



Financial Sector
Conduct Authority

FSPs and managing representatives

2023

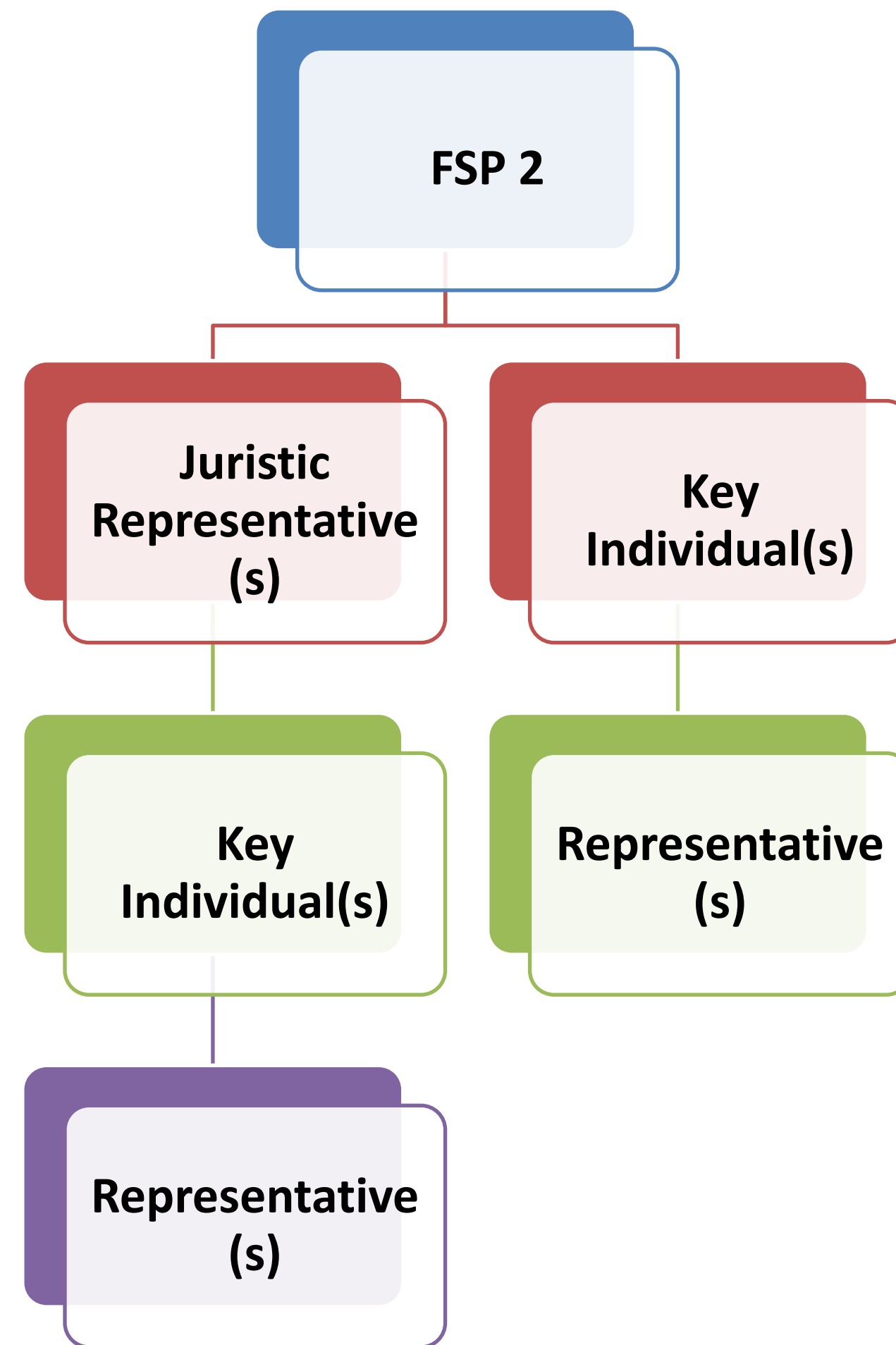
Important legislative changes (3)

Notice	Purpose
BN 706 & 707 of 2020	<p>Amendment of the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003 and the Specific Code of Conduct for Authorised Financial Services Providers and Representatives Conducting Short-term Deposit Business, 2004</p> <p>Amendment of the Determination of Fit and Proper Requirements, 2017</p>
FSCA FAIS Notice 86 of 2018	Exemption Of Services Under Supervision

A representative is:

- Any person who renders a financial service
 - To a client
 - On behalf of a provider (licensed FSP)
 - By virtue of an employment contract with the provider or
 - By virtue of a mandate from the provider or client
- **NOT:** A person who provides clerical, technical, administrative, legal, accounting or related service **IF:**
 - That service requires no judgment; or
 - Does not specifically lead a client towards a financial product transaction when the client merely enquires about the product or service; or
 - Is just factual, objective information in relation to the description of a financial product.

