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Course Guide

AMENDED FIT AND PROPER REQUIREMENTS: ONLINE CPD COURSE 2022 / 2023

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Course summary

The amended fit and proper requirements course is an on-line short course outlining the new fit and proper requirements prescribed under Board Notice 194 of 2017 as applicable to financial services providers and representatives in Category I.

Time allotted for course

The course consists of 4 topics with an assessment that needs to be completed. The time allotted for each aspect is as follows:

Topic number	Title	Word count	Level	Time allotted
Topic 1	Categorization of financial services providers	2 314	Introductory	60 minutes
Topic 2	Fit and proper requirements for the FSP	4 333	Introductory	100 minutes
Topic 3	Fit and proper requirements for representatives	3 275	Introductory	80 minutes
Topic 4	Responsibilities relating to competency requirements	2 579	Introductory	60 minutes
	Assessment			30 minutes

Total time	5.5 Hours
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Assessment and certification

After completion of the workshop the learner must complete an electronic assessment on the learning management system.

- **Form of assessment:** Multiple Choice Questions
- **Number of questions:** 10 questions
- **Duration:** 30 minutes
- **Competency mark:** 65%

Upon obtaining a competency mark of 65% the learning will receive a certificate of completion. The learner will be afforded an opportunity to re-do the workshop should a competency mark not be attained.

Course Accreditation

CPD Category: Online programme

COB Category: All Classes of Business

Accreditation Validity: 1 August 2022 to 31 July 2023

CPD Hours Allocated: 5.5 hours | points

Accreditation Number:

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TOPIC 1 CATEGORISATION OF FINANCIAL SERVICES PROVIDERS

LEARNING OUTCOMES

After studying the topic, the learner should be able to-

- Understand the reasoning behind the amendment of the categorization of financial services providers.
- Differentiate between the different categories of authorization present within the financial services sector.
- Outline the product tiers as well as the classes of business.
- Apply the product definition to be able to assess for which category a provider should be authorised.

1.1 INTRODUCTION

The FAIS Act has made provision for standards to be set for FSPs, key Individuals and representatives. These standards are deemed the fit and proper requirements for FSPs and have been amended effective on 1 April 2018 as set out in Board Notice 194 of 2017.

For an FSP, key individual, representative or compliance officer to remain authorised that person must always comply with the fit and proper requirements to the extent applicable to the relevant categories and subcategories in which a financial service is provided.

The elements of the fit and proper requirements as applicable to the different role players role players are outlined in Table 1.1.

Table 1.1: Fit and proper elements and their applicability

Fit & proper element	FSP	Key Individuals	Representatives	Compliance officers
Honesty, integrity & good standing	Applicable to members, directors	Applicable	Applicable	Applicable
Competence: Experience*	-	Applicable	Applicable	Applicable
Competence: Qualifications*	-	Applicable	Applicable	Applicable
CPD	-	Applicable	Applicable	Applicable
Operational ability	Applicable	Applicable	Applicable	Applicable
Financial soundness	Applicable	-	Applicable to juristic reps	Applicable

**Competence means having the skills, knowledge and expertise needed for the proper discharge of a person’s responsibilities in the performance of his or her functions.*

The main purpose of the amended fit and proper requirements especially related to representatives was to introduce requirements that are more appropriate for a specific representative functions.

In order to accommodate these changes additional subcategories were introduced. Furthermore, the subcategories have been divided into tier 1: complicate products and tier 2: uncomplicated products.

Furthermore, new minimum requirements stipulate the representatives and key individuals must undergo Class of Business training and product specific training. To accommodate this, the industry is further divided into classes and subclasses of business.

New type of financial services namely automated advise and execution of sales has also been introduced to further differentiate.

The subsections following consider the categorization as well as the applicable definitions.

1.2 CHANGE UNDER THE FINANCIAL SECTOR REGULATION ACT

The Financial Sector Regulation Act have been promulgated (enacted) in order to effect the Twin Peaks model of regulation.

Under this act, the name of the Financial Services Board has been amended to the Financial Sector Conduct Authority and the role of the FAIS registrar is now performed by the Commissioner of the FSCA.

1.3 CATEGORIES OF FINANCIAL SERVICE

The FAIS Act governs different kinds of financial service, product and a wide range of participants. Therefore, it is necessary to differentiate between types of financial service which can be provided and the product in which it can be provided.

The FAIS Act makes provision for categorizing FSPs and their representatives into Categories and Subcategories. The main categories indicate the types of service that can be provided and the subcategory the product. Table 1.1 outlines the various main categories of financial services that FAIS distinguishes between.

Table 1.2: FSP License service categories

Category	Description
Category I Ordinary FSP	A Category I FSP renders ordinary financial services in that they can only act on client instruction. We can distinguish between advice and intermediary service in this category.
Category II Discretionary FSP	A discretionary FSP renders intermediary services of a discretionary nature regarding the choice of a particular financial product but without implementing any bulking.
Category IIA Hedge Fund FSP	A Hedge Fund FSP renders intermediary services of a discretionary nature regarding the choice of a particular hedge fund or fund of hedge funds regarding a particular financial product.
Category III Administrative FSP	An administrative FSP renders intermediary services in respect of financial products on the instructions of a client or another FSP and through the method of bulking.
Category IV Assistance Business FSP	An assistance business FSP performs the administration of assistance policies* and includes a person who is a binder holder as defined in the Regulations under the Long-term Insurance Act, where such administration is performed by that binder holder.

* Administration of assistance policies means work performed by a person relating to the offsetting of claims, processing of claims or payment of fees or commission in respect of an assistance policy.

Offsetting of claims means the payment of policyholders' claims and offsetting such claims against premium received from policyholder for remittal to a long-term insurer.

1.3.1 Subcategories

The subcategories specify the product for which the FSP is authorised to provide the financial services for. Table 1.2 details the different subcategories.

Table 1.3: Subcategories of FSPs

Subcategory name	Product in category examples <i>(list is not exhaustive)</i>	Code Cat I
Long-term insurance: Subcategory A	Funeral policies	1.1
Short-term insurance: Personal lines	Household insurance motor insurance etc.	1.2
Long-term insurance: Subcategory B1	Life and disability insurance – risk only	1.3
Long-term insurance: Subcategory C	Endowment policies with no guarantee	1.4
Retail pensions benefits	Retirement annuity fund Preservation funds Preservation provident fund	1.5
Short-term insurance: Commercial lines	Business insurance	1.6
Pension fund benefits	Pension fund Provident fund	1.7
S & I: Shares	Securities & Instruments: Investment products	1.8
S & I: Money market instruments		1.9
S & I: Debentures and securitized debt		1.10
S & I: Warrants, certificates and other instruments acknowledging debt		1.11
S & I: Bonds		1.12
S & I: Derivative instruments excluding warrants and a forex investment		1.13
Collective investment schemes	Unit trust	1.14
Forex investment business	Currency deposit	1.15
Health service benefits	Medical aid Hospital plan	1.16
Long-term deposits	Bank account with maturity of longer than 12 months excludes structured products	1.17
Short-term deposits	Bank account with maturity of 12 months or shorter excludes structured products	1.18
Friendly society benefits	Stokvel	1.19
Long-term insurance: Subcategory B2	Endowment policies with a guaranteed minimum amount Guaranteed annuity	1.20
Long-term insurance: Subcategory B2-A	Long term insurance B2 products which provide for the premiums to be invested in a portfolio with no option by the policyholder to request change or amendment to that portfolio	1.21
Long-term insurance: Subcategory B1-A	Life and disability policy that required no or limited underwriting.	1.22
Short-term Insurance Personal lines A1	Short term policy that requires no or limited underwriting -see definition	1.23
Structured deposits	Money market accounts - see definitions	1.24
Securities and instruments	Any other securities and instruments mentioned separately	1.25
Participatory interest in a CIS hedge fund	CIS which uses strategies that could result in the investment incurring losses greater than its total market value at any point which include leverage or net short positions	1.26

1.4 TIERS OF PRODUCTS

For further clarification on the fit and proper requirement products were also categorized into two tiers. Table 1.3 outlines the two tiers.

