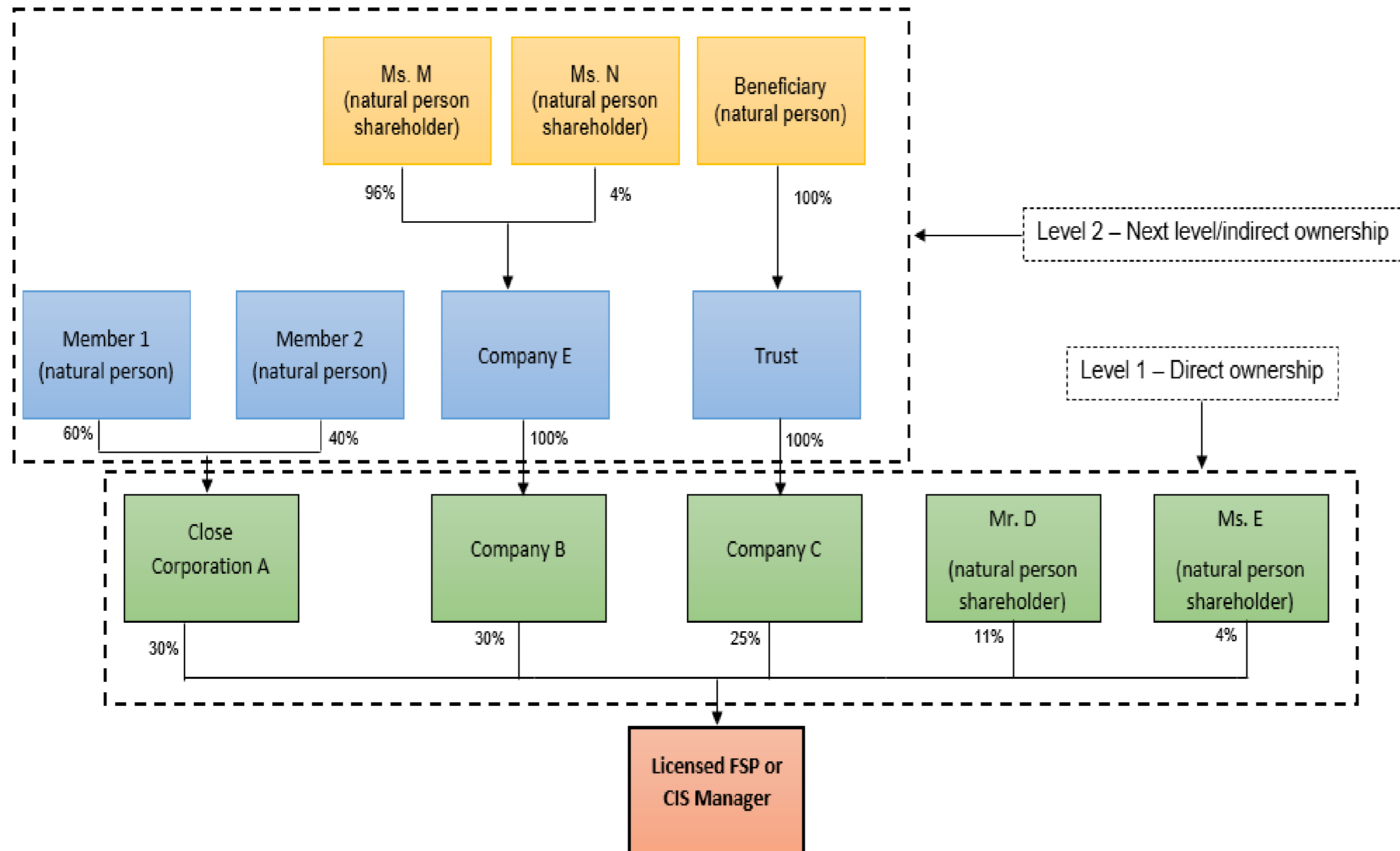
Reportable events - section 17(1)(c) of the FAIS Act

31. Failure to request approval/notify the Authority of FSPs of a change in the financial year-end of the FSP.
32. Failure to debar representatives who have materially contravened the provisions of the Act.
33. A representative which has been debarred renders financial services on behalf of the FSP.
34. Non-compliance with nominees of administrative and discretionary FSPs requirements
35. Non-compliance with the Code of Conduct for Administrative and Discretionary FSP (Inclusive of Hedge Funds FSPs)
36. Client mandate breaches by administrative and discretionary FSPs.
37. An FSP creating/operating/utilising product structures (e.g., structures facilitating the aggregation of investments from clients/pooling vehicles) in contravention of legislation regulating such structures.
38. A Category II, IIA or III FSP selling financial products owned by such FSP to clients or buying financial products owned by clients for its account.
39. Manipulation of the register of representatives, e.g., to influence the number of levies to be paid to the FSCA.
40. The FSP is engaging in a rent-a-license practice
41. The FSP is engaging in the rent-a-KI practice
42. An FSP preventing its auditor from performing the functions of the auditor.
43. Continued non-compliance after the compliance officer directed that rectification was required.
44. Any undesirable practices by the FSP.

Collection Beneficial Ownership Information

- ❖ The Authority published FSCA Information Request 6 of 2022 (General) on 12 August 2022, requesting ownership details of certain financial institutions based on a recommendation by the Financial Action Task Force (FATF) who is a global watchdog for money laundering and terrorist financing.
- ❖ More information on who FATF is and what they do is available in the request for information (RFI) which will be posted in the chat for download.
- ❖ The collection of the beneficial ownership information is applicable to all FSPs.
- ❖ However, the following FSPs are excluded from submitting this information to the Authority:
 - Banks
 - Mutual banks
 - Insurers
 - FSPs that are authorised for non-life insurance and/or health service benefit products only
 - Sole proprietors
 - Partnerships

- ❖ Impacted financial institutions must upload an organogram depicting the total ownership and control structure of the institution to enable verification of the ownership information by the FSCA. Below is how an organogram should look:



- ❖ The Beneficial Ownership information can only be submitted via the FAIS e-Portal
- ❖ A step-by-step user guide is available to assist you with the process (a copy will be posted in the chat for download)
- ❖ We will now do a live demo on how you complete the information on the e-Portal

**END.
THANK YOU.**

