

Financial Services Board

# FAIS NEWSLETTER



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## IN THIS ISSUE

Introduction	2
Applicable sections of the legislation	2
Explanation of the personal character qualities of honesty and integrity requirement	2 — 3
Application of honesty and integrity requirements to key individuals and representatives	4
Debarment of representatives	5 — 7
Application of honesty and integrity requirements to compliance officers and auditors	7
Developments within Financial Advisory and Intermediaries Act, 2002 ("FAIS") Department	7

### **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

This Newsletter addresses personal character qualities of honesty and integrity which is one of the requirements that must be complied with by financial services providers. It will include FAIS license applicants, authorised financial services providers, key individuals, representatives, compliance officers and auditors.

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## APPLICABLE SECTIONS OF THE LEGISLATION

The following legislation refers to the personal characteristics of honesty and integrity:

- Section 8(1) of the FAIS Act.
- Part II of the Determination of Fit and Proper Requirements for Financial Services Providers (“Fit and Proper Requirements”). Published as Notice 91 in Government Gazette No 29132 dated 16 August 2006).
- Section 13 of the FAIS Act.
- Section 14 of the FAIS Act.
- Section 19(6) of the FAIS Act.

## EXPLANATION OF THE PERSONAL CHARACTER QUALITIES OF HONESTY AND INTEGRITY REQUIREMENT

Section 2 of Part II of the Fit and Proper Requirements prescribes that the applicant for the FAIS license must be a person who is honest and has integrity. The obligation of submitting the information required for assessing compliance with the honesty and integrity requirement lies with the applicant. The Registrar can request the applicant to submit further information or request verification of the information submitted by the applicant. The Registrar is not limited to considering information submitted by the applicant only, but can also consider information derived from other sources. This means that the Registrar can call for information on the applicant from law enforcement agencies, other regulators both within and outside South Africa, credit bureaus, professional bodies, industry bodies etcetera.

Once the information is submitted and/or collected, the duty of the Registrar is to consider such information and determine whether the applicant can be said to be a person who is honest and has integrity. This process is not in anyway easy. Part II of the Fit and Proper Requirements contains a gauge which the Registrar can utilise in determining compliance with the honesty and integrity requirement. This gauge consists of six questions that prompt the applicant to provide answers and make disclosures.

## EXPLANATION OF THE PERSONAL CHARACTER QUALITIES OF HONESTY AND INTEGRITY REQUIREMENT (Cont.)

The questions are whether the applicant:

- has been found guilty in any civil or criminal proceedings by a court of law of having acted fraudulently, dishonestly, unprofessionally, dishonorably or in breach of a fiduciary duty;
- has been found guilty by any professional or financial services industry body of an act of dishonesty, negligence, incompetence or mismanagement, sufficiently serious to impugn the honesty and integrity of the applicant;
- has been denied membership of professional or financial services industry body on account of an act of dishonesty, negligence, incompetence or mismanagement, sufficiently serious to impugn the honesty and integrity of the applicant;
- has been found guilty by any regulatory or supervisory body; or had its authorisation to carry on business refused, suspended or withdrawn by any such body, on account of an act of dishonesty, negligence, incompetence or mismanagement sufficiently serious to impugn the honesty and integrity of the applicant;
- has within a period of five years preceding the date of application, had any license granted to the applicant by any regulatory or supervisory body suspended or withdrawn by such body on account of an act of dishonesty, negligence, incompetence or mismanagement, sufficiently serious to impugn the honesty and integrity of the applicant; or
- has at any time prior to the date of application been disqualified or prohibited by any court of law from taking part in the management of any company or other statutorily created, recognised or regulated body, irrespective whether such disqualification has since been lifted or not.

It must be noted that establishing compliance with honesty and integrity requirements is not restricted to the above mentioned questions. The applicant is therefore obliged to disclose all the information that may have an impact in the evaluation of his/her compliance with the honesty and integrity requirement. This should be irrespective of whether the information is requested or not. Failure to disclose such information may be seen as an attempt to conceal material information which may in turn affect a person's compliance with the honesty and integrity requirement.