Table 1.4 Tiers of financial products

Tier 1 Financial Products	Tier 2 Financial Products
Structured Deposits	Short-term Insurance Personal Lines A1
Short-term Insurance Personal Lines	Long-term Insurance Subcategory A
Short-term Insurance Commercial Lines	Long-term Insurance Subcategory B1-A
Long-term Insurance Subcategory B1	Long-term Insurance Subcategory B2-A
Long-term Insurance Subcategory B2	Friendly Society Benefits
Long-term Insurance Subcategory C	Short-term Deposits
Retail Pension Benefits	Long-term Deposits
Pension Fund Benefits	
Participatory interest in a collective investment scheme	
Participatory interest in a CIS hedge fund	
Forex Investment	
Health Service Benefits	
Shares	
Money market instruments	
Debentures and securitized debt	
Warrants, certificates and other instruments	
Bonds	
Derivative instruments	
Securities and Instruments	

1.5 CLASSES OF BUSINESS

For purpose of the continuous professional development requirement, financial products were also categorized according to classes of business.

Table 1.5: Classes of business

Class 1: Short-term insurance: Personal Lines (Policy holder must be a natural person)	
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
Class 2: Short-term Insurance: Commercial lines (Policy holder must be a juristic person or a person acting in a business capacity)	
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

Class 3: Long-term Insurance	
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
Class 4: Pension fund benefits	
Class 5: Short-term and long-term deposits	
Class 6: Structured deposits	
Class 7: Investments	
7.1	Shares
7.2	Money market instruments
7.3	Debentures and securitized 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
Class 8: Forex investments	
Class 9: Health Services Benefits	

1.6 DEFINITIONS

1.6.1 Product definitions

Short-term insurance personal lines A1 means the short-term insurance policies that-

- Require no or limited underwriting.
- Define policy benefits as a sum insured, provide for the replacement of the insured asset or provide for the settlement of outstanding balances due and payable to credit providers.
- Have contract terms of 24 months or less.
- Are not subject to the principle of average.
- Do not provide for any exclusions or conditions from liability of the insurer other than-
 - Exclusions relating to unlawful conduct, provided that such exclusions may only be applied or relied on if there is a direct link between the cause of the loss and the unlawful conduct.
 - Special risks referred to in the Conversion of the SASRIA Act.
 - Exclusions relating to the condition of any asset insured at inception of the policy other than exclusions relating to the wear and tear of the asset.
 - Exclusions relating to the maintenance and usage of the insured asset under a policy that insures against unforeseen mechanical or electrical component failure.
 - Exclusions relating to consequential loss.

It excludes marine and engineering policies

Structured deposit means a one of the following:

- Combination of a short-term deposit or a long-term deposit and another Tier 1 financial product.
- A short-term deposit or long-term deposit where the return or value is dependent on the performance of or is derived from the return or value of one or more underlying financial product, asset, rate or index, on a measure of economic value or on a default event.

Forex investment means an investment in a financial product in foreign exchange trading based on price fluctuation in the foreign exchange market but excludes transaction in foreign exchange conducted under Exchange Control laws by a bureau de change.

1.6.2 Underwriting definitions

No underwriting means there is no requirement by a product supplier for any medical, financial, demographic or lifestyle information to be provided by a prospective policyholder or life insured for such product supplier to accept risk or pay a claim.

Limited underwriting means where the only requirement a prospective policyholder or life insured must comply with for a product supplier to accept risk or pay a claim are one or more of the following:

- The furnishing of a health declaration structured as answers to no more than eight questions relating to specific medical conditions.
- The requirement that the policy of a life assured must undergo an HIV test
- The requirements imposed by the National Credit Act.

1.6.3 Meanings of short term policies

- *Accident and health policy*: Policy that provide benefits in terms of a disability event, health event or death event.
- *Engineering policy*: Policy that provides benefits to cover risks relating to-
 - Machinery or equipment (other than a motor vehicle) in the carrying on of business
 - Erection of building or other structures
 - Installation of machinery or equipment
- *Guarantee policy*: A policy to provide benefits to cover risks relating to the failure of a person to discharge and obligation.
- *Liability policy*: Policy to provide benefits to cover risks relating to incurring of a liability.
- *Miscellaneous policy*: Policy to provide benefits to cover risks otherwise not defined in any other short-term insurance policy.
- *Motor policy*: Policy to provide benefits to cover risks relating to the possession, use or ownership of a motor vehicle
- *Property policy*: Policy to provide benefits to cover risks relating to the use, ownership, loss or damage to movable or immovable property
- *Short-term reinsurance policy*: A reinsurance policy in respect of a short-term policy

- *Transportation policy*: Policy to provide benefits to cover risks relating to
 - Possession, use or ownership of a vessel, aircraft for the conveyance of persons or goods by air, space, land or water
 - Storage treatment and handling of goods so conveyed

1.6.4 Meaning of long-term Insurance policies

- *Assistance policy*: A life policy of which the total of the value of the policy benefits does not exceed R25 000.
- *Fund policy*: A policy to provide benefits for the purpose of funding in whole or in part the liability of a medical scheme, pension fund or friendly society benefit to provide benefits to its members in terms of its rules.
- *Life policy*: A policy that undertakes to-
 - Provide policy benefits as a result of a life event.
 - Pay an annuity for a period.
- *Life risk policy*: A life policy that provides risk benefits only.
- *Life investment policy*: A life policy that provides for an investment component.
- *Long-term reinsurance policy*: A reinsurance policy in respect of a long-term policy.
- *Sinking fund policy*: A policy other than a life policy which provides one or more sums of money on a fixed future date as policy benefits.

TOPIC 2 FIT AND PROPER REQUIREMENTS FOR THE FSP

LEARNING OUTCOMES

After studying the topic, the learner should be able to-

- Explain the fit and proper requirements that a financial services provider in Category I must meet on appointment and thereafter.

2.1 INTRODUCTION

Although the elements of fit and proper requirements for financial services providers has remained the same, the requirements itself has become more onerous.

The financial services provider must on appointment meet the requirements in terms of honesty and integrity, financial soundness and operational ability on appointment and thereafter on a continuous basis.

The three aspects are considered in the sections following.

2.2 HONESTY, INTEGRITY AND GOOD STANDING

An FSP must be owned and managed by persons displaying qualities of honesty and integrity and good standing. The commissioner will assess if any of the directors, members or owners (which ever the case might be) have been found guilty of any of the following transgressions or offences:

- The person has been found guilty (and the conviction has not been expunged) in any criminal proceeding or liable in civil proceeding by a court of-
 - An offence relating to the regulation or supervision of a financial institution as defined in the financial Institutions Act or a corresponding offence under the law of a foreign country.
 - Theft, fraud, dishonesty, perjury, unprofessional or dishonorable activity or breach of fiduciary duty.
 - An offence under the Prevention of Corruption Act or the Prevention of Corrupt Activities Act or a corresponding offence under the law of a foreign country.

