



Career Ready Academy

TEXTBOOK

Financial Services Overview

Fundamental Module



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INTRODUCTION

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

This module forms part of the Class of Business Training for all business classes.

It is a prerequisite to complete and pass the COB Module 1: Overview of the financial services sector before any other class of business module can be undertaken.

Topic 1 The Financial Services Sector

LEARNING OUTCOMES

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

- Provide an overview of the financial services sector in South Africa.
- Describe the participants in the financial services sector.

1.1 OVERVIEW OF THE FINANCIAL SERVICES SECTOR IN SOUTH AFRICA

The financial services sector provides the necessary infrastructure that allows people to make day-to-day economic transactions, such as paying for goods through a credit card; to save for their future goals and retirement needs; and to insure themselves against risks, such as damage to their property, or loss of income due to a disability.

The financial services sector also plays an extremely important role at the macro-economic level. This is because its infrastructure allows for a smooth and efficient flow of funds from those who have surplus funds, to those who have a shortage of funds, either by direct, market-based financing (for example through the stock exchange); or by indirect, bank-based finance (for example loans through a bank). This, in turn, enables opportunities for economic growth, job creation, infrastructure creation and sustainable development in South Africa.

Underpinning the South African financial services sector is a sound regulatory and legal framework that ensures prudential and market conduct oversight. However, although South Africa's financial services sector is well-developed and well-regulated, and weathered the 2008 global financial crisis relatively well, the National Treasury document, 'A safer financial sector to serve South Africa better' (2011), highlighted that much more needs to be done in the sector to ensure on-going national and global financial and economic stability, and to ensure that the sector can play a bigger role in supporting real economic growth and the on-going transformation of South Africa's society, to enable a better life for all South Africans.

Furthermore, National Treasury's discussion document, Treating Customers Fairly in the financial sector, a draft Market Conduct Policy Framework for South Africa (2014), highlighted poor market conduct and examples of abuse in the financial sector, such as high fees, selling of inappropriate products and services, and reckless lending in the sector, which undermines the objectives of government to make the financial sector more accessible to South Africans in order to improve financial inclusion.

The Financial Services Sector Act of 2017 introduced a Twin Peaks Model of regulation with the establishment of the Prudential Authority within the South African Reserve Bank (SARB) and transforming the Financial Services Board (FSB) to the Financial Sector Conduct Authority (FSCA).

This new legislation removed the fragmented (or 'silo') regulatory approach which saw different regulators overseeing different sub-sectors in the industry; and move towards a more streamlined system of licensing, supervision, enforcement, customer complaints, appeal mechanism, and customer advice and education across the financial sector.

The Treating Customers Fairly Initiative, which is already being used in the supervision of market conduct in the sector, will also reform the industry, and ensure that a culture of “treating customers fairly” becomes entrenched in the sector. This will ensure that this sector provides accessible and appropriate products and services, and thereby remains sustainable into the future.

The South African financial services sector consists of different types of participants, which provide the various products and services, and they can be grouped into the following main categories:

- Regulatory authorities such as the Financial Sector Conduct Authority the Prudential Authority
- Banks
- The Johannesburg Stock Exchange
- Insurance companies
- Medical schemes providers
- Asset/ fund managers (such as collective investment schemes managers, employee retirement benefit suppliers)
- Financial services providers (FSPs).

The sections following considers each of these participants in the financial services sector.

1.2 REGULATORY AUTHORITIES

1.2.1 Financial Sector Conduct Authority

In terms of the Financial Sector Regulation Act, the Financial Services Board changed on 1 April 2018 to become the new Financial Services Conduct Authority (FSCA), and its new main role will be to oversee market conduct in the entire financial services sector.

1.2.2 The South African Reserve Bank (SARB)

The South African Reserve Bank is South Africa’s central bank. Its primary function is to protect the value of South Africa's currency. In discharging this role, it takes responsibility for the following:

- Ensuring that the South African money, banking and financial system as a whole, is sound; meets the requirements of the community; and keeps abreast of international developments.
- Assisting the South African government, as well as other members of the economic community of southern Africa, with data relevant to the formulation and implementation of macro-economic policy.
- Informing the South African community and all stakeholders abroad about monetary policy and the South African economic situation.

1.2.3 Prudential Authority

The Prudential authority is a division of the South African Reserve Bank (SARB) established in terms of the Financial Sector Regulation Act.

The Prudential Authority regulates the prudential aspects (financial soundness regulations) for the banking and insurance sector.

1.2.4 National Credit Regulator (NCR)

The National Credit Regulator (NCR) was established through the National Credit Act of 2005 and is responsible for the regulation of the South African credit industry. Objectives of the NCR include, amongst others the following:

- Promoting a fair and non-discriminatory market place for access to consumer credit.

- Providing for the general regulation of consumer credit and improved standards of client information.
- Promoting black economic empowerment and ownership within the consumer credit industry.
- Prohibiting certain unfair credit and credit-marketing practices.
- Promoting responsible credit granting and prohibiting reckless credit granting.
- Providing for debt re-organisation in cases of over-indebtedness.
- Providing for the registration of credit bureaus, credit providers and debt-counselling services.

Under the new Financial Services Regulation Act, the NCR will continue to regulate consumer credit, but will work cooperatively alongside the new Prudential Authority and Financial Sector Conduct Authority.

1.2.5 Council for Medical Schemes (CMS)

The Council for Medical Schemes is a statutory body established by the Medical Schemes Act of 1998, to provide regulatory supervision of private health financing through medical schemes. Under the new Twin Peaks approach, it is envisaged that the CMS will continue to regulate medical schemes.

1.2.6 Council for Overseeing Recognised and Statutory Ombudsman Schemes

There are several ombudsman schemes currently operating in South Africa both statutory and voluntary.

The Financial Services Ombud Schemes Act provides for the recognition of voluntary ombudsman schemes provided they comply with certain requirements. It also provides for complaints that fall outside of the jurisdiction of any recognised or statutory ombudsman scheme to be heard by a statutory ombudsman scheme created for that purpose.

The various ombudsman schemes are detailed in the table following.

Statutory Ombudsman schemes	Voluntary Ombudsman schemes
Pension fund adjudicator	Long-term insurance ombud
FAIS ombud	Short-term insurance ombud
	Banking adjudicator

Table 1. 1: Ombudsman Schemes

An independent council reporting to the Minister is responsible for the regulation and supervision of ombudsman schemes, including approving applications, coordinating the activities of the ombudsman schemes and monitoring compliance with the provisions of the Financial Services Ombud Schemes Act. The Financial Sector Conduct Authority, however, funds its activities and is responsible for the administration of the Act.

Self-regulated organisations such as the exchanges which have dispute resolution mechanisms in place have to ensure that these schemes also comply with the minimum criteria laid down for ombudsman schemes to ensure coherence in the complaint’s resolution field in South Africa.