FSPs and Representatives



FSP is responsible for:

- Due diligence & verification before appointing representatives
- Record keeping – competence register
- Competence of staff
- Supervision of staff
- Oversight over their rendering of services
- Operational ability
- Governance

Honesty & Integrity

- S10: Disclosure of information relating to honesty, integrity and good standing
 - FSP and KI: disclose to Authority
 - Rep: disclose to FSP
 - All information that may be relevant to determine compliance with the requirements

Adhere to:



- Disclose to FSP if there are any changes
- FSP must decide on materiality
- S10 of Fit and Proper

Competence

Competence



DOFA is important

- General competence requirement (section 12 of BN 194)
- Qualification(s) – **once off**
- Experience – depends on products
- RE5 – **once-off**
- Class of Business – **once-off**
- Product specific training - **continuous**
- CPD - **continuous**

Qualifications

Must be on the list of approved qualifications

- <https://www.fsca.co.za/Regulated%20Entities/Pages/LR-FAIS-Fit%20and%20Proper.aspx>
- Can obtain under supervision if minimum qualification is met

Must meet:

- At least 3 relevant subjects as per BN 194 of 2017
- At least 1 subject at final year level
- Quantitatively and qualitatively relevant

Experience

Categories of products

- Varies in period according to category

Can obtain under supervision

- FSP must have KIs and/or qualified representatives to act as supervisors

Class of Business Training

1.	Short-term Insurance: Personal Lines
Subclasses	
1.1	Personal lines: Accident and health policy
1.2	Personal lines: Liability policy
1.4	Personal lines: Miscellaneous policy
1.5	Personal lines: Motor policy
1.6	Personal lines: Property policy
1.7	Personal lines: Transportation policy
1.8	Personal lines: Short-term reinsurance policy
2.	Short-term Insurance: Commercial Lines
Subclasses	
2.1	Commercial lines: Accident and health policy
2.2	Commercial lines: Engineering policy
2.3	Commercial lines: Guarantee policy
2.4	Commercial lines: Liability policy
2.5	Commercial lines: Miscellaneous policy
2.6	Commercial lines: Motor policy
2.7	Commercial lines: Property policy
2.8	Commercial lines: Transportation policy
2.9	Commercial lines: Short-term reinsurance policy

Classes of Business

3.	Long-term Insurance
Subclasses	
3.1	Assistance policy
3.2	Life risk policy
3.3	Life investment, policy
3.4	Fund policy
3.5	Sinking fund policy
3.6	Long-term reinsurance policy
4.	Pension Fund Benefits
5.	Short-term and Long-term Deposits
6.	Structured Deposits

7.	Investments
Subclasses	
7.1	Shares
7.2	Money market instruments
7.3	Debentures and securitised debt
7.4	Bonds
7.5	Derivative instruments, warrants, certificates or other instruments
7.6	Securities and Instruments
7.7	Participatory interests in a collective investment scheme
7.8	Participatory interest in a CIS hedge fund
7.9	Retail Pension Benefits
8.	Forex Investments
9.	Health Services Benefits

- ❑ Regarded as foundational product knowledge i.e. the fundamentals of short-term insurance
- ❑ These principles don't change – once off training

Class of Business Training

- Section 29 – criteria that must be covered in the training
- Must be trained and assessed by an accredited training provider / higher learning institution
- Record keeping requirement – competence register to be updated within 15 days after training occurred
- Retain records for a period of at least 5 years



Product Specific Training

- Must complete product specific training before any services are rendered.
- Cannot work under supervision to complete product specific training.
- Product specific training refers to the specific product in respect of which services are rendered that is unique to that particular product supplier.
- Product training **includes product amendments:**
 - ✓ *Any person can conduct this training*
 - ✓ *Not applicable to Cat II, IIA and III FSPs*
 - ✓ *Takes place each time a product change is made*
- Same record keeping requirement as for COB.
- FSP must provide confirmation of training to product supplier where requested to so.