- The person has been convicted (and that conviction has not been expunged) of any other offence committed after 1996 where the penalty imposed for the offence was or may be imprisonment without the option of a fine.
- The person has accepted civil liability for theft, fraud, forgery, uttering a forged document, perjury or any conduct involving dishonesty, breach of fiduciary duty, misrepresentation or negligent, dishonorable and unprofessional conduct.
- The person has been the subject of frequent or material preventative, remedial or enforcement actions by the Commissioner or a regulatory authority.
- The person has been removed from an office of trust for theft, fraud, forgery, uttering a forged document, misrepresentation, dishonesty, breach of fiduciary duty or business conduct.
- The person has breached a fiduciary duty.
- The person has been suspended, dismissed or disqualified from acting as a director, managing executive, public officer, auditor or statutory actuary (or his or her alternate) under any law or any action to achieve one of the aforementioned outcomes has been instituted against the person.
- The person has been refused a registration, approval, authorization or license to carry out a trade business or profession.
- The person has had a registration, approval, authorization or license to carry out a trade business or profession suspended, revoked, withdrawn or terminated by a regulated authority.
- The person has been denied membership of a statutory professional or voluntary body recognised by the Financial Sector Conduct Authority because of negligence, incompetence or mismanagement of sufficient importance to impugn the honesty and integrity of the person in question.
- The person had been found guilty by any regulatory or supervisory body (inside or outside the South Africa) of negligence, incompetence or mismanagement of sufficient importance to impugn the honesty and integrity of the person in question.
- The person has been disciplined, reprimanded, disqualified or removed in relation to matters relating to honesty and integrity, incompetence or business conduct by a professional body or regulatory authority or any other action to achieve one of the aforementioned outcomes has been instituted against the person.
- The person has knowingly been untruthful or provided false or misleading information to the Commissioner or a regulatory authority or the person has been uncooperative in any dealings with the Commissioner or a regulatory authority.

- The person has demonstrated a lack of readiness and willingness to comply with legal, regulatory or professional requirements and standards.
- The person has been found to be not fit and proper by the Commissioner or a regulatory authority in any previous assessment of fit and proper and this has not been remedied.
- The person has failed to disclose information required to be disclosed in terms of the FAIS Act, including failure to disclose information relating to honesty, integrity and good standing.
- The person has been involved or is involved as a director, trustee, member, partner, controlling shareholder or managing executive or is concerned in the management of a business that has been subject to any of these conducts aforementioned while that person has been connected with that organisation or within one year of that connection.
- The person has been involved or is involved as a director, trustee, member, partner, controlling shareholder or managing executive or is concerned in the management of a business that has been placed in liquidation or business rescue while that person has been connected with that organisation or within one year of that connection.

If a role player is guilty of any of the above mentioned, the Commissioner will make a final decision on the honesty, integrity and good standing status of the person.

In assessing whether the person has honesty, integrity and good standing the Commissioner must have due regard to the following:

- The seriousness of a person's conduct and the surrounding circumstances.
- The relevance of such conduct with relation to the duties to be performed by the person.
- The passage of time since the occurrence of the conduct.

The person in question must disclose to the Commissioner promptly and on own initiative any information which may be relevant in determining that that person complies or continues to comply with the requirements relating to honesty and integrity and good standing.

(I) Definitions

A regulatory authority includes the following:

- Any organ of state as defined in the Constitution of the Republic of South Africa, responsible for the supervision or enforcement of legislation, or a similar body designated in the laws of a country other than the Republic to supervise or enforce legislation of that country.
- A market infrastructure that is responsible for the supervision of persons authorised by such infrastructure under the Financial Markets Act, 2012.
- An Ombud established under Financial Sector Conduct Authority legislation or a recognised Scheme under the Financial Services Ombud Schemes Act, 2004.

2.3 FINANCIAL SOUNDNESS

2.3.1 Applicability of requirements

The financial soundness requirements are applicable to all financial services providers and juristic representatives.

The financial soundness requirements are not applicable to the following:

- A representative that is a natural person.
- A key individual.
- An FSP that is a registered Bank and that FSP complies with the requirements prescribed in the Banking Act.
- An FSP that is a registered insurer and that FSP complies with the requirements prescribed in the Short-term Insurance Act or the Long-term Insurance Act.

2.3.2 General requirements

An FSP and a juristic representative must always maintain financial resources that are adequate both as amount and quality to carry out their activities and supervisory arrangements and to ensure that liabilities are met as they fall due.

An FSP, (excluding a Category I FSP that does not hold clients’ funds and a juristic representative of such FSP) must have sound, effective and comprehensive strategies, processes and systems to assess and maintain, on an ongoing basis, the amounts, types and distribution of financial resources that it considered adequate to cover:

- The nature and level of the risks to which it is, or might be, exposed to.
- The risk that the FSP or juristic representative might not be able to meet the specified requirements in terms of financial soundness.

No person may become or continue as an FSP or juristic representative if-

- Declared insolvent or provisionally insolvent or is subject to any pending proceeding which may lead to such an outcome.
- Placed under liquidation or provisional liquidation or is subject to any pending proceeding which may lead to such an outcome.
- It seriously and persistently failed or fails to manage any of its financial obligations satisfactorily.

No person may become an FSP or a juristic representative if business rescue proceedings have commenced in respect of that person.

(I) Requirements for specific FSPS’ and their juristic representatives

An FSP need to be financial sound to be FAIS compliant. The financial soundness requirements for FSPs differs amongst the various main categories of FSPs. The requirements are outlined in Table 2.3. These requirements must be interpreted in line with the applicable definitions.

Table 2.1: Financial soundness requirements according to category

Category of FSP and Juristic Representative	General asset requirement	Working capital requirement	Liquidity Requirement
Cat I that does not hold clients’ funds	Assets > liabilities	N/A	N/A
Cat I that holds clients funds	Assets > liabilities	Current assets > current liabilities	Liquid assets = 4 weeks of annual expenditure

(II) Definitions

- **Annual expenditure:** The expenditure set out in the latest set of financial statements of the provider for the year in question or in the case of an applicant commencing business, the budgeted expenditure as expressed in its budget or other account less
 - Staff bonuses.
 - Employees and directors or member's shares in profits.
 - Emoluments (benefits) of directors, members, partners or sole proprietor.
 - Other appropriation of profits to directors, members, partners or a sole proprietor.
 - Remuneration that is linked to a percentage of the FSP's revenue or a percentage of the revenue generated by an employ, representative or contractor of the FSP and that in the absence of such revenue the FSP has no obligation to pay the remuneration.
 - Depreciation.
 - Bad debts.
 - Any loss resulting from the sale of assets.
- **Remuneration:** Includes salaries, wages, commissions, fees and any other payment, paid directly or indirectly by an FSP to an employee, representative or contractor of that FSP either directly or indirectly
- **Liquid assets:** An FSP can choose one of the following:
 - Cash or a participatory interest in a money market portfolio
Provided that the first 50% of the assets can be converted into cash within 7 days and the remainder 50% within 30 days without incurring a penalty.
 - 70% of the market value of a participatory interest in a collective investment scheme, other than an investment in a money market portfolio or a CIS hedge fund as long as asset is capable of being converted into cash within 7 days.
 - 70% of the market value of a security listed on a licensed exchange provided it does not constitute more than 50% of total liquid assets. The asset must be capable of being converted into cash within 7 days.
- **Assets:** All assets excluding goodwill, intangible assets investment in and loans to related parties.
- **Liabilities:** All liabilities excluding loans subordinated in favor of other creditors.
- **Cash:** Physical currency consisting of Reserve Bank notes and coins or any balance with a bank or a branch of a bank/mutual bank or foreign bank. It excludes a facility that extends credit.