The objective of the Act is to ensure that clients have easy and free access to an ombudsman to submit complaints, which is another step forward in the important task of protecting customers in South Africa.

1.2.7 Financial Intelligence Centre

Money laundering is an offence that involves concealing the nature of the proceeds of crime, avoiding prosecution for money laundering or diminishing the proceeds of crime.

The Financial Intelligence Act (FICA) provides for control measures to facilitate the detection and investigation of money laundering that are based on three main principles:

- Intermediaries in the financial system must know with whom they are doing business, the so-called know your client principle.
- The paper trail of transactions through the financial system must be preserved.
- Possible money laundering transactions must be reported.

The control measures introduced by FICA require that accountable institutions establish and verify the identity of their clients, keep certain records and report certain information. Accountable institutions include a long list of persons and institutions including authorised users (members of exchanges) and certain financial services providers.

The regulatory authority responsible for the implementation of FICA is the Financial Intelligence Centre. The objective of the Financial Intelligence Centre (FIC) is to identify the proceeds of unlawful activities and to combat money laundering activities. FIC ensures that timeous financial intelligence is provided for use in the fight against crime, money laundering and terror financing.

The centre collects, processes, analyses, and interprets information received in terms of the various statutory reporting obligations. The Centre then advises law enforcement authorities, supervisory bodies (like the FSCA, JSE Ltd and the Banking Supervision Division of the SA Reserve Bank) and the intelligence services and cooperates with these organisations in the execution of their duties.

1.3 BANKS

Banks are important to the economy of a country because they act as intermediaries through which the funds of surplus units (savers) can be made available to shortage units (borrowers), to finance productive investment activities. This is crucial to the functioning of the economy.

Banks also provide a whole range of financial services and advice to the public, such as the payment services that are an everyday fact of life, and without which the economy cannot function smoothly.

1.3.1 Legal Structure of Banks

All banks must, firstly, be registered as public companies, and be registered by the Registrar of Banks in terms of the Banks Act 94 of 1990, before they can commence business.

To get a banking licence they need to meet stringent requirements, including the following:

- The establishment of the proposed bank will be in the public interest.
- The business the applicant proposes to conduct, is that of a bank.
- The applicant will conduct the proposed business of a bank in the capacity of a public company incorporated and registered under the Companies Act.
- The applicant will be able to establish itself successfully as a bank.
- The applicant will have the financial means to comply, in the capacity of a bank, with the requirements of this Act.
- The business of the proposed bank will be conducted in a prudent manner.
- Every person who is to be a director or an executive officer of the proposed bank is, a fit-and-proper person to hold the office of such director or executive officer.
- Every person who is to be an executive officer of the proposed bank has sufficient experience of the management of the kind of business it is intended to conduct.

- The composition of the board of directors of the proposed bank will be appropriate regarding the nature and scale of the business it is intended to conduct.

1.3.2 Typical Product Range of a Bank

Typically, the following products and services are offered to retail as well as to business customers:

- Transactional accounts:** These include products such as cheque, transmission accounts savings accounts.
- Investment accounts:** These include products such as call deposits, money-market accounts, or structured deposits
- Bank cards:** These include products such as debit cards, credit cards, garage or petrol cards.
- Loans:** These include products such as overdrafts, revolving credit plans, personal or business loans or mortgage bonds.
- Asset finance:** These include products such as instalment credit or lease agreement credit.

1.4 STOCK EXCHANGES

The Johannesburg Stock Exchange (JSE) is a multi-asset class securities exchange, which provides a marketplace where equities, bonds, options and futures, and other securities can be traded.

Buyers and sellers come together to trade during specific hours on business days. The Exchange imposes rules and regulations on the firms and brokers that are involved with them. If a particular company is traded on an exchange, it is referred to as listed.

The JSE is licensed to operate under the Financial Markets Act, 19 of 2012. The JSE is a self-regulatory organisation, setting and enforcing listing and membership requirements and trading rules. Currently the Financial Sector Conduct Authority (FSCA) supervises the JSE in the performance of its regulatory duties.

For a long time, the JSE was the only stock exchange in South Africa, In the last two years four new alternate exchanges became operational each with their own focus area.

1.5 LONG-TERM INSURERS

The main purpose of long-term insurers is to provide appropriate products that assist clients in achieving their financial goals in life. Note that long-term insurers could be assisting both individual clients and groups of clients (such as employers wanting to provide for their employees) in achieving certain goals.

Long-term insurers, therefore, also have a major duty to take care of people's money, since millions of clients rely on them to invest and grow their hard-earned cash, so that they will be able to send their children to university, go on that dream holiday one day and, extremely important, be able to retire comfortably in their old age.

Clients also rely on long-term insurers to be able to pay out lump sums and/ or monthly benefit payments to the affected families in case of adverse life events, such as unexpected death, disability and severe illnesses. These lump sums and/ or monthly benefit payments are used to ease the financial costs associated with, and to replace income/ earnings lost because of these adverse life events.

1.5.1 Legal Structure of Long-Term Insurers

Because of their important role as custodians (or caretakers) of people's money, long-term insurers currently need to be registered and licensed by the Registrar of Long-term Insurance in terms of the Long-term Insurance Act 52 of 1998, before they can commence business.

To get the licence, they need to meet stringent requirements in terms of the following:

- Having sufficient capital and asset resources and reserves, to be able to pay claims.
- Having sufficient actuarial, asset management and risk management skills in place, to prudently manage funds.
- Creating actuarially sound, appropriate, and sustainable products.

Once the licence to operate has been granted by the Registrar, these businesses must continue to meet appropriate conditions, including being appropriately capitalised, considering financial stability and safety and soundness concerns, maintaining sound corporate governance standards, having in place appropriate checks and balances, and applying sound capital management, risk management and compliance with relevant legislation and regulation.

In order to align with the Twin Peaks regulatory approach, the Insurance Act 18 of 2017 – gazetted but not yet effective – will, in future, replace the prudential framework requirements of the current Long-term and Short-term Insurance Acts, while market conduct will in the future be centralised in the Conduct of Financial Institutions Act (COFI).

1.5.2 Typical Product Range of Long-Term Insurers

A typical product range for a long-term insurer consist of the following:

- Risk cover products:** These products include whole life cover, term cover, accidental cover, funeral cover (assistance policy), disability, temporary disability and functional impairment cover, and severe illness cover. These products are also known as life risk policies.
- Savings products:** These products include endowment policies (long-term investment policies), sinking fund policies and retirement annuities.
- Income provision products:** These products include guaranteed annuities, living annuities and voluntary annuities.

1.6 SHORT-TERM INSURERS

The main purpose of short-term insurers is to provide a range of products that assist clients in protecting their physical assets such as homes, furniture and motor vehicles from unexpected loss or damage, by providing lump sums to repair or replace these expensive assets when the loss or damage occurs. In addition to this, clients can also protect themselves against unexpected legal claims against them, such as a claim for damages caused to a third party while driving a vehicle and having an accident.