S30: Recordkeeping

- Competence register
- Record within 15 days of the training
- Retain all info for at least 5 years
- Provide proof of training to:
 - product providers
 - KIs and reps

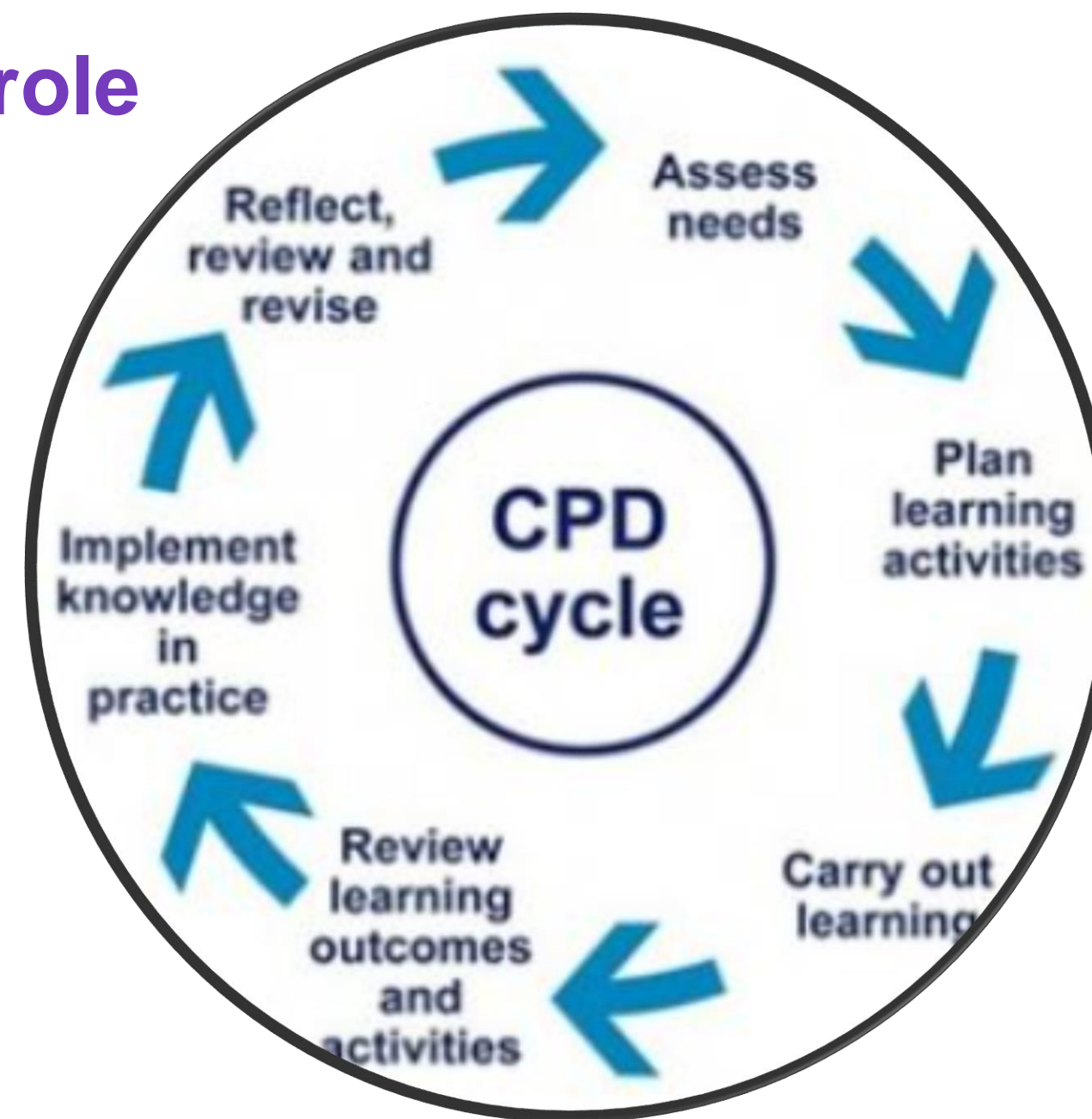


Background: Continuous Professional Development

CPD cycle: 1 June to 31 May

✓ **RELEVANT** to the function and role

✓ **CONTRIBUTE** to the knowledge, skills, expertise, professional and ethical standards



✓ **NOT** about merely collecting CPD hours

✓ **TAKE INTO CONSIDERATION** changes to internal / external conditions

✓ **ADDRESS ANY IDENTIFIED GAPS** in technical knowledge, generic knowledge, the context within which the financial services are rendered

Requirements: Continuous Professional Development

Example:

X = Number of annual required CPD hours **12 hours**

Y = Number of months absent from work in a particular CPD cycle **5 months**

Z = Required pro-rata CPD hours

$$(\mathbf{12\ hours} \div 12 = 1) \times (12 - \mathbf{5\ months} = 7) = 7 \text{ pro-rated CPD hours}$$

Exemption Of Services Under Supervision

FSCA FAIS Notice 86 of 2018

<https://www.fsca.co.za/Notices/FSCA%20FAIS%20Notice%2086%20of%202018.pdf#search=Notice%2086>

Exemption Of Services Under Supervision

The purpose of this exemption:

- To allow for the appointment of representatives to work under supervision where the representatives were appointed for the first time in respect of a specific category and subcategory;
- To allow for the newly appointed representatives to work under supervision subject to specific conditions;
- To allow sufficient time for the newly appointed representatives to meet the relevant competence requirements in relation to the category and subcategories for which they were appointed.
- Does not apply to product specific training.