2.3.3 Submission of the liquidity calculation form

All Category I FSPs that hold clients' funds or receive premiums and all Category IV FSPs must submit to the Commissioner a liquidity calculation form in the prescribed manner annually. The form must be submitted together with the financial statement of the FSP within 4 months of the financial year end of the FSP.

All Category II, IIA and III FSPs must submit to the Commissioner a liquidity calculation form in the prescribed manner on a half yearly basis calculated in terms of the FSP's financial year. The form must be submitted within 45 days after every half year end of the FSP.

A juristic representative (other than a juristic representative for Category I that does not hold client's funds or receive premiums) must submit the liquidity calculation to its FSP on a half yearly basis calculated in terms of the representative's financial year. The form must be submitted within 45 days after every half year end of the juristic representative.

2.3.4 Early warning requirements

An FSP (other than a Category I FSP that does not hold clients' funds or receive premiums) must in writing immediately notify the Commissioner in case of the following:

- The assets of the FSP or that of its juristic representative exceed the liabilities by less than 10%.
- The current assets of the FSP or that of its juristic representative exceeds the current liabilities by less than 10%.
- In respect of a Category IIA and III FSP and juristic representatives of that FSPs, the additional assets of the FSP or that of its juristic representative exceeds the minimum requirement by less than 10%.
- The FSP or its juristic representative does not meet any of the financial soundness requirements.
- The FSP becomes aware of an event or situation that may or will result in any of the above becoming a reality.

If any of the above factors arise, the FSP may not directly or indirectly make any payment by way of a loan, advance, bonus, dividend, repayment of capital or a loan or any other payment or other distribution of assets to any director, officer, partner, shareholder, related party or associate without the prior written approval of the Commissioner.

The early warning notification must be certified by the chief executive officer, controlling member, managing or general partner, or trustee, of the FSP as the case may be.

The same requirements early warning notification is applicable to a juristic representative of an FSP, but the notification must be made in writing to the relevant FSP.

2.3.5 Multiple Category FSPs

A person authorised as an FSP or appointed as a juristic representative under more than one category of FSP must comply with the most onerous of the financial soundness requirements applicable to the different categories of FSPs for which that person is authorised or appointed.

2.4 OPERATIONAL ABILITY

2.4.1 General requirements

An FSP must prove continuous operational ability, which includes the following:

- Have the operational ability, including adequate and appropriate human, technical and technological resources, to effectively function as a particular category of FSP and to render the financial services in relation to the financial product for which it is authorised.
- Adopt, document and implement an effective governance framework that provides for the fair treatment of clients and prudent management and oversight of the business of the FSP.
- A fixed business address from where business is conducted.
- Adequate communication facilities, including a full-time telephone or cell phone service.
- Adequate storage and filing systems for the safe-keeping of records, business communications and correspondence.
- A bank account with a registered bank and where required a separate bank account for client's funds.
- Adequate and appropriate key individuals to effectively manage and oversee the activities of the FSP relating to the rendering of financial services, including having at least one key individual per class of business in respect of which the FSP is authorised.

The key individual can be one person responsible for managing or overseeing the rendering of financial services in respect of all or multiple classes of business provided that the key individual is approved for all such classes of business and has the operational ability to oversee and manage the rendering of financial services in respect of all such classes of business.

2.4.2 Governance requirements

The governance framework of an FSP must be proportionate to the nature, scale, risks and complexity of the business of the FSP.

The governance framework of an FSP must include effective and adequate systems of corporate governance, risk management (including conduct risk management) and internal controls that includes the following:

- A business plan setting out the aims and scope of the business, the business strategies and related matters.
- Risk management policies, procedures and systems, including the following:
 - Effective procedures for risk assessment, which identify the risks relating to the FSP's activities, processes and systems, and where appropriate, set the level of risk tolerated by the FSP.
 - Effective procedures and systems to ensure compliance by the FSP, its officers, employees, key individuals and representatives with the Act and other applicable laws, including the Financial Intelligence Centre Act and other applicable anti-money laundering or terrorist financing legislation.
 - Effective procedures and systems to ensure compliance with decisions and decision-making procedures at all levels of the FSP.
 - Effective procedures and systems to detect any risk of failure by the FSP to comply with applicable legislation, and put in place measures and procedures to minimise such risk
 - Effective procedures and systems that provide for corrective actions to be taken in respect of non-compliance, weak oversight, failure of controls or lack of sufficient management.
 - Systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, including -
 - Electronic data security and internal and external cybersecurity.
 - Physical security of assets and records.
 - System application testing.
 - Back-up and disaster recovery plans and procedures for systems and electronic data.
 - Systems and processes to ensure accurate, complete and timeous processing of data, reporting of information and the assurance of data integrity.
- Accounting policies and procedures to enable the FSP to record, report and deliver in a timely manner to the Commissioner financial reports which reflect a true and fair view of its financial position and which comply with the applicable reporting and accounting standards and requirements.

- Sound and sustainable remuneration policies and practices which promote the alignment of interests of the FSP with those of its clients and which avoid excessive risk taking and unfair treatment of customers.
- A business continuity policy aimed at ensuring, in the case of an interruption to the FSP's systems and procedures, that any losses are limited, the preservation of essential data and functions, and the maintenance of its regulated activities, or where that is not possible, the timely recovery of such data and functions and the timely resumption of those activities.
- A recovery plan for the restoration of the FSP's financial situation following a significant deterioration and viable resolution plan setting out options for the orderly resolution of the FSP in the case of failure.
- Provide for regular monitoring and evaluation of the adequacy and effectiveness of its systems, processes and internal control mechanisms and measures to address any deficiencies and to determine whether it serves reasonably to ensure -
 - Risk detection and compliance with applicable legislation.
 - The integrity of the FSP's practices, including the treatment of clients with due care, skill and diligence and in a fair, honest and professional manner.
 - Appropriate segregation of key duties and functions, particularly those duties and functions which, when performed by the same individual, may result in undetected errors or may be susceptible to abuses which expose the FSP or its clients to inappropriate risks.

2.4.3 Outsourcing of functions to a person other than a representative of the FSP

An FSP must exercise due skill, care and diligence when entering into (including the selection process), managing or terminating any arrangement for the outsourcing to any person other than a representative of the FSP of-

- A function that the Act or another law requires to be performed or requires to be performed in a particular way or by a particular person.
- A function that is integral to the nature of the financial services for which the FSP is authorised.
- Any material important operational function of the FSP.

An FSP, where it outsources a function or activity must ensure that the person to whom the function or activity has been outsourced –

- Has the ability, capacity, and any authorisation required by law to perform the outsourced functions, services or activities reliably and professionally.

- Is able to carry out the outsourced services effectively, to which end the FSP must establish methods for assessing the standard of performance of that person.