1.6.1 Legal Structure of Short-Term Insurers

Short-term insurers are currently required to be registered and licensed by the Registrar of Short-term Insurance in terms of the Short-term Insurance Act 53 of 1998, before they can commence business. To get their licence they need to meet the same stringent requirements, in terms of the following:

- Having sufficient capital and asset resources and reserves, in order to be able to pay claims.
- Having sufficient actuarial, asset management and risk management skills in place, in order to prudently manage funds.

- Creating actuarially sound and sustainable products.

Once the licence to operate has been granted by the Registrar, these businesses must continue to meet appropriate conditions, including being appropriately capitalised, considering financial stability and safety and soundness concerns, maintaining sound corporate governance standards, having in place appropriate checks and balances, and applying sound capital management, risk management and compliance with relevant legislation and regulation.

In practice, many of the bigger insurance companies may offer both long-term and short-term insurance products, as well as pension fund and retail pension fund products and collective investment scheme products (also known as unit trusts). They can do this, provided they have obtained all of the relevant licenses, and provided they continue to meet the on-going requirements in order to offer all of these products.

1.6.2 Typical Product Range of Short-Term Insurers

A typical product range for a short-term insurer would include, amongst others the following:

- Motor vehicle insurance (known as a motor policy):** Cover that provides cover against loss or damage to the client's motor vehicle(s).
- Homeowner's insurance (known as a property policy):** Cover that provides cover against loss or damage to the buildings and immovable or permanent goods and fixtures in the house, e.g. roof, fitted carpets and fitted cabinets.
- Householder's insurance (known as a property policy):** Cover that provides cover against loss or damage to the content/ goods in the house, e.g. television and furniture.
- All-risk insurance (known as a miscellaneous policy):** Cover that provides cover against loss or damage to personal items when they are outside of the home (such as laptops and cell phones).
- Personal liability insurance (known as a liability policy):** Cover that provides cover against costs of any legal liabilities, such as third parties who sue the client for damages.

1.7 MEDICAL SCHEMES

A medical scheme is established to provide medical financial aid to cover a large group of individuals. These individuals can be from the same employer group, or they could be a large group of private members. Members pay monthly contributions to a medical aid fund and when any of the members have medical expenses, the costs are paid from this fund. All registered medical schemes must comply with the provisions of the Medical Schemes Act 131 of 1998.

1.7.1 Legal Structure of Medical Schemes

All medical schemes must be registered by the Registrar of Medical Schemes with the concurrence of the Council of Medical Schemes and in terms of the Medical Schemes Act 131 of 1998, before they can commence business.

To get the licence they need to meet stringent requirements, including the following:

- Members of the board of trustees and the principal officer of the proposed medical scheme must be fit-and-proper persons to hold the offices concerned.
- The medical scheme is or will be financially sound.
- The medical scheme has a sufficient number of members who contribute or are likely to contribute to the medical scheme.

- The medical scheme does not or will not unfairly discriminate, directly or indirectly, against any person on one or more arbitrary grounds, including race, age, gender, marital status, ethnic or social origin, sexual orientation, pregnancy, disability and state of health.
- The registration of the medical scheme is not contrary to the public interest.

The Registrar may also demand from the person who manages the business of a medical scheme which is in the process of being established, financial guarantees to ensure the financial stability of the medical scheme.

There are currently plans in place by the South African government to implement a National Health Insurance (NHI) scheme, which will most likely lead to extensive restructuring of the public and private healthcare sector, including medical schemes, over the next few years.

1.7.2 Typical Product Range of Medical Scheme

A typical medical scheme offers one or more of the following, to meet various medical needs:

- Basic care option:** Provides members with cover for basic care (such as GP visits) through a network of providers, such as Mediacross.
- Hospital plan option (major medical expenses):** Provides members with cover for procedures that require hospitalisation.
- Day-to-day care option:** Provides members with cover for day-to-day costs, such as GP or basic dentistry services, at the member's own chosen service provider.
- Medical savings plan:** Allows members to allocate a portion (up to certain maximum percentages) of their contribution towards an individual savings account, which can be used to pay for medical services not covered under their scheme option.
- Fully comprehensive plan option:** This option typically covers all the above medical needs.

Prescribed minimum benefits (PMBs) are the minimum level diagnosis, treatment and care that a medical scheme must cover – the PMB condition must be paid from the risk pool, in full. There are 270 serious health conditions and 25 chronic diseases that form part of PMBs.

1.8 EMPLOYEE RETIREMENT BENEFIT SUPPLIERS

The main purpose of providers of retirement fund benefits is to provide a range of products that assist clients (corporate clients, such as business enterprises) to, in turn, assist their employees in saving money towards their retirement. Retirement products, such as pension funds and provident funds, are intended as vehicles to provide for an income at retirement stage and, as such, have favourable tax benefits to encourage saving.

1.8.1 Legal Structure of Employee Retirement Benefit Suppliers

Employee retirement benefit suppliers consist of suppliers who offer a range of retirement fund structures and retirement solutions to bigger and smaller companies. Bigger companies may opt to have their own registered pension funds, while smaller companies would use the employee retirement benefit suppliers' umbrella fund.

Each pension or provident fund is registered as an individual retirement fund by the Registrar of Pension Funds, and, as such, is governed by the Pension Funds Act 24 of 1956. The Commissioner for Inland Revenue also approves these funds so that contributions and benefits are taxed in accordance with the Income Tax Act, to enable the special tax concessions that apply to retirement benefit products.

Initial and on-going requirements for actuarial soundness apply to anyone registering a retirement fund before a license to operate can be issued. In addition, the Pension Funds Act requires each fund to appoint a board of at least four members, who will have the duty to act as trustees on behalf of the registered retirement fund and to ensure that decisions made by the fund are in the best interests of its members (the employees who belong to the fund).

Another requirement is that each retirement fund must have a set of rules which set out, amongst others, how the fund will be managed and administered, and how decisions about the fund will be made by the trustees

1.8.2 Typical product range of employee retirement benefit suppliers

A typical product range for an employee retirement benefit supplier could consist of the following:

- Group risk insurance benefits:** These products include group life cover, group funeral cover, group occupational disability and temporary disability cover.
- Pension fund benefits:** These products provide registered pension funds for companies.
- Provident fund benefits:** These products provide registered provident funds for companies.
- Preservation fund benefits:** These products provide registered preservation pension or preservation provident funds for employees who leave a registered pension or provident fund due to resignation from employment.
- Umbrella funds:** These funds provide access for companies to join an already registered pension or provident fund.

1.9 COLLECTIVE INVESTMENT SCHEMES

Accessing a direct diversified portfolio in shares and other securities is mostly unaffordable to the everyday working individual. A collective investment scheme pools the fund of various smaller investors and invest it in a diversified portfolio. This provides a means for ordinary person to participate in investing in more sophisticated instruments, in order to achieve a growth on their investment that beats inflation over the longer term.