Conditions

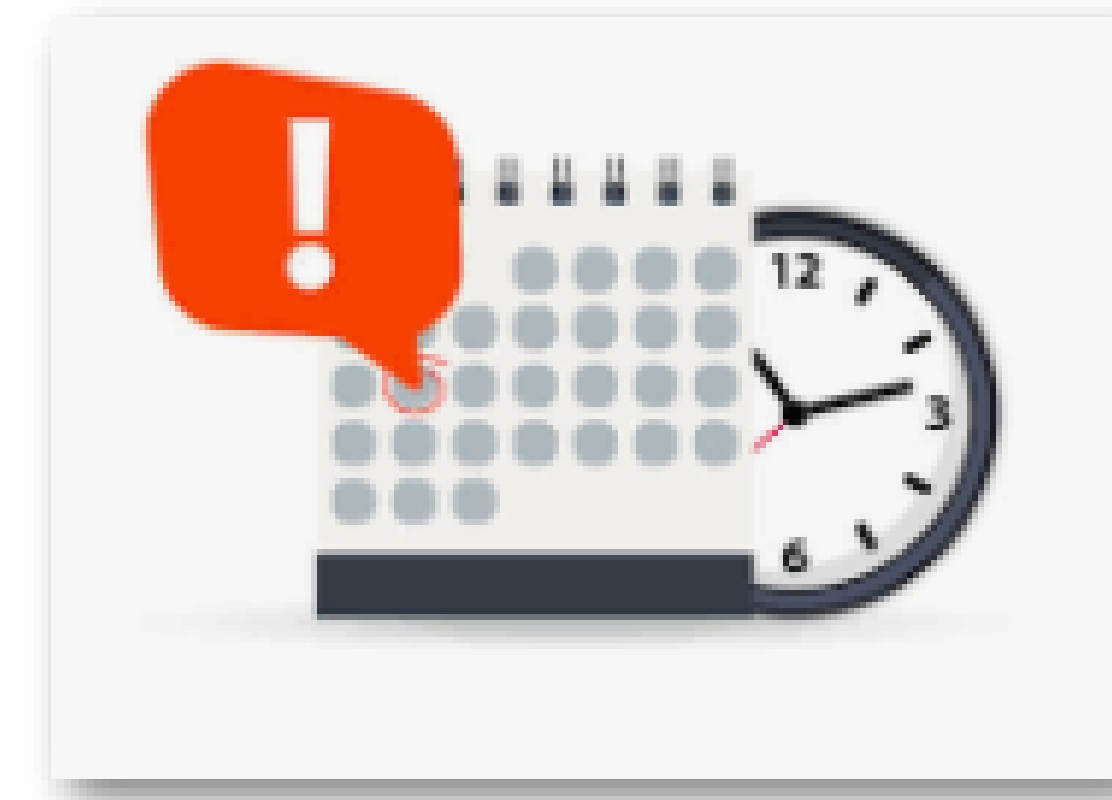
1: ENTRY LEVEL REQUIREMENTS: Representative of...

- Category I & IV:
 - Grade 12 National Certificate or equivalent
- Category I execution of sales only:
 - Grade 10 or equivalent
- Category I appointed for subcategory 1.1 and 1.19 only:
 - excluded
- Category II, IIA and III:
 - a recognised qualification at a degree level



Conditions

2: SPECIFIC COMPLIANCE PERIODS



DATE OF FIRST APPOINTMENT IN RESPECT OF A SPECIFIC CATEGORY AND SUBCATEGORY

Experience

- *BN 194 of 2017*
- *Min Experience as per Annexure 1 Table 1 & 2*
- *Must be assessed at the end of supervision period*
- *May run concurrently*
- *Commence on DOFA*

Qualification

- *6 years max.*
- *Excl. subcategory 1.1. & 1.19*
- *Recognised qualification*

Regulatory Examination

- *2 years from DOFA*
- *No longer linked to financial product – linked to DOFA as a rep*
- *Only applies to:*
 - ✓ *Cat I (Tier 1 advice & intermediary)*
 - ✓ *Cat II, IIA, III*
 - ✓ *Cat IV*

Class of Business

- *12 months from DOFA*

Continuous Professional Development

- *After meeting qualification, RE, class of business or*
- *After 6 years*
- *Only applies to:*
 - ✓ *Cat I (Tier 1 advice & intermediary)*
 - ✓ *Cat II, IIA, III*
 - ✓ *Cat IV*

Conditions

2: SPECIFIC COMPLIANCE PERIODS

Example: John Doe is a supervised representative appointed for more than one subclass of business within a single class of business and must therefore complete a minimum of 12 hours of CPD per CPD cycle. **He complied with the experience, class of business, RE and qualification requirement on 1 December 2020.** The CPD hours he must complete will be calculated as follows:

X = Number of annual required CPD hours = **12 hours**

Y = Number of months from the date of compliance until the end of the CPD cycle (01/12/2020 to 31/05/2021 = **6 months**)

Z = Required pro-rata CPD training

$$[X \div 12] \times Y = Z$$

$$[12 \text{ hours} \div 12 = 1] \times 6 \text{ months} = \underline{6 \text{ CPD hours}}$$

3: Supervision agreement

- Written supervision agreement must:

- ✓ Identify the supervisor;
- ✓ Set out the tasks and functions performed by the supervised representative on behalf of the FSP (categories of financial services and financial products);
- ✓ Relevant knowledge, skills and expertise required to perform these tasks and functions;
- ✓ Training needs of the supervised representative and the training programme to be implemented to address these needs;
- ✓ Supervision arrangement details such as duties and responsibilities of both parties, supervision policies, procedures, processes, monitoring, and assessment;
- ✓ When the intensity of the supervision may be reduced;
- ✓ When and how the supervised representative will be assessed;
- ✓ Sign-off criteria by the supervisor.

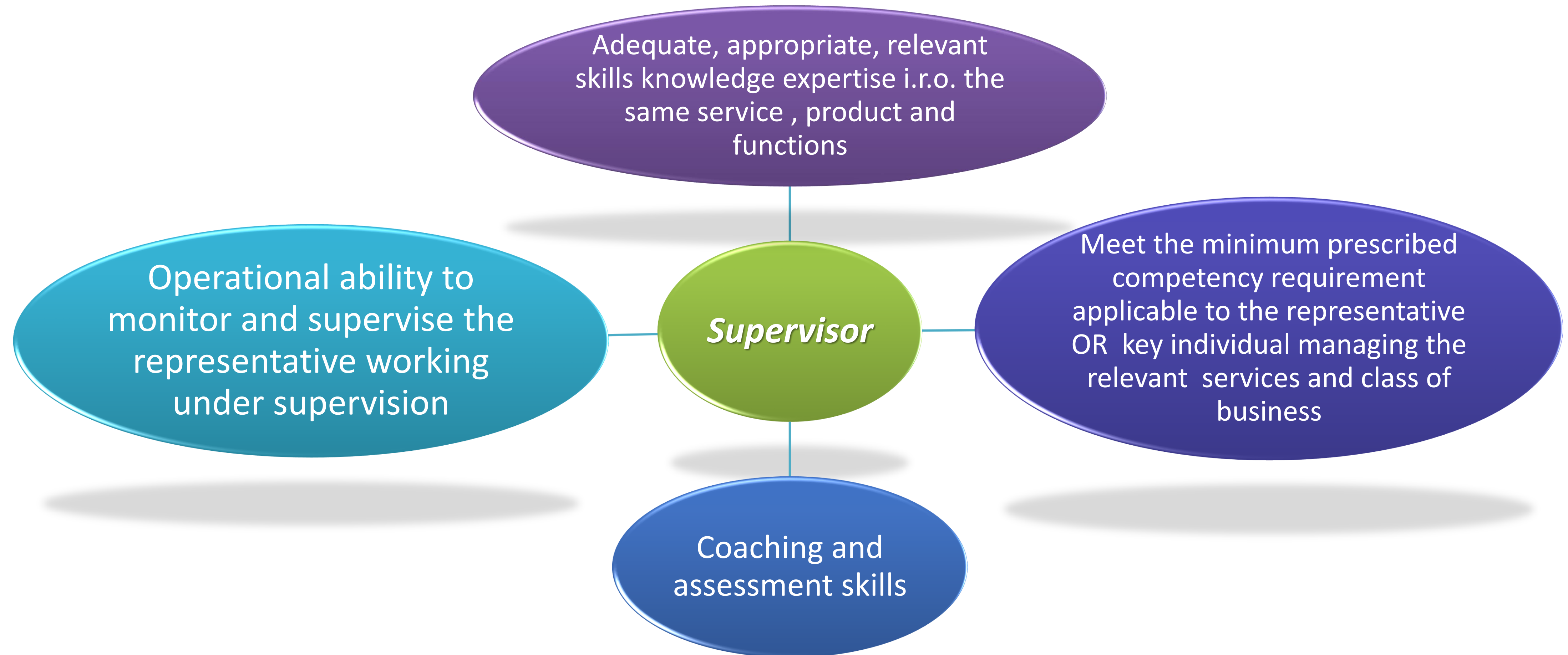
4: Duties of the FSP

- To appoint a representative under supervision the FSP must -
 - ✓ Operational ability (human, technical and technological resources, controls, procedures and governance framework to appoint, monitor and supervise representatives);
 - ✓ Ensure that the appointment does not materially increase any risk to the FSP or fair treatment of clients, impair the quality of the governance framework of the FSP, prevent the FSP to act in the best interest of clients);
 - ✓ Ensure that a working relationship exist between the supervisor and supervised representative to have oversight of the activities of the supervised representative;
 - ✓ Review the effectiveness and adequacy of the supervision arrangements at regular intervals;
 - ✓ Ensure that the supervised representative actively pursue the completion of the class of business training, regulatory examination and recognized qualification within the prescribed time limits;
 - ✓ Reflect on the register of representatives whether the person is working under supervision and update the register within **15 days** after the supervision ended;