An FSP, where it outsources a function or activity must have a written contract that governs the outsource arrangement and which clearly provides for all material aspects of the outsourcing arrangement, including –

- Addressing the rights, responsibilities, and service-level requirements of all parties.
- Providing for access by the FSP and the Commissioner to the person's business and information in respect of the outsourced function or activity.
- Addressing sub-outsourcing
- Addressing confidentiality, privacy and the security of information of the FSP and clients of the FSP.

An FSP, where it outsources a function or activity must ensure the following:

- Properly supervise the carrying out of the outsourced functions, and adequately manage the risks associated with the outsourcing, including any risks to the FSP's clients.
- Take appropriate action if it appears that the person may not be carrying out the functions effectively and in compliance with applicable laws and regulatory requirements.
- Retain the necessary expertise to supervise the outsourced functions effectively and manage the risks associated with the outsourcing.
- Be able to terminate the arrangement for outsourcing where necessary without detriment to the continuity and quality of its provision of financial services to clients.
- Establish, implement and maintain a contingency plan for disaster recovery and periodic testing of backup facilities.
- Have effective access to data related to the outsourced activities, including any data relating to the FSP's clients, as well as to the business premises of the person.
- Ensure that the outsourcing arrangement does not compromise the fair treatment of or continuous and satisfactory service to the FSP's clients.
- Ensure that the outsourcing arrangement does not result in key decision-making responsibilities being removed from the FSP.

2.4.4 Provisions applicable to the appointment of a representative

An FSP must ensure that where it appoints a person as a representative that the person

- Is not declared insolvent or provisionally insolvent or is not subject to any pending proceeding which may lead to this.
- Is not under liquidation, provisional liquidation or business rescue or is not subject to any pending proceeding which may lead to this.

An FSP must ensure that where it appoints a juristic representative that such representative has sufficient operational ability and financial resources to perform the activities for which it is appointed as a representative; and such appointment does not lead to one of the following:

- Materially increase any risk to the FSP or to the fair treatment of its clients.
- Materially impair the quality of the governance framework of the FSP, including the FSP's ability to manage its risks and meet its legal and regulatory obligations.
- Compromise the fair treatment of or continuous and satisfactory service to clients.
- Prevent the FSP from acting in the best interests of its clients.
- Result in key decision-making responsibilities being removed from the FSP.

An FSP must ensure that any remuneration or fee paid in respect of an activity or function for which a person is appointed as a representative-

- Is reasonable and commensurate with the actual function or activity.
- Is not structured in a manner that may increase the risk of unfair treatment of clients.

An FSP must develop appropriate contingency plans to ensure the continued function of the FSP's business and continued service to its clients if the appointment of the representative is terminated or becomes ineffective.

An FSP may not permit a representative to outsource or sub-delegate any activity or part thereof relating to the rendering of financial services that that representative performs on behalf of the FSP.

2.4.5 Additional requirements applicable to FSPS that provide automated advice

Automated advice is the furnishing of advice through an electronic medium that uses algorithms and technology without the direct involvement of a natural person.

In addition to the governance requirements, an FSP that provides automated advice must-

- Have adequate and appropriate human resources that have the required competence to-
 - Understand the technology and algorithms used to provide the automated advice
 - Understand the methodological approaches, including assumptions, embedded in the algorithms
 - Understand the preferences or biases that exist in the approaches, and assumptions embedded in the algorithms.
 - Understand the risks and rules underpinning the algorithms.
 - Identify the risks to clients arising from the automated advice.
 - Monitor and review the automated advice generated by algorithms to ensure quality and suitability of the advice and compliance with the Act.
- Establish, implement and maintain adequate policies and procedures-
 - To monitor, review and test the algorithms and the advice generated by it.
 - To monitor, review and test the filters implemented to ensure clients for whom the automated advice is not suitable are filtered out.
 - That set out the level of human review that will be undertaken on the advice generated.
- In relation to the monitoring and testing of the algorithms and filters-
 - Have appropriate system design documentation that sets out the purpose, scope and design of the algorithms and filters.
 - Have a documented test strategy that explains the scope of testing, including test plans, test cases, test results, defect resolution, and final test results
 - Have appropriate processes for managing any changes to an algorithm and filters that include having security arrangements in place to monitor and prevent unauthorised access to the algorithms.
 - Be able to control, monitor and reconstruct any changes to algorithms or filters.
 - Review and update algorithms whenever there are factors that may affect their relevance (such as market changes and changes in the law).

- Have in place controls and processes to suspend the provision of advice if an error within an algorithm or filters is detected.
- Be able to frequently monitor and supervise the performance of algorithms and filters through an adequate and timely review of the advice provided.
- Have adequate and sufficient technological resources to-
 - Maintain client records and data integrity.
 - Protect confidential and other information.
 - Meet current and anticipated operational needs, including in relation to system capacity.

TOPIC 3 FIT AND PROPER REQUIREMENTS FOR REPRESENTATIVES

LEARNING OUTCOMES

After studying the topic, the learner should be able to-

- Explain the fit and proper requirements that a representative in Category I must meet on appointment and thereafter.

3.1 REQUIREMENTS APPLICABLE TO REPRESENTATIVES

Representatives must meet all of the following elements of fit and proper requirements, the details of which is considered in the sections following:

- Personal character qualities of honesty and integrity and good standing
- Financial Soundness
- Operational Ability
- Competency
- Continuous Professional Development

3.2 HONESTY, INTEGRITY AND GOOD STANDING

The personal characteristics of representatives are clearly very important as clients rely on representatives to guide them honestly with respect to advice on financial services and products.

An FSP must assess if a representative is guilty of one of the transgressions or offences mentioned in paragraph 2.2

If a representative is guilty of any of these transgression or offences, the key individual must make a final decision on the honesty, integrity and good standing status of the person.

In assessing whether the person has honesty, integrity and good standing the key individual must have due regard to the following:

- The seriousness of a person's conduct and the surrounding circumstances.
- The relevance of such conduct with relation to the duties to be performed by the person.
- The passage of time since the occurrence of the conduct.

The representative also has the duty to declare on a regular basis to the FSP whether his honesty and integrity status might have been affected.

3.3 OPERATIONAL ABILITY

A representative of an FSP must have the operational ability to effectively function as a representative of the FSP or perform the activities for which that person was appointed.

A juristic representative must always have at least one key individual responsible for managing or overseeing the financial services rendered by the representative.

3.4 FINANCIAL SOUNDNESS REQUIREMENTS

An FSP must ensure that where it appoints a person as a representative that the person:

- Is not declared insolvent or provisionally insolvent or is not subject to any pending proceeding which may lead to this.
- Is not under liquidation, provisional liquidation or business rescue or is not subject to any pending proceeding which may lead to this.

Apart from this requirement, there is also additional financial soundness requirements applicable to juristic representatives. These requirements are discussed in Chapter 2.

The financial soundness requirements for juristic representatives becomes effective 1 March 2019.

3.5 COMPETENCY REQUIREMENTS

The competency requirements for representatives include the minimum experience and qualifications a representative must meet before appointment or must obtain whilst working under supervision.

All the competence requirements must be met except if the Commissioner exempted a representative from any of the requirements while rendering a financial service under supervision.

A sole proprietor FSP cannot work under supervision and therefore must meet all competency requirements before a license will be granted. Where a representative is responsible for more than one product, only the highest qualification requirement should be met.

There are different requirements for different date of first appointments (DOFA).

The date of first appointment is the first date on which a representative was appointed by an FSP to render financial services in relation to a specific subcategory.