1.9.1 Legal Structure of Collective Investment Schemes

Each collective investment scheme is individually registered by the Registrar of Collective Investment Schemes and is governed by the Collective Investment Schemes Control Act (CISCA), 45 of 2002.

Each collective investment scheme is also obliged to appoint a trustee or custodian to ensure that the collective investment scheme manager operates the scheme according to the rules as set out in the 'deed' that governs it, and that acts as custodian of all cash and securities in the investment portfolio (investment fund) of the scheme.

Collective investment schemes (CIS) also need to meet the requirements and guidelines as set out in the ASISA Fund Classification Standard, which establishes and maintains a classification system for CIS portfolios in South Africa.

The objectives of the ASISA Fund Classification Standard are as follows:

- Promote investor awareness and understanding of CIS portfolio types.
- Assist with the comparison of CIS portfolios within and across classification categories.

- Assist with the assessment of potential risks of investing in a particular type of CIS portfolio.
- The purpose of the ASISA Fund Classification Standard is as follows:
- Ensure that CIS portfolios adhere to the classification category definitions.
- Standardise applications for approval of the classification of a CIS portfolio.
- Facilitate the timeous and appropriate classification and reclassification of CIS portfolios.

1.9.2 Typical Product Range of Collective Investment Schemes

In consideration of the product range of a collective investment scheme, differentiation need to be made between the investment portfolios (or funds) offered, and the investment vehicle (or type of product) used.

The investment portfolios (or investment funds) are the different combinations of securities and assets that each fund is invested in, so that investors can choose from a range of funds to suit different investment needs.

Examples of investment portfolios (funds) are the following:

- Money-market funds:** These funds invest in interest-bearing investments and are generally used by investors as a safe parking place for their money.
- Equity funds:** These funds invest in a range of shares (equities) on the stock market and can be general equity funds (diversified across all the sectors on the stock market) or specialist equity funds (invest in only one sector). These types of funds are used by investors to grow their capital over the long-term.
- Income funds:** These funds invest in bonds and rental property and are generally used by investors to provide them with an income from their lump sum investment.
- Prudential funds:** These funds invest into assets as set out by the Prudent Investment Guidelines contained in the Pension Funds Act and are thus suitable for investors who are saving towards their retirement.
- Hedge funds:** The funds use alternative investment strategies such as leverage and short-selling in order to achieve higher than expected market return. However, hedge fund is also exposed to higher market risk than other traditional CIS funds.

On the other hand, the investor can invest into any of the above type of funds via different types of investment vehicles, or products. These products include typical products offered by long-term insurers, such as retirement annuities and endowment policies. However, most collective investment schemes managers also offer clients a simple default collective investment scheme (unit trust) account, where all of the client's transactions of buying and selling participatory interests (units) are recorded.

1.10 FINANCIAL SERVICES PROVIDERS (FSPS)

The typical financial products provided in South Africa has been discusses in brief. Although these products are very important to ensure a person's financial wellbeing (in the present as well as for their future), many people in South Africa are poorly educated about the importance of financial planning or are fearful about financial products due to their intangible nature, and due to the complexity of some of these products. For this reason, the industry also requires competent professionals who can provide clients with the necessary information and advice needed to achieve financial planning objectives, and in order to assist the client to make the right decisions on the most appropriate product for their specific needs.

A financial services provider (FSP) is the business or part of a business that distribute financial products to clients. Their role includes contacting and reaching clients (done through call centres, or by direct-face-to-face contact, or at branches), educating and guiding clients on financial planning needs, providing clients with information about financial products and services, and advising clients in terms of appropriate products and services for their specific needs.

The Financial Advisory and Intermediary Services (FAIS) Act regulates this provision of financial services by FSPs. Financial services include providing advice about financial products, distributing products (marketing and selling), dealing in products (trading equities, trading debt instruments), administering, and providing supporting services (such as record-keeping, investment platform administration, and valuations).

In terms of the FAIS act, persons who provide financial services on behalf of a financial services provider are known as representatives. Representatives are defined in the FAIS Act as any person who renders a financial service for or on behalf of a financial services provider, in terms of conditions of employment or any other mandatory agreement, but excludes a person rendering clerical, technical, administrative, legal or accounting service, which service does not require judgement on the part of that person, or does not lead a client to any specific transaction in respect of a financial product in response to general enquiries.

Historically, there were many terms commonly used to describe the role of representative in the industry. You may have heard of the term's agents, financial advisors or advisors, brokers, and intermediaries.

Each financial services provider must appoint the requisite number of key individuals required to manage and oversee the representatives and ensure that the financial services provider adhere to the licensing requirements and ongoing licensing responsibilities.

1.10.1 Legal Structure of Financial Services Providers

Before the Financial Advisory and Intermediary Services Act, 37 of 2002 (FAIS), came into being, anyone could be employed or mandated directly by a product supplier to distribute products, based mainly on their ability to sell the products effectively.

Currently, however, financial services providers are required to apply to the Financial Services Conduct Authority (FSCA) for a licence in terms of the FAIS Act before they may operate as a financial services provider.

This licence sets out the different product categories in respect of which the financial services providers may provide financial services.

The FAIS Act also requires all key individuals (managing staff who oversee the provision of financial services to clients in an FSP) to meet certain fit-and-proper requirements. Representatives are required to meet similar fit-and- proper requirements as those applicable to key individuals.

Financial services providers are required to keep updated registers of all the representatives authorised to act on behalf of the FSP. Any representative who loses his/ her fit-and-proper status needs to be removed from the register and prohibited from acting on behalf of any financial services provider.

1.10.2 Products Distributed by FSPs

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. The table following outlines the various main categories of financial services that FAIS distinguishes between.

Financial Services Providers have to apply for licences in all the different categories and sub-categories (classes) of products that they intend to give advice on (and distribute). Any representative who acts on behalf of an FSP can only provide financial services in those categories and sub-categories for which the FSP he/ she is representing has obtained a licence and for which the representative meets the fit and proper requirements.

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.

Table 1.2.: FSP License Services Categories

* 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.

The subcategories specify the product for which the FSP is authorised to provide the financial services for. The table following details the subcategories.