Conditions

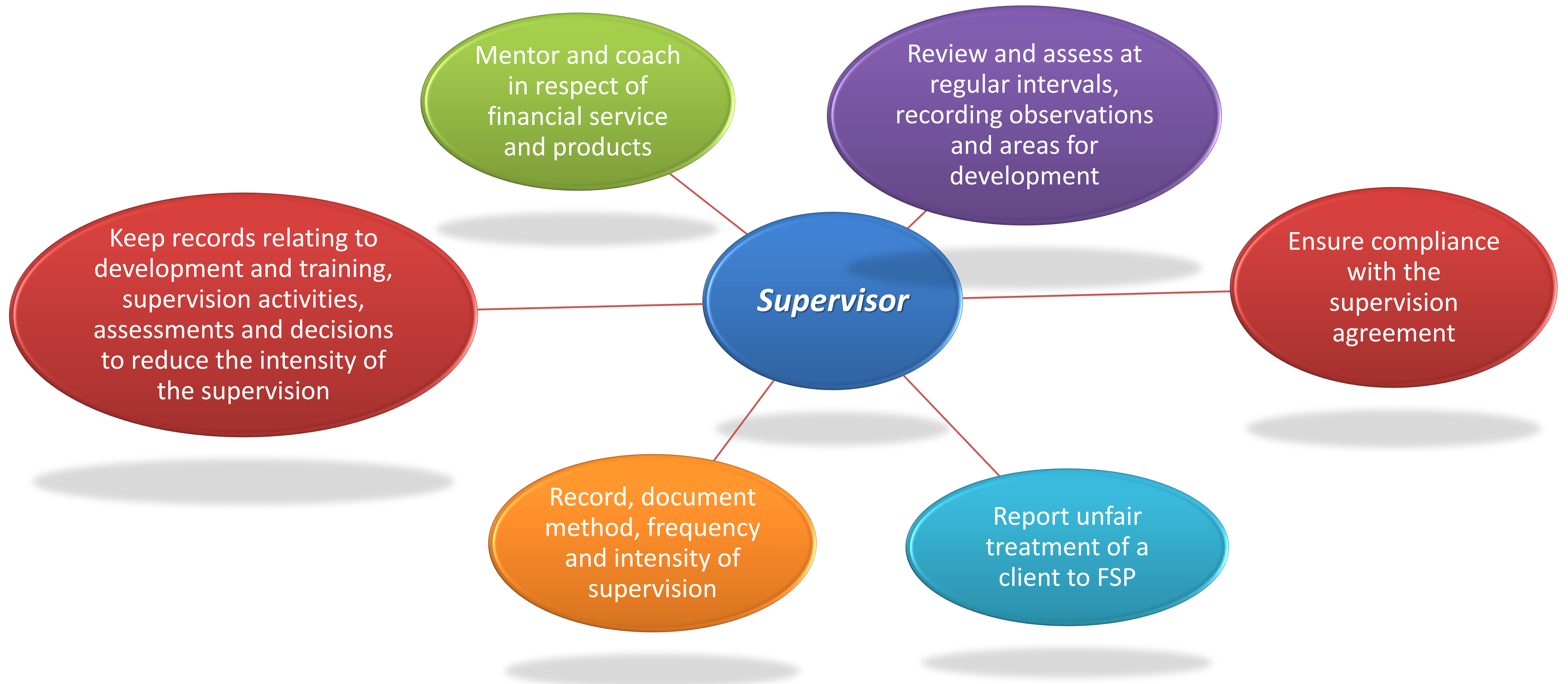
4: Duties of the FSP

- ✓ Assign a supervisor to the supervised representative that –



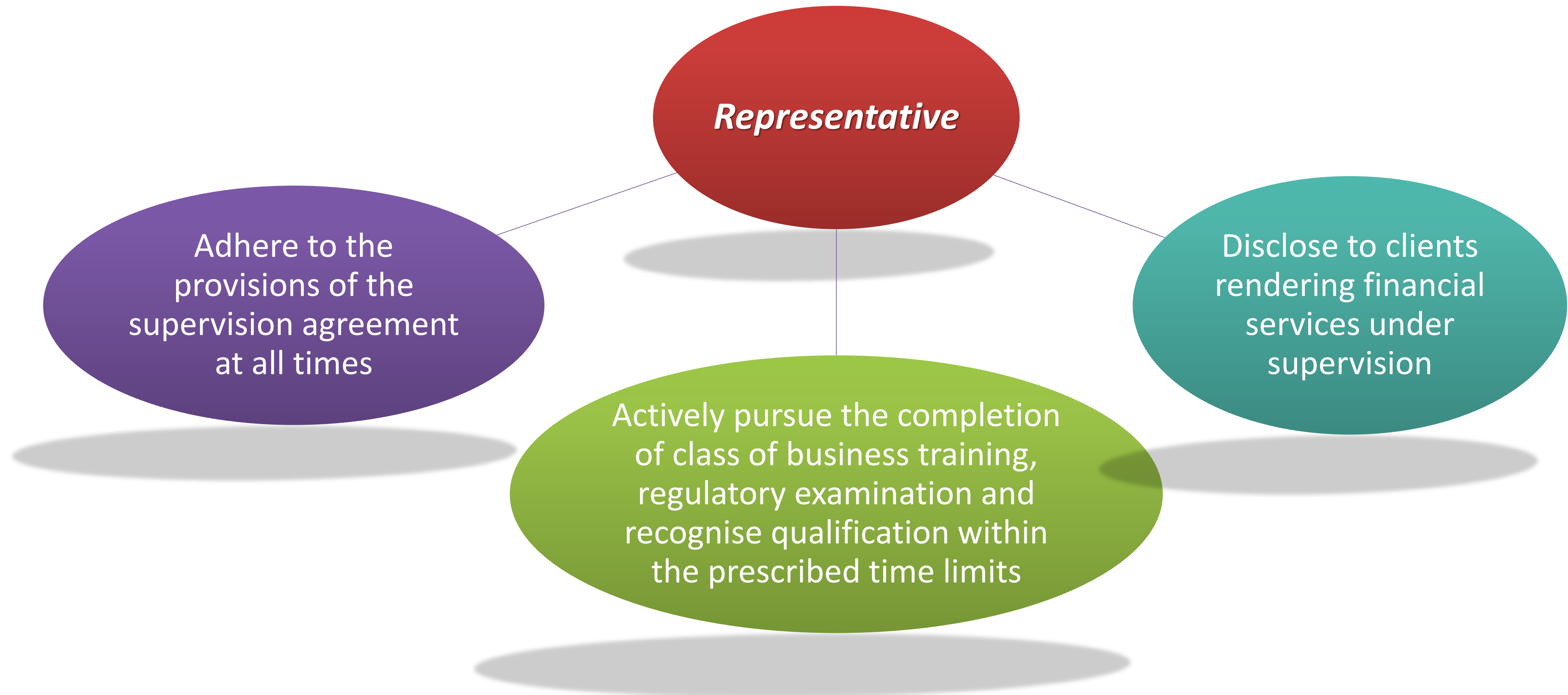
Conditions

5: Duties of the supervisor



Conditions

6: Representative duties



Conditions

7: Intensity of supervision

The FSP must -



- ✓ Determine the arrangements and intensity of supervision that must apply having regard to:
 - *The nature, scale and complexity of the financial service and financial products to be rendered by the supervised representative;*
 - *The supervised representative's assessed level of competency, and*
 - *The risk to clients and the FSP*
- ✓ At regular intervals review the appropriateness, effectiveness and adequacy of the supervision arrangements and the level of intensity of the supervision;
- ✓ Determine the criteria and procedures to assess whether it is appropriate for a supervised representative to work under a reduced level of intensity of supervision.

Execution of sales

S13: Execution of sales

- (2) A Category I FSP that appoints representatives to perform the execution of sales as contemplated in section 22 (b) (ii) must be able to demonstrate compliance with the requirements set out in that section.
- (3) An FSP must be able to demonstrate and record that it has evaluated and reviewed at regular and appropriate intervals—
 - (a) its representatives' and key individuals' competence and has taken appropriate action to ensure that they remain competent for the activities they perform; and
 - (b) the appropriateness of the training and CPD referred to in subsection 1 (d) and (e).
- (4) The evaluation and review contemplated in [subsection \(3\)](#) must, *inter alia*, take into account—
 - (a) technical knowledge and its application;
 - (b) skills and expertise; and
 - (c) changes in the market, to financial products, financial services and legislation.

Managing representatives

S40: Appointment of representatives

- 40(1)(a) .—(1) An FSP must ensure that where it appoints a person as a representative —
 - (a) the person—
 - (i) is not an unrehabilitated insolvent;
 - [Sub-para. (i) substituted by BN 707 of 26 June 2020.]