3.5.1 Transitional Period

Representatives appointed between 2004 and 2010 are subject to transitional arrangements.

These stipulations determine the type of qualification which is required as well as the arrangements regarding the requirements in terms of the regulatory examinations.

Representatives appointed between 2008 -2009 could choose to either complete the 30/60 requirements within 3 years of date of first appointment or to complete a recognised qualification within 5 years of date of first appointment.

All representatives appointed in the transitional period had until December 2013 to be found competent in the RE5.

Representatives that no longer worked under supervision as on 1 April 2018 is deemed fit and proper and do not adhere to the new requirement set in terms of Class of Business Training and product specific training only in so far for the subcategories they were appointed for on or before 1 April 2018.

Most of the requirements became effective 1 April 2018 but some requirements have different effective dates as stipulated in the subtopic following.

3.5.2 Experience requirements

The fit and proper requirements set different requirements with respect to experience for the different categories of representatives. The length of experience is also dependent on whether the rep provides advice or intermediary service. The requirements are outlined in Table 3.1.

Table 3.1: Experience requirements relative to different categories and subcategories

Subcategory name	Minimum Experience Advice Cat I	Minimum Experience Intermediary services Cat I
Long-term insurance: Subcategory A	6 months	2 months
Short-term insurance: Personal Lines	1 year	6 months
Long-term insurance: Subcategory B1	1 year	6 months
Long-term insurance: Subcategory C	1 year	6 months
Retail pensions benefits	1 year	6 months
Short-term insurance: Commercial lines	1 year	6 months
Pension fund benefits	1 year	6 months
S & I: Shares	2 years	1 year
S & I: Money market instruments	2 years	1 year
S & I: Debentures and securitized debt	2 years	1 year
S & I: Warrants, certificates and other instruments acknowledging debt	2 years	1 year
S & I: Bonds	2 years	1 year
S & I: Derivative Instruments excluding warrants	2 years	1 year
Collective investment schemes	1 year	1 year
Forex investment business	2 years	1 year
Health service benefits	2 years	2 years
Long-term deposits	6 months	3 months
Short-term deposits	6 months	3 months
Friendly society benefits	6 months	2 months
Long-term insurance: Subcategory B2	1 year	6 months
Long-term Insurance subcategory B2-A	1 year	6 months
Long-term Insurance subcategory B1-A	1 year	6 months
Short-term Insurance Personal Lines A1	1 year	6 months
Structured Deposits	2 years	1 year
Securities and instruments	2 years	1 year
Participatory interest in a CIS hedge fund	2 years	1 year

(I) Conditions that the experience must met

The experience must be practical experience gained specifically in terms of the subcategories for which the representative is appointed, providing the following:

- The experience involved the active and ongoing gaining of knowledge, skills and expertise required in terms of the FAIS Act.
- The experience was obtained through the active involvement in providing financial services and could have been gained while working under supervision for the minimum experience period, if proof of such experience can be submitted.
- The experience could have been gained within or outside the borders of South Africa.
- The experience could have been gained in intermittent periods.
- The dates relating to the experience must be clearly stated.
- Experience gained prior to the implementation of the FAIS Act is acceptable.
- Experience gained more than 5 years prior to the application is not acceptable i.e. experience *expires* after 5 consecutive years.
- The experience could have been gained simultaneously in multiple subcategories, if proof of such experience can be submitted.

3.5.3 Qualification requirements

The new fit and proper requirements are moving away from the original 30/60 credit requirements with the introduction of product specific training and class of business training requirements, recognised qualification requirements and regulatory examination. These requirements are considered in the subsections following.

However, representatives performing executing of sales is exempted from the class of business training, recognised qualification requirement and regulatory examination requirements if they meet the following minimum requirements:

- The representative has a Grade 12 National Certificate or NQF level 4 or higher qualification
- The execution of sales is performed in accordance with a script approved by a key individual and the relevant governance structure of the FSP and under the direct oversight of a key individual
- Where the execution of sales is performed by telephone, all conversations with clients are recorded and the recordings are stored and retrievable

- The FSP has sufficient and adequate controls in place to ensure and to monitor that the representative does not furnish the client with advice and that the sales practices are not misleading, false, inappropriate to the expected target clients or will not result in unfair outcomes for the client.
- The FSP must on a regular basis review the recordings and must monitor the representative to ensure that they do not deviate from the script or supplement the script with content not approved
- The FSP must on a regular basis review and monitor the adequacy and efficiency of its controls and quality assurance processes in relation to the execution of sales.
- The FSP must on a regular basis review the script for appropriateness and compliance with applicable legislation.

Execution of sales means an intermediary service performed by a person on instruction of a client to buy, sell, deal or disinvest in, replace or vary one or more financial product.

(I) Product specific training

Product specific training is training in respect of a particular financial product and which training is assessed, including any amendment to that particular financial products.

Exemptions applicable to product specific training

The competency requirements relating to product specific training does not apply to representatives in Category II, IIA or III provided that-

- Such representatives have adequate, appropriate and relevant knowledge and expertise in respect of financial services, financial products and functions that it performs
- Comply with the minimum fit and proper requirements
- Maintain their competence

Requirements in term of product specific training

An FSP and representative must prior to the rendering of any financial service in respect of a particular financial product complete the product specific training relevant to that financial product and for which they are authorised or in respect of which authorisation is sought.

The product specific training becomes effective 1 May 2018.

A representative working under supervision appointed prior to 1 April 2018 or appointed between 1 April and 30 April has three months from 1 May 2018 to complete the product specific training.

Representatives appointed before 1 April 2018 who no longer work under supervision is deemed to have completed the product specific training. This exemption is only applicable to particular financial products for which the representative was authorised. The representative still need to undergo product specific training in the event to where an amendment to the product occurred after 1 April 2018

(II) Class of business training

Class of business training is training in respect of a class of business and which the training is provided and assessed by an accredited provider or an education institution.

An accredited provider is an entity that is registered with the Quality Council as having the capacity to offer qualifications registered on the National Qualifications Framework (NQF) at the required standard or a foreign person that is so recognised by an authority that is equivalent to a Quality Council.

Education institution has the meaning assigned to it in section 1(1) of the NQF Act.

Assessed in relation to competence requirements, means the structured process of gathering reliable evidence to determine the level of a person's competence in relation to a pre-determined standard, and the extent to which the person's competence meet the pre-determined standard.

The class of business training may be undertaken separately from or in combination with product specific training or a recognised qualification provided a person is able to demonstrate that the content of the qualification meets the criteria referred to.

Where a financial product incorporates one or more other underlying financial products, the class of business training must include training in respect of the underlying product.

Exemptions applicable to class of business training

The competency requirements relating to class of business training does not apply to representatives that are authorised to only render financial services or manage financial services in relation to-

- Perform execution of sales in respect of a Tier 1 financial product provided that the minimum exemption provisions are complied with.
- Perform financial service in respect of Tier 2 financial products.

Requirements in term of class of business training

An FSP and representative must prior to the rendering of any financial service in respect of a particular financial product complete the class of business training relevant to that financial product and for which they are authorised or in respect of which authorisation is sought.

The class of business training becomes effective 1 August 2018.

An FSP representative other than a representative working under supervision appointed prior to 1 April 2018 is deemed to have completed the class of business training in respect of the financial products for which they were appointed.