Subcategory name	Product in category examples (list is not exhaustive)	Code Cat I	Code Cat II/IIA
Long-term insurance: Subcategory A	Funeral policies	1.1	N/A
Short-term insurance: Personal lines	Household insurance motor insurance etc.	1.2	N/A
Long-term insurance: Subcategory B1	Life and disability insurance – risk only	1.3	2.1
Long-term insurance: Subcategory C	Endowment policies with no guarantee	1.4	2.2
Retail pensions benefits	Retirement annuity fund Preservation funds Preservation provident fund	1.5	2.3
Short-term insurance: Commercial lines	Business insurance	1.6	N/A
Pension fund benefits	Pension fund Provident fund	1.7	2.4
S & I: Shares	Securities & Instruments: Investment products	1.8	2.5
S & I: Money market instruments		1.9	2.6
S & I: Debentures and securitized debt		1.10	2.7
S & I: Warrants, certificates and other instruments acknowledging debt		1.11	2.8
S & I: Bonds		1.12	2.9
S & I: Derivative instruments excluding warrants and a forex investment		1.13	2.10
Collective investment schemes		Unit trust	1.14
Forex investment business	Currency deposit	1.15	2.12
Health service benefits	Medical aid Hospital plan	1.16	N/A
Long-term deposits	Bank account with maturity of longer than 12 months excludes structured products	1.17	2.13

Subcategory name	Product in category examples <i>(list is not exhaustive)</i>	Code Cat I	Code Cat II/IIA
Short-term deposits	Bank account with maturity of 12 months or shorter excludes structured products	1.18	2.14
Friendly society benefits	Stokvel	1.19	N/A
Long-term insurance: Subcategory B2	Endowment policies with a guaranteed minimum amount Guaranteed annuity	1.20	2.15
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	2.16
Long-term insurance: Subcategory B1-A	Life and disability policy that required no or limited underwriting.	1.22	2.17
Short-term Insurance Personal lines A1	Short-term policy that requires no or limited underwriting -see definition	1.23	N/A
Structured deposits	Money market accounts - see definitions	1.24	2.18
Securities and instruments	Any other securities and instruments mentioned separately	1.25	2.19
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	2.20

Table 1.1: Subcategories of FSPs

Topic 2 Regulatory Framework of the Financial Services Sector

LEARNING OUTCOMES

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

- Provide an overview of the different legislation and regulatory initiatives applicable to the financial services sector.

2.1 INTRODUCTION

This topic considers the various pieces of legislation and regulatory initiatives applicable to the financial services sector.

2.2 FINANCIAL SECTOR REGULATION ACT (TWIN PEAKS)

The Twin Peaks approach came into effect in the Financial Sector Regulation Act and separates prudential and market conduct regulation and supervision and make this applicable across all financial services institutions.

Within this approach, a new Prudential Authority (PA), a division of the South African Reserve Bank (SARB), is responsible for regulating the prudential aspects of banks and insurers, while the Financial Services Board (FSB) has been dissolved and replaced by a new entity, the Financial Sector Conduct Authority (FSCA), who is responsible for regulating market conduct and fair treatment of financial clients.

Prudential regulation definition

Prudential regulation is type of financial regulation that requires financial firms to control risks and hold adequate capital as defined by capital requirements.

The main policy objectives of the Financial Services Regulation Act and the Twin Peaks approach are the following:

- Financial stability:** Preserving the stability and financial soundness of financial institutions and market infrastructures in South Africa.
- Client protection and market conduct:** Protecting clients of financial products and services and ensuring that financial institutions treat their customers fairly.
- Inclusion:** Expanding access to appropriate financial products and services to ensure the financial inclusion of all South Africans.
- Combating of financial crime:** Combating financial crime to ensure the integrity of the financial sector.

The Financial Sector Regulation (FSR) Act 9 of 2017, thus creates the main foundation for the Twin Peaks approach and grants the Financial Services Conduct Authority (FSCA) and the Prudential Authority (PA) powers to enforce appropriate regulation.

In addition, a number of additional structures are established, in terms of this Act, to support achievement of the objectives:

- **The Council of Financial Regulators:** This council provides inter-agency coordination between the two new regulators (PA and FSCA) on issues of legislation, enforcement and market conduct. It also includes relevant standard-setters, such as the Independent Regulatory Board for Auditors.
- **The Financial Stability Oversight Committee (FSOC):** The Committee comprises the South African Reserve Bank, Financial Services Conduct Authority and National Treasury. This committee co-ordinates efforts to maintain financial stability and limit systemic risk by, amongst others, identifying and responding appropriately to risks in the financial system, and by playing an advisory role in crisis management and resolution.
- **The Ombud Council:** The council aims to promote the awareness, accessibility and use of the ombud system, take steps to improve its effectiveness, and promote cooperation and coordination amongst ombud schemes. The Ombud Council will oversee all ombud schemes. In instances where the jurisdiction of a complaint is unclear, the Ombud Council is empowered to determine which ombud is responsible for hearing the complaint.

For now, medical aids will continue to be regulated under the Department of Health and the Council of Medical Schemes; while the National Credit Regulator (NCR), which regulates and represents the interests of creditors, particularly the poor and low-income earners, will work cooperatively together with FSCA.

With the signing into law of the Financial Sector Regulation Act, phase one of implementing the Twin Peaks approach, which focused on creating the necessary structures for Twin Peaks implementation, is complete.

The table following outlines the framework for licensing and supervision of existing laws in Phase 1 of the Financial Sector Regulation Act.

Act regulated under	New licensing authority	Subordinate legislation	Supervision & Enforcement
Cooperative Banks Act	Prudential Authority (PA)	Existing subordinate legislations	PA supervises and enforces requirements of legislation where it is the licensing authority and requirements of standards and subordinate legislation it issues
Mutual Banks Act			
Dedicated Banks Bill		New Standards may be issued Prudential Standards issued by PA Conduct Standards issued by FSCA	
Long Term Insurance Act			
Short-term Insurance Act			
Pension Funds Act	Financial Sector Conduct Authority (FSCA)		FSCA supervises and enforces requirements of legislation where it is the licensing authority and requirements of standards and subordinate legislation it issues
FAIS Act			
Collective Investment Schemes Control Act			
Friendly Societies Act			
Financial Markets Act			
Credit Rating Services Act			
National Credit Act	National Credit Regulator (NCR)	Standards issued by the PA and FSCA will apply to entities licensed by the NCR. Standards will be issued in consultation	NCR remains but PA & FSCA supervise and enforce requirements of standards and subordinate legislation they issue

Table 2. 1: Licensing and Supervision of Existing Laws in Phase 1

2.3 THE INSURANCE ACT

The Insurance Act was passed by the National Council of Provinces in December 2017

The Insurance Act brings with it changes to the Long-Term Insurance Act (LTIA), Short Term Insurance Act (STIA) and more specifically the Policyholder Protection Rules (PPR), creating new opportunities for existing insurers and providing for licensed micro-insurance products.

Amendments to insurance legislation aim to give more South Africans the opportunity to cover themselves and their assets and will provide for greater protection for policyholders.

The Long-term insurance act and the Short-term insurance act will govern market conduct of insurers while the Insurance Act will apply from a prudential point of view to all insurers.

2.4 FINANCIAL INSTITUTIONS (PROTECTION OF FUNDS) ACT

The Financial Institutions (Protection of funds) Act, 2001 considers the duties and obligations of financial institutions such as retirement funds, insurers and fund asset managers relating to the investment, safe custody and administration of fund and trust property. This Act also deals with the powers bestowed on regulators to protect such funds and trust property.