The Fit and Proper Requirements prescribes that an occurrence within five years from the date of the application, of any above factors, is *prima facie* evidence that the applicant does not comply with the honesty and integrity requirement. This means that, the Registrar may in the absence of information that indicates otherwise, conclude that the applicant does not comply with honesty and integrity requirements. The applicant is allowed to advance information that shows that beside the occurrence of one or more of the above factors, the applicant still complies with the honesty and integrity requirement. The aspect recognises that a person who previously had misdeeds in life may repent and be rehabilitated. The onus of proving such rehabilitation lies with the applicant.

Compliance with the honesty and integrity requirement is not a once-off event but an unending obligation. A person who is licensed or allowed into the financial services providers' environment is required to ensure ongoing compliance with the honesty and integrity requirement. Failure may result in suspension, withdrawal or a person being barred from entering or participating in the financial services providers' environment.

## APPLICATION OF THE HONESTY AND INTEGRITY REQUIREMENT

### KEY INDIVIDUALS

Key individuals must always be persons who are honest and have integrity. The Registrar is responsible for approving key individuals and assessing their compliance with this requirement. Once approved, the FSP assumes the responsibility of ensuring that approved key individuals continue to be persons who are honest and have integrity. Any occurrence in the life of an approved key individual which may affect the key individual's continued compliance with the honesty and integrity requirement must be brought to the attention of the Registrar. The Registrar will make a ruling on whether such occurrence negatively affects the key individual's compliance with the honesty and integrity requirement. Failure to communicate such information may be regarded as material non-compliance and may lead to withdrawal of the FSP license.

Key individuals who no longer comply with the honesty and integrity requirement are recorded as such on the Registrar's records and may in certain instances be debarred when an FSP's license is withdrawn. The Registrar may also make the information on record available to any FSP that appoints the person as a representative or take the information into account if the person applies to become the key individual of another FSP.

### REPRESENTATIVES

The FSP is entrusted with the responsibility of ensuring that its representatives comply with the Fit and Proper Requirements which includes the honesty and integrity requirement. The FSP must therefore have procedures in place that will be followed and that will ensure that an appointed representative complies with the honesty and integrity requirements. Several FSP's have sought the Registrar's guidance as to what measures or honesty and integrity test must they subject their representatives.

Our recommendation is that representatives be subjected to the same questions as those contained in Part II of the Fit and Proper Requirements. This procedure consists of posing the stipulated questions to the representatives, noting the answers and requesting the representatives to disclose any information that may be relevant to the representative's compliance with the honesty and integrity requirement. The furnished answers and disclosures can then be assessed to establish whether a representative is honest and has integrity.

## DEBARMENT OF REPRESENTATIVES

The FSP is required to satisfy itself that its representatives are at all times compliant with the Fit and Proper Requirements. The FSP is required to debar representatives who no longer comply with the Fit and Proper Requirements, including the honesty and integrity requirement. The Act requires the providers to debar their representatives and then subsequently notify the Registrar to update the central register regarding the debarment. It must be noted that it is not the Registrar's, but the providers' function to debar non-complaint representatives. The Registrar only updates the central register after receiving notifications and requests from FSPs regarding debarment of representatives.

The Registrar has since 30 September 2004 placed numerous representatives on the central register of debarred representatives. Some of the affected representatives could not be placed on the said register as either, the reasons for their debarment were not in line with those contemplated in Section 14 of the FAIS Act or the correct procedure was not followed.

It appears that some FSPs confuse the processes regarding the removal (when the representative leaves the FSP under normal circumstances like resignation or retirement) and the debarment of representatives (when the representative no longer complies with qualification, experience and honesty and integrity requirement).

### *What is a debarment?*

Debarment is an action taken by the FSP in order to prevent a representative from rendering further financial services due to an adverse finding/ruling against that representative, which renders the FSP non-compliant with the Fit and Proper Requirements.

### *Removal versus Debarment*

#### **Removal of a representative**

A provider that removes a representative from the central register of the Financial Services Board due to the termination of the service agreement between the FSP and the representative, with the effect that the representative no longer acts on behalf of that particular FSP but may be appointed or may act as a representative for another FSP.

#### **Debarment of a representative**

A provider may debar a representative when he is found to be no longer compliant with the Fit and Proper Requirements. The debarment would mean that such representative shall no longer be allowed to participate in the rendering of financial services.