A representative working under supervision on 1 April 2018 has 12 months from 1 August 2018 to comply with the class of business training requirements for the financial products in respect of which they are working under supervision.

A representative appointed between 1 April 2018 and 1 August 2018 has 12 months from 1 August 2018 to comply with the class of business training requirements.

(III) Recognised qualifications

In addition to meeting the minimum qualification requirement, representatives must also have a recognised qualification as determined by the Commissioner. Representatives may work under supervision until the recognised qualification is obtained, for a period of not more than 5 years.

A representative registered for more than one category/subcategory need to meet the most onerous requirement.

The latest list of recognised qualifications is published in Board Notice 76 of 2015 with an additional list published in Board Notice 51 of 2017. The reader must familiarise himself with the qualifications listed in this notice.

However, the recognised qualification requirement does not apply to representatives authorised only to render financial services or manage or oversee financial services for Long-term Insurance Subcategory A and/or Friendly Society benefits or for Category I representatives performing execution of sales if the minimum requirements are met.

(IV) Regulatory Examinations

The amended Fit and Proper requirements introduced regulatory examinations. These examinations must be completed by representatives and key individuals of FSPs.

The first level regulatory examinations are based on regulatory understanding and are applicable to all key individuals and representatives.

The first level regulatory examinations consist of five separate examinations and the examination that is applicable depends on the role and category of the person. You only need to familiarise yourself with the following first level regulatory examinations.

- *RE1*: Competency needed by key individual in all categories on appointment (except category IV).
- *RE5*: Competency needed by representatives in all categories within 2 years of date of first appointment.

The regulatory examination does not apply to representatives that are authorised to only render financial services or manage financial services in relation to-

- Perform execution of sales in respect of a Tier 1 financial product provided that the minimum exemption provisions are complied with.
- Perform financial service in respect of Tier 2 financial products.

3.6 CONTINUOUS PROFESSIONAL DEVELOPMENT REQUIREMENTS

3.6.1 Exemptions to requirements

The Continuous Professional Development (CPD) requirements does not apply to representatives that are authorised to only render financial services or manage financial services in relation to-

- Rendering a financial service in respect of a Tier 2 financial product.
- Rendering intermediary services in respect of a Tier 1 financial products.

3.6.2 General requirements

A representative must maintain the required competence to render or manage or oversee the financial services for which the representative is authorised.

A representative must comply with the minimum CPD requirements stipulated

A representative must ensure that the type and combination of CPD activities undertaken-

- Are relevant to the functions and role of the representative.
- Contributes to the skill, knowledge, expertise and professional and ethical standards of the representative.
- Addresses any identified needs or gaps in the technical knowledge of representative.
- Addresses any identified needs or gaps the generic knowledge and understanding of the environment in which the financial service is rendered or managed or overseen.
- Addresses any identified needs or gaps in the knowledge and understanding of applicable laws.
- Adequately considers changing internal and external conditions relevant to the classes and subclasses of business, the category of financial services and the financial products for which the representative is authorised.

3.6.3 Minimum CPD hours

Representative must complete the required number of hours of CPD activities within a CPD cycle. A CPD cycle is a period of 12 months and starts on 1 June every year and end 31 May the following year.

The minimum CPD hours prescribed depends on the amount of business classes and subclasses in which the representative renders a financial service in. The requirement is detailed in the Table following.

Table 3.2: Required CPD hours per cycle

Number of subclasses	Number of class of business	Number of CPD hours per cycle
1	1	6 hours
2 or more	1	12 hours
1 or more	2 or more	18 hours

A representative must submit evidence of their CPD activities to the FSP within 15 days after expiry of the CPD cycle.

A representative that is authorised for a period of less than 12 months in a particular CPD cycle must by the end of the CPD cycle complete a pro-rate minimum number of CPD hours calculated as follows:

$$\begin{aligned} & \text{Required pro rate CPD hours} \\ & = \text{Number of annual required CPD hours} \\ & \times \frac{\text{Number of months authorised in cycle}}{12} \end{aligned}$$

An FSP may pro rate reduce the CPD hours in respect of a representative for a period of time which that representative is continuously absent from work if that absence is due to one of the following:

- Maternity, paternity or adoption leave.
- Long-term illness or disability.
- The representative's responsibilities to care for a family member of that representative who has a long-term illness or disability.

The reduced hours must be calculated as follows:

$$\begin{aligned} & \text{Required pro rate CPD hours} \\ & = \text{Number of annual required CPD hours} \\ & \times \frac{(12 - \text{number of months absent in cycle})}{12} \end{aligned}$$

An FSP may not reduce the CPD hours of a representative for consecutive CPD cycles except where the absence commenced in a particular CPD cycle and uninterruptedly continues into the consecutive CPD cycle. The reduction may only be applied for a maximum period of three consecutive CPD cycles.

3.6.4 CPD activities

A CPD activity is an activity that is accredited by a Professional body that has been allocated an hour value of part thereof and is verifiable. CPD activities excludes an activity performed towards a qualification and product specific training.

Verifiable means activities that can be objectively verified and includes evidence of the identity of the person who took part in such activities and proof of the completion thereof.

A professional body is a body recognised by the South African Qualifications Authority (SAQA) as a professional body for purposes of the NQF Act.

An FSP and representative must ensure that the CPD activities are tailored to meet the specific knowledge and skills, needs and/or gaps arising from changing internal and external conditions having cognizance of classes and subclasses of business and the financial product category for which it is authorised.

3.7 SUMMARY OF EXEMPTIONS TO REQUIREMENTS

The table following summarized the exemption applicable to the fit and proper requirements.

Fit and proper requirement	Exemption applicable
Product specific training	<ul style="list-style-type: none"> ▪ Category II representatives
Class of business training	<ul style="list-style-type: none"> ▪ Key individuals in Long-term insurance A & Friendly Society Benefits ▪ Representatives providing execution of sales ▪ Tier 2 representatives
Recognised qualifications	<ul style="list-style-type: none"> ▪ Key individuals in Long-term insurance A & Friendly Society Benefits ▪ Representatives in Long-term insurance A & Friendly Society Benefits ▪ Representatives providing execution of sales
Regulatory examination requirement	<ul style="list-style-type: none"> ▪ Key individuals in Long-term insurance A & Friendly Society Benefits ▪ Representatives providing execution of sales ▪ Tier 2 representatives
Continuous Professional Development	<ul style="list-style-type: none"> ▪ Tier 2 representatives ▪ Representatives providing intermediary services in Tier 1 products

TOPIC 4 RESPONSIBILITIES RELATING TO COMPETENCY REQUIREMENTS

LEARNING OUTCOMES

After studying the topic, the learner should be able to-

- Understand the financial services providers responsibilities relating to maintaining the fit and proper status of representatives and key individuals.

4.1 INTRODUCTION

Board Notice 194 of 2017 also introduced responsibilities in relation to the competency requirements of representatives and key individuals. These responsibilities are part of the on-going licensing responsibilities of a financial services provider and failure to meet these responsibilities can lead to penalties as prescribed under the FAIS Act.

The following subtopic consider the responsibilities in terms of this.

4.2 GENERAL REQUIREMENTS

The amended fit and proper requirements prescribe that an FSP, key individual and representative must-

- Have adequate, appropriate and relevant knowledge and expertise in respect of financial services, financial products and functions that it performs.
- Comply with the minimum fit and proper requirements.
- Maintain their competence.

The minimum competency requirements laid down for representatives and key individual does not serve as evidence that the representative or key individual compliance with the requirements detailed above.