- This Act refers to some of the duties expected of fund trustees, including the following:
- Declaring interest and avoiding conflicts of interest.
- Acting with due care and observing utmost good faith.
- Prohibiting use of und assets for personal gain.
- Requiring investment to be made and managed in accordance with the investment mandate.
- Ensuring that assets are held in fiduciary capacity in a separate account.

2.5 CONDUCT OF FINANCIAL INSTITUTIONS BILL (COFI)

Work has also progressed on the second phase of Twin Peaks implementation. This phase focuses on harmonising different financial sector legislation, such as the Banks Act, Financial Advisory and Intermediary Services Act and the Long- and Short-term Insurance Acts with the Financial Sector Regulation Act, and to implement the overarching structure of market conduct in the form of the Conduct of Financial Institutions Act (COFI) Act.

According to National Treasury's discussion document Treating Customers Fairly in the financial sector, a draft Market Conduct Policy Framework for South Africa (2014), the COFI Act should entrench a consistent and complete approach to market conduct across the financial sector, focus on achieving fair customer outcomes, and empower the Financial Sector Conduct Authority to monitor and respond proactively and pre-emptively to poor market conduct practices observed, taking intrusive steps where necessary to change the cultural attitude of financial institutions towards greater customer-centricity.

From a licensing perspective, in the second phase, all financial institutions will need to obtain a license from the Financial Sector Conduct Authority (FSCA), and a separate, additional license from the Prudential Authority, should they be subject to prudential requirements. The FSCA license will authorise entities to carry out specified categories of regulated activities, for specified categories of customer.

At this stage, work on Phase 2 is on-going, and an updated overall timeline for implementation has not been published.

2.6 TREATING CUSTOMERS FAIRLY (TCF)

The TCF framework governs the way financial institutions conduct their business with clients, ensuring that all clients are treated fairly during all stages of the product life-cycle and advice process. The TCF initiative is seen as an important component to strengthen market-conduct objectives in the financial services sector.

To ensure that financial services organisations such as financial product suppliers and financial services providers treat their customers fairly, they must demonstrate that they meet the following six principles or fairness outcomes:

1. The fair treatment of customers must be central to the organisation's culture.
2. Products and services marketed and sold in the retail market must be designed to meet the needs of identified customer groups and targeted accordingly.
3. Customers must be given clear information and be kept appropriately informed before, during and after the time of contracting.
4. Where customers receive advice, this must be suitable, and must consider their current circumstances.
5. Products must perform as customers have been led to expect to expect; and the service must be of an acceptable standard and must be what your customers are expecting.
6. There must be no unreasonable post-sale barriers to change product, switch provider, submit a claim or make a complaint.

Financial Services Providers are already required in terms of the FAIS fit and proper requirement to adopt, document and implement an effective governance framework that provides for the fair treatment of clients.

2.7 RETAIL DISTRIBUTION REVIEW (RDR)

Against the background of the Treating Customers Fairly approach to market conduct regulation, the Retail Distribution Review (RDR) discussion document, published by the Financial Services Board in November 2014, proposed a series of regulatory reforms aimed at ensuring distribution models that adheres to the following:

- Support the delivery of suitable products and provide fair access to suitable advice for financial customers.
- Enable customers to understand and compare the nature, value and cost of advice and other services that intermediaries provide.
- Enhance standards of professionalism in financial advice and intermediary services to build client confidence and trust.
- Enable customers and distributors to benefit from fair competition for quality advice and intermediary services, at a price more closely aligned with the nature and quality of the service being rendered.
- Support sustainable business models for financial advice that enable advisor businesses to viably deliver fair customer outcomes over the long term.

The RDR sets out 55 proposals for future regulatory policy, aimed at achieving these objectives. These proposals are also being implemented in phases as seen in the review of existing legislation and introduction of new legislation.

The on-going phased implementation of these proposals seek to give retail customers confidence in the retail financial services market, and trust that product suppliers and advisors will treat them fairly. This, in turn, will support a more sustainable market for the financial services industry over the long term.

2.8 OVERVIEW OF THE FINANCIAL ADVISORY AND INTERMEDIARY SERVICES (FAIS) ACT

The Financial Advisory and Intermediary Services (FAIS) Act regulates the giving of financial services to clients in relation to a financial product.

FAIS can be regarded as putting on record the principles on which good business with clients should be based. The main goal of the act is client protection to maintain trust in the industry and maintaining systemic stability.

The FAIS act was enacted in November 2002 but became effective in 2004.

2.8.1 Definition of a Financial Service Under The FAIS Act

Financial services can be provided as advice and/or intermediary service. Persons may only provide financial services if they are licensed as, or represent, a licensed FSP.

Both advice and intermediary service need to be in relation to a financial product provided to a client for it to be regulated under the FAIS Act.

I) Definition of Advice Under The FAIS Act

Under the FAIS Act, advice means any recommendation, guidance or proposal of a financial nature furnished, by any means or medium, to any client-

- In respect of the purchase of any financial product.
- In respect of the investment in any financial product.
- On the variation of any term or condition applying to a financial product
- On the replacement of any financial product.
- On the termination of any purchase of or any investment in a financial product.
- On the conclusion of any other transaction, including a loan or cession, aimed at the incurring of any liability or the acquisition of any right or benefit in respect of any financial product.

It is constituted as advice irrespective of whether such advice is furnished during or incidental to financial planning or results in such a purchase, investment, transaction, variation, replacement or termination being effective.

The following actions are not categorised as the giving of advice:

- Describing a financial product to a client.
- Answering questions on administrative procedures of the business.
- Presenting information on a specific financial product without any recommendations.

II) Definition of Intermediary Service Under The FAIS Act

An intermediary service can be in short described as an act where a person or organisation intermediate between a client and a relevant product supplier in relation to a financial product i.e. the product supplier and the FSP is two separate entities and the FSP acts as link between the client and the product supplier.

Intermediary is any act other than giving advice where a person perform an act on behalf of a client or product supplier in relation to a financial product for example:

- The keeping in safe custody of a financial product in which a client has invested.
- The collection of premiums from clients on behalf of product suppliers.

- Receiving, submitting or processing a client’s claim against a product supplier.
- Buying, selling or dealing in (discretionary or non-discretionary basis) financial products.
- Administration of any financial product on behalf of product supplier.
- Maintaining or servicing a financial product on behalf of product supplier.

Intermediary service excludes a bank taking a premium on behalf of a product supplier in its function as a bank.

Financial product’ is very widely defined in the FAIS Act and includes all of the types of financial products (and their underlying assets, where relevant), that form the different Classes (and subclasses) of Business, as defined in the new Determination of Fit and Proper Requirements contained in Board Notice 194 of 2017. The Classes of business is outlined in the table following.