S40: Appointment of representatives

- **Section 40(5):**

If a representative who is a **natural person** is sequestered after the appointment referred to in subsection (1), the FSP who appointed the representative may only allow such representative to continue to act on behalf of the FSP as a representative if the FSP implements appropriate measures to mitigate any risks that may arise for clients or the FSP as a result of the representative being sequestered.

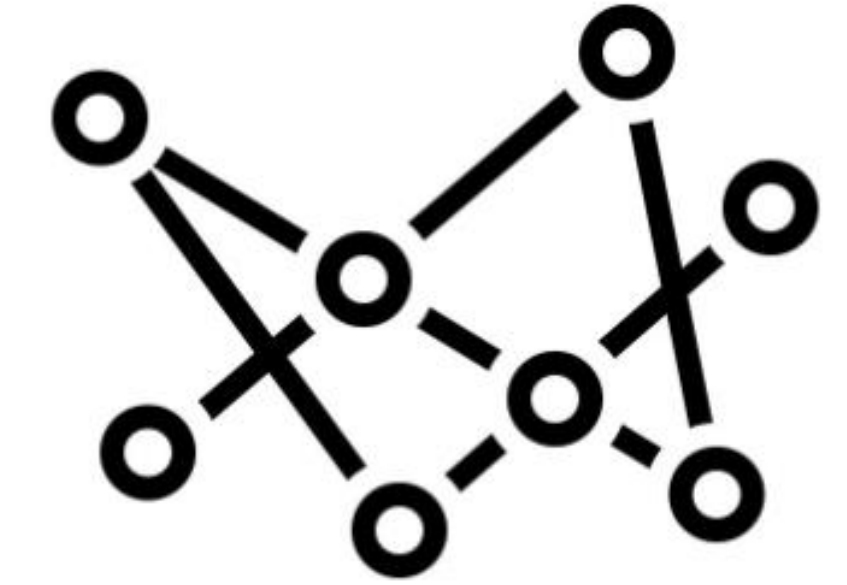
[Sub-s. (5) inserted by BN 707 of 26 June 2020.]

S41: representatives



- Operational ability to perform functions
- JR – at least 1 KI to oversee the representatives

Juristic representative



- A representative that is not a natural person contracted by an FSP to act as a representative on its behalf.
- An FSP must ensure that each juristic representative must at all times have at least one key individual responsible for the managing and overseeing of the juristic representative.
- The key individual must meet the same experience, qualifications and regulatory examination requirements as would apply to the key individual of the provider.

S42: KI's

- If a KI is approved for more than 1 FSP or JR
- Or is a KI of FSP or JR, and a rep on another FSP
 - *Must demonstrate the operational ability to carry out the functions*
- FSP must regularly assess the operational ability of their KIs

Financial soundness

Ch 6: Financial soundness

- S43
- Does not apply to:
- KI or representatives that is a natural person
- Banks and Insurers



S44: General requirements

- (3) No person may become or continue as an FSP **or juristic representative** if—
- (a) declared insolvent or provisionally insolvent;
 - (b) placed under liquidation or provisional liquidation;
 - (c) subject to section 9 (3), it is subject to any pending proceedings which may lead to an outcome referred to in paragraph (a) to (b); or
 - (d) subject to section 9 (3), it seriously and persistently failed or fails to manage any of its financial obligations satisfactorily.
- (4) No person may become an FSP or a **juristic representative** if business rescue proceedings have commenced in respect of that person.

S45

- Cat 1, JR of Cat 1 – does not collect/hold money:
- Assets exceed liabilities
 - *Assets include goodwill*
 - *Liabilities includes subordinated loans*



S48 & 49

- **Specific requirements**
 - (4) A juristic representative referred to in section 46 (1) (a) must submit to its FSP, on a half yearly basis calculated in terms of the representative's financial year, Form A in Annexure Six.
 - Specific solvency requirements
- **Early warning requirements**

Debarments

Debarments

Section 14 of the FAIS Act – Governs FSPs to debar natural person.

- An FSP must ensure that any representative who no longer complies with the requirements referred to in section 13(2), is not allowed to render any new financial service on behalf of the provider are removed from the representative register.
- The FSP must in the form and manner determined by the Authority:
 - within 5 days notify the Authority of the debarment;
 - provide grounds and reasons to the Authority within 15 days of the debarment; and
 - thereafter, the debarment and reasons will be published on the Authority's website.
- **Section 153 of the Financial Sector Regulation Act (FSR Act)**
 - Repealed section 14A of the FAIS Act – 1 April 2018
 - A debarment of a natural person by the Authority after considering:
 - the seriousness of the allegations, number of allegations against the person, potential prejudice suffered by the client and how negatively the conduct has had on the financial industry.

THANK YOU