An authorised financial services provider must debar a representative prior to terminating the service or any other mandatory contract between itself and the said representative and advise the Registrar of such debarment within thirty days of such a debarment.

## UPDATING THE CENTRAL DEBARMENT REGISTER

### Through the internet, by means of an excel spreadsheet

- Visit our website at [www.fsb.co.za](http://www.fsb.co.za).
- Choose FAIS (**top right hand side**).
- Click on “Excel spreadsheet for submitting representatives”.
- Enter your FSP number in cell **B6**.
- Delete the samples on the spreadsheet and start listing the representative(s) at line 14.
- Complete **all** fields with special attention to:
  - i) ID Number of representative and/or key individual of representative.
  - ii) Type should always be **N**.
  - iii) Key individual of representative should only be answered **Y** if the person is working for a Juristic representative.
  - iv) The Registration number of the Juristic representative should always be indicated under Reg no of representative if (iii) has been answered yes.
  - v) Date the Financial services provider has debarred the representative/key individual of representative.
  - vi) The reason for the debarment (provide a short explanation).
  - vii) The field under the heading “debarred” should always be indicated as **Y**.
  - viii) The field under the heading “Process Flag” should always be indicated as **3D**.
    - Save the document on your desktop as an Excel file.
    - E-mail the completed spreadsheet to [faispfc@fsb.co.za](mailto:faispfc@fsb.co.za).
    - Send additional information to FAIS Eforcement.

### Via facsimile, electronic mail, post and hand delivery

Provide the following information on FSP letterhead clearly and indicate on the first page that the document is for the attention of the FAIS Enforcement Division:

- i) the FSP Number of the entity;
- ii) that you are requesting an update of the debarment register;
- iii) the name and Identity number of the representative/key individual of representative debarred;
- iv) the actual date the FSP has debarred the representative;
- v) supporting documentation regarding the reasons for debarment and
- vi) a copy of the “notice of debarment” that was given to the representative.

The facsimile number and electronic mail addresses are +27 12 422 2973 and [faispfc@fsb.co.za](mailto:faispfc@fsb.co.za) respectively.

## DEBARRED REPRESENTATIVES LINKED TO MORE THAN ONE FSP

There are instances whereby a representative who has been debarred by one FSP is linked to other FSP.

The other FSP that the representative is linked to, will be notified by the Registrar that the said representative has been debarred by another FSP

## CHECKING WHETHER A PERSON IS DEBARRED

We have facility on our website which can be use to establish whether a particular person is debarred or not. To access this facility, visit the FSB website at [www.fsb.co.za](http://www.fsb.co.za) and click on the word "FAIS". Thereafter select the phrase "Search for debarred representatives". Note that the identity number of a person is required to do a search on a person.

## APPLICATION OF THE HONESTY AND INTEGRITY REQUIREMENT

### COMPLIANCE OFFICERS

Compliance Officers are required to comply with the honesty and integrity requirement in terms of section 2(c)(iii) of the Determination of the Criteria and Guidelines for the Approval as Compliance Officers (Published in Government Gazette No. 25299 dated 8 August 2003).

The Registrar can direct an FSP to terminate an appointment of a compliance officer who no longer complies with the honesty and integrity requirement.

### AUDITORS

Auditors are regulated by the Independent Regulatory Board of Auditors. The role of the Registrar is to approve appointment of external auditors to an FSP business.

The Registrar can also direct an FSP to terminate the appointment of an auditor who no longer complies with the honesty and integrity requirement.

## DEVELOPMENTS WITHIN THE FAIS DEPARTMENT

- **Fit and Proper**

The Fit and Proper Forum is currently in liaison with the financial services industry's representatives with a view of establishing the next set of the Fit and Proper Requirements for Authorised Financial Services Providers. This would be the requirements that will apply to key Individuals and representatives post 2009. Comments and queries on this aspect may be emailed to [fitandproper@fsb.co.za](mailto:fitandproper@fsb.co.za)

- **Processing of compliance reports and financial statements**

We have made good progress on the processing of compliance reports and financial statements. FSPs that have not submitted their compliance reports and financial statements are urged to submit the said reports before the end of November 2007. We will start imposing penalties for non-submission with effect from 01 December 2007. These penalties will be calculated from the date on which the non-compliance commenced.