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 securitised debt
7.4	Bonds
7.5	Derivative instruments, warrants, certificates, or other instruments
7.6	Securities and Instruments
7.7	Participatory interests in a collective investment scheme
7.8	Participatory interest in a CIS hedge fund
7.9	Retail Pension Benefits
Class 8: Forex investments	
Class 9: Health Services Benefits	

Table 2.2: Classes of Business

2.9 FAIS OMBUD

The FAIS Act instituted a complaints mechanism and dispute resolution process through the creation of the FAIS Ombud's office.

The main objective of the FAIS Ombud is to investigate and resolve complaints by a specific client against a financial services provider in a procedurally fair, informal, economical, and expeditious manner. In this process, the Ombud has to consider what is equitable in all the circumstances, with due regard to the relevant contractual arrangements or other legal relationships.

Complaint refers to a specific complaint relating to a financial service rendered by a financial services provider or a representative of such provider to the complainant.

Client refers to a specific person or group of persons, excluding the general public, who is or may become the subject to whom a financial service is rendered intentionally, or is the successor in title of such person or the beneficiary of such service.

Complaints to the Ombud could relate to situations where the financial services provider:

- Has contravened the provisions of the FAIS Act and the complainant has suffered or is likely to suffer financial prejudice or damage.
- Has acted wilfully or negligently in rendering the financial service and has caused or is likely to cause prejudice or damage to the complainant.
- Has treated the complainant unfairly.

Before lodging a complaint, the client must first approach the FSP and try to resolve the problem. The FSP has six weeks to resolve the complaint. If the complaint cannot be sorted out by the FSP, the client can approach the office of the Ombud within six months of the receipt of the final response of the FSP.

The nature of a complaint will determine how the Ombud will deal with the complaint. The idea is not to replicate the rigid processes employed by the courts in settling disputes, but to get to the truth of the matter without insisting on the formality that goes with court processes.

The Ombud has to first explore the prospect of resolving a complaint by a settlement between the parties through a process of mediation and conciliation. Where a complaint has not been settled, or the Ombud's recommendation is not accepted by the parties, the Ombud will arbitrate the matter and make a final determination, which will be deemed to be a judgement of the court.

2.10 FIT AND PROPER REQUIREMENTS FOR FINANCIAL SERVICES PROVIDERS REPRESENTATIVES AND KEY INDIVIDUALS

The new Determination of Fit and Proper Requirements for Financial Services Providers, 2017 was finally released on 17 December 2017, and is effective as from 1 April 2018, but with certain sections becoming effective in phases after 1 April.

While fit-and-proper requirements are not new to the industry, there are many changes in the new legislation, the biggest of which are related to Competence Requirement and Continuous Professional Development (CPD).

The subsections following provides an overview of the main requirements.

2.10.1 Honesty, Integrity and Good Standing

The fit and proper requirements relating to honesty, integrity and good standing apply to all financial services providers (FSPs), key individuals and representatives.

The requirement is that FSPs, key individuals and representatives must be persons who are honest and have integrity and is of good standing.

In assessing the honesty, integrity or good standing of an FSP, key individual or representative, the FAIS Registrar will take into account incidents indicating when persons are not honest, or lack integrity or good standing.

These include, for example, incidents such as the following:

- The person has been found guilty in any criminal proceedings or liable in any civil proceedings of:
 - An offence relating to regulation or supervision of a financial institution.
 - Theft, fraud, forgery, uttering a forged document, perjury, or an offence involving dishonesty, breach of fiduciary duty, dishonourable or unprofessional conduct.
 - An offence under the Prevention of Corruption Act or the Prevention and Combating of Corrupt Activities Act, or a corresponding offence under the law of a foreign country.
- The person has been disciplined, reprimanded, disqualified, or removed in relation to matters relating to honesty, integrity, incompetence or business conduct by a professional body, or Regulatory authority.

For more detailed information, refer to the relevant sections of Board Notice 194 of 2017

2.10.2 Competence Requirements

The requirements for competence in terms of the new fit-and-proper determinations are set out in the subsections following.

I) General Requirements

The general requirement for FSPs, key individuals and representatives is that they must –

- Have adequate, appropriate and relevant skills, knowledge and expertise in respect of the financial services, financial products and functions they perform.
- Comply with the minimum requirements for competence.
- Maintain their competence.

The FSP is responsible to establish, maintain and apply adequate policies, internal systems, control and monitoring mechanisms to ensure that its key individuals and representatives-

- Comply and continue to comply with all competence requirements.
- Are aware of the procedures which must be followed for the proper discharge of their responsibilities in the performance of their functions.
- Possess appropriate general and technical knowledge so as to be able to comply with all relevant disclosure obligations to clients.
- Are appropriately trained regarding the requirements of the Act, and the financial services and financial products in respect of which they are appointed.
- Undertake Continuous Profession Development (CPD) to maintain and update the knowledge and skills that are appropriate for their activities.
- Are able to assess whether it is appropriate to offer a particular 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.
- Who do not meet the competency requirements, and staff of the FSP who are not appointed as representatives, do not render financial services.

FSPs are also responsible to maintain a competence register of its key individuals and representatives, to report the information on competence to the Registrar, and to notify the Registrar if a key individual or representative no longer complies with any competence requirements.

II) Minimum Experience

An FSP and representative must have adequate and appropriate experience in the rendering of a particular financial service in respect of a particular financial product; and particular category for which it is authorised or appointed or in respect of which authorisation or appointment is sought.

A key individual must have adequate and appropriate experience to manage or oversee the rendering of a particular financial service in respect of a particular category for which it is approved or in respect of which approval is sought.

The experience gained by an FSP or a representative lapses when the FSP or representative has not rendered the particular financial service in respect of a particular financial product relevant to a particular category for a period of five consecutive years.

The experience gained by a key individual of a Category I FSP, lapses when the key individual has not managed or overseen the rendering of a particular financial service in respect of a particular category for a period of five consecutive years.

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 the table following.

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

Table 2. 3: Experience Requirements Relative to Different Categories and Subcategories

III) Minimum Qualifications

Generally, an FSP, a key individual and a representative must have a qualification recognised by the Registrar.

However, there are two instances where these qualification requirements do not apply:

- Where FSPs, key individuals and representatives render financial services only in respect of Long-term Insurance sub-category A and/ or Friendly Society Benefits.
- Where representatives are appointed to perform execution of sales only. In this case, representatives must possess a minimum qualification of Grade 12 National Certificate or equivalent.

New entrants into the industry thus need to obtain a full qualification which is acceptable to the Registrar. They must work under supervision until they gain the full qualification.

Individuals who currently meet the (old) fit-and-proper requirements (as at 1 April 2018), are deemed to have satisfied the requirement for qualifications, but only in respect of the Categories and financial products for which they were authorised or appointed to perform financial services. Any changes or additions to a licence of an FSP, key individual or appointment of a representative, after the commencement date of 1 April 2018, will mean that the new requirements will have to be met.

When reviewing acceptable qualifications, the Registrar will determine if the qualification provides the relevant knowledge and skills necessary for the key individual and representative to fulfil the responsibilities under the Act.