Therefore, the amended fit and proper requirements lay down certain measures that must be in place to achieve this. These measures are considered below.

An FSP must establish, maintain and apply adequate policies, internal systems, control and monitoring mechanisms to ensure that the FSP, key individuals and representatives –

- Comply and continue to comply with the fit and proper requirements imposed on those role players.
- Are aware of the procedures that must be followed for the execution of their responsibilities in the performance of their functions.
- Possess appropriate general and technical knowledge to be able to comply with all relevant disclosure obligations to clients.
- Are appropriately trained regarding the requirements of the FAIS Act and the financial services and financial products in respect of which they are appointed.
- Undertake Continuous Professional Development (CPD) to maintain and update the knowledge and skills.
- Are able to assess whether it is appropriate to offer or provide a client a particular financial service or product taking into account the needs, circumstances, risk tolerance and capacity of the client and the client's capacity to understand the features and complexity of the service or product.
- Are able to prohibit persons who are not authorised as representatives or who do not meet the competency requirements to not render a financial service.

A category I FSP that appoints representatives to perform the execution of sales must be able to demonstrate compliance with the minimum qualification requirements Execution of sales means an intermediary service performed by a person on instruction of a client to buy, sell, deal or disinvest in, replace or vary one or more financial product.

An FSP must be able to demonstrate and record that it has evaluated and reviewed at regular and appropriate intervals the following:

- The continuous competence of the key individuals and representatives for the activities they perform
- The actions taken to ensure the continuous competence of the key individuals and representatives for the activities they perform.
- The appropriateness of training regarding financial services and financial products in respect of which they are appointed
- The appropriateness of CPD activities to maintain and update the knowledge and skills that are appropriate for their activities. (This stipulation becomes effective 1 May 2018)

The abovementioned evaluation and review must consider the following:

- Technical knowledge and its application
- Skills and expertise
- Changes in the market, financial products, financial services and legislation.

An FSP must notify the Commissioner immediately if a key individual no longer complies with any of the fit and proper requirements.

These requirements become effective 1 May 2018

4.3 COMPETENCE REGISTER

An FSP must establish, maintain and update on a regular basis a competence register in which all qualifications, successfully completed regulatory examinations, product specific training class of business training and CPD activities of the FSP, key individuals and representatives are recorded.

An FSP must in the form and manner and at the intervals prescribed by the Commissioner furnish to the Commissioner the information in the training register.

4.3.1 Maintenance of competence register

An FSP must within 15 days after the training has occurred, record in the competence register of the FSP the product specific or class of business training of the FSP, its key individuals and representatives.

An FSP must retain all information and documentation relating to class of business and product specific training for a period not less than five years after the FSP or representative has ceased to render financial services in respect of that particular financial product or a particular class of business and the key individual as ceased to manage the rendering of financial services by the FSP in respect of a particular financial product or a particular class of business.

An FSP must within a reasonable time after a request by a product supplier, provide confirmation that representatives have obtain the required class of business and product specific training where the product supplier requires the information to comply with legal obligations.

An FSP must within a reasonable time after a request by a key individual or representative (former or current) provide confirmation to the key individual or representative of the product specific and class of business training completed by him/her.

4.3.2 Class of business and product specific training

An FSP must ensure that it, its key individuals and representatives are proficient in respect of, understand, and have completed adequate and appropriate class of business training and product specific training relevant to, the particular financial products in respect of which they render financial services or manages or oversees the rendering of financial services.

Class of business training, where appropriate must include training on the following:

- The range of financial products within the class of business.
- The general characteristics, terms and features of financial products in the class of business and any specialist characteristics, terms and features in respect of financial products in the class of business.
- The typical fee structures, charges and other costs associated with products in the class of business.
- General risk associated with investing, purchasing or transacting in the products in the class of business.
- Investment and risk principles, options and strategies in respect of products in the class of business.
- The appropriateness of different products or product features in the class of business for different types of clients or group of clients.
- The typical role players or market participants in respect of products in the class of business, including their legal structure.
- The impact of applicable legislation, including taxation laws, on product in the class of business.
- The impact of applicable economic and environmental factors on the products in the class of business and the performance of those products including:
 - The economic and business environment and cycles.
 - Inflation.
 - Government monetary and fiscal policy.
 - Interest rates and exchange rates.
- Any inter-relationship within and between particular classes of business.
- Industry standards and codes of conduct relevant to class of business.

Product specific training, where appropriate, must include training on the following:

- The specific characteristics, terms and features of the product, including any specific complexities or material differentiation from the general characteristics, terms and features of products in the class of business concerned.
- The nature and complexity of the financial product and any underlying components of that product.
- How the financial product and underlying components of the product are structured and priced.
- The fee structure, charges and other costs associated with the product and their impact on the real return or benefits of the product.
- The nature and features of any guarantees and the costs associated with them.
- The risks associated with investing, purchasing or transacting in the product and any underlying components of the product.
- The risks associated with particular investment concepts and strategies in respect of the product.
- The impact of tax on the benefits or real return of the product.
- The potential impact of abnormal or extreme market, economic or other relevant conditions on the performance of the product.
- Any investment options or strategies within the product.
- Any flexible benefit or service options available within the product.
- The accessibility of benefits or funds under the product and any restrictions or limitations on such accessibility.
- The level of liquidity of the product or its underlying components
- The intended target market of the product and the outcomes it is intended to deliver for customers, including identifying customers or groups of customers for whom the product is not expected to be suitable.
- The identity of the product supplier and the providers of any underlying components of the product, including their good standing and regulatory status.
- Particular disclosures, whether or not prescribed by legislation, applicable or relevant to the product, its underlying components and the product supplier.
- The lock-in periods and relevant termination conditions, exit options and associated costs.
- The accessibility of benefits or funds under the financial product and any associated restrictions or limitations.
- The expected outcomes that will be achieved for clients.

The class of business training may be undertaken separately from or in combination with product specific training or a recognised qualification provided a person is able to demonstrate that the content of the qualification meets the criteria referred to.

Where a financial product incorporates one or more other underlying financial products, the class of business training must include training in respect of the underlying product.

4.4 CONTINUOUS PROFESSIONAL DEVELOPMENT

An FSP must establish and maintain policies and procedures on Continuous Professional Development that include how the FSP, key individual and representative will-

- Maintain knowledge and skills that are appropriate for their activities and responsibilities.
- Update their knowledge and skills.
- Develop new knowledge and skills to assist with their current functions and responsibilities or functions contemplated in the future.

An FSP must establish and maintain training plans for each CPD cycle to ensure that CPD-

- Is relevant and appropriate for the authorisation, approval and appointment of the FSP, key individual and representative
- Addresses any identified needs, knowledge and skills gaps.
- Continually improves the professional standards and practices of the FSP, its key individuals and representatives.

An FSP must within 30 days of the expiry of each CPD cycle, record in the competence register the following

- CPD activities of the FSP, its key individuals and representatives.
- Reduction of CPD hours of a representative.

An FSP must calculate the total number of CPD hours completed by each person referred as at the end of each CPD cycle.

An FSP must obtain and retain relevant supporting evidence of the CPD activities recorded in the competence register.

An FSP must record the dates of, reasons for and retain supporting evidence for, any decision of the FSP to reduce CPD requirements. An FSP must retain the evidence of CPD activities for a period not less than five years from the end of the CPD cycle concerned.