IV) Regulatory Examinations

FSPs, key individuals and representatives must pass the relevant Regulatory Examination before such person can be approved or appointed.

The table following sets out the specific Regulatory Examination requirements.

	Category I	Category II	Category IIA	Category III	Category IV
FSP	RE1	RE1 & RE3	RE1 & RE3	RE1 & RE4	RE1
Key Individual	RE1	RE1 & RE3	RE1 & RE3	RE1 & RE4	RE1
Representative	RE5	RE5	RE5	RE5	

Table 2.4: Regulatory Examinations Applicable to Regulated Officers

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

- Long-term Insurance Subcategory A and Friendly Society Benefits.
- Perform execution of sales in respect of a Tier 1 financial product provided that the minimum exemption provisions are complied with as detailed in Paragraph 5.3.2 (I).
- Perform financial service in respect of Tier 2 financial products.

The regulatory examination does not apply to key individual that are authorised to only render financial services or manage financial services in relation to Long-term Insurance Subcategory A and Friendly Society Benefits.

V) Class of Business Training and Product Specific Training

An FSP and representative must complete the Class of Business training relevant to those financial products for which they are authorised or appointed, prior to rendering any financial service in respect of such products.

A key individual must, likewise, complete the Class of Business training in respect of the classes of business it manages or oversees, and for which it is approved to act as key individual, prior to managing or overseeing the rendering of any such financial services.

The FSP must ensure that it, its key individuals, and its representatives are proficient in respect of, understand, and have completed adequate and appropriate Class of Business training relevant to the financial products in respect of which they render financial services.

The competence requirements relating to Class of Business training do not apply to –

- A Category I FSP, its key individuals, and its representatives that are authorised, approved or appointed to render financial services only in respect of the financial products: Long-term Insurance sub-category A and/ or Friendly Society Benefits
- A representative of a Category I FSP that is appointed to furnish advice or render an intermediary service in respect of a Tier 2 financial product or perform only the execution of sales in respect of a Tier 1 financial product.

The competency requirements relating to Product-specific training contained in this part do not apply to a Category II, Category IIA or a Category III FSP, or its representatives.

Individuals who currently meet the (old) fit-and-proper requirements (as at 1 April 2018), are deemed to have satisfied the requirement for Class of Business training and Product-specific training, but only in respect of the Categories and financial products for which they were authorised or appointed to perform financial services. Any changes or additions to a licence of an FSP, key individual or appointment of a representative, after the commencement date of 1 April 2018, will mean that the new requirements will have to be met.

In terms of transitional provisions in Board Notice 194 of 2017, representatives already working under supervision as at 1 April 2018 will need to complete Class of Business training in respect of the relevant classes of business within a twelve-month period from 1 August 2018 to 31 July 2019. Those appointed after 1 April 2018 will need to adhere to the new timelines, as stated in the Supervision Board Notice 104 of 2008, which is expected to come into operation before 1 April 2018, in order to complete the relevant Class of Business training.

2.10.3 Continuous Professional Development

An FSP, key individual and representative must comply with the minimum Continuous Professional Development (CPD) requirements set out in Board notice 194. The requirement is to perform a certain number of hours of CPD activities during a CPD cycle. A CPD cycle is 12 months, commencing on 1 June of every year and ending 31 May of the following year.

A CPD activity is a verifiable activity that is accredited by a professional body, who also allocates an hour value or a part thereof to the activity. Activities performed towards a qualification and product-specific training do not qualify for CPD points.

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.

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

Table 2. 5: Required CPD hours per Cycle

New appointees after 1 April 2018, as well as those working under supervision on this date, will become liable for CPD activities only after completing their other competency obligations under the Fit and Proper Determination.

The following persons are specifically excluded from the Continuous Professional Development requirement:

- Long-term Insurance Subcategory A.
- Friendly Society Benefits.
- Rendering a financial service in respect of a Tier 2 financial product.
- Rendering intermediary services in respect of a Tier 1 financial products.

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

2.10.4 Operational Ability

There are general and specific fit-and-proper requirements relating to operational ability, for FSPs, representatives and key individuals.

I) Requirements Applicable to Financial Services Providers

The general requirement applicable to an FSP states that 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

In terms of operational ability, FSPs are also required to have in place a comprehensive governance framework that is proportionate to the nature, scale, risks, and complexity of the business of the FSP. This includes having in place effective and adequate systems of corporate governance, risk management (including conduct risk management), and internal controls to ensure the effective running of the business and managing risks.

Where FSPs provide automated advice, they are required to have additional requirements, including to –

- Ensure that they are able to understand the methodology and assumptions used, that they understand the potential biases and risks of using the methodology, and that they are able to monitor and review the automated advice to ensure the quality and suitability of advice provided.
- Establish, implement and maintain policies and procedures to monitor, review and test the algorithms and advice generated.
- Have adequate and sufficient technological resources to maintain client records and data integrity, protect confidential client information, and have the capacity to meet current and anticipated operational needs.

FSPs also have duties when they appoint representatives. An FSP must ensure that where it appoints a person as a representative, the person is not declared insolvent, under liquidation or business rescue, or pending proceedings for these.

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.

II) Requirements for Representatives

A representative must have the operational ability to effectively function as a representative of the FSP or perform their activities as representative of the FSP.

In the case of a juristic representative, it must, at all time, have at least one key individual responsible for managing or overseeing the financial services rendered by the representative.

III) Requirements for Key Individuals

A key individual must have the operational ability to effectively manage and oversee the financial services related activities of the FSP or juristic representative, and the financial services in relation to the financial products for which the key individual was approved or appointed and must be able to demonstrate this ability to the Registrar.

The FSP must, on a regular basis, assess the operational ability of its key individuals to adequately and effectively perform their functions, taking into account individual circumstances, the nature, scale, range and complexity of the FSP's financial-services-related activities.

For more detailed information, refer to the relevant sections of Board Notice 194.

2.10.5 Financial Soundness

The general requirement is that an FSP and a juristic representative must, at all times, maintain financial resources that are adequate – both as to amount and quality – to carry out their activities and supervisory arrangements, and to ensure that there is no risk that liabilities are not met as they fall due.

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.

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.
- if business rescue proceedings have commenced in respect of that person.

There are also requirements for different categories of FSPs regarding specific additional assets, working capital and liquidity requirements that must be in place at all times.

For more detailed information, refer to the relevant sections of Board Notice 194.

2.11 FAIS GENERAL CODE OF CONDUCT

Board Notice 80 of 2003, also known as the General Code of Conduct, is aimed at giving effect to the protection of clients and setting standards that professionalise the financial services industry.

This Board Notice sets out minimum standards of ethical behaviour for the representative and the financial services provider. The Code of Conduct should be considered a legally binding document that applies to all financial services providers and their representatives.

In addition to the General Code of Conduct, which applies to all FSPs and representatives, there are other specific codes in respect of specific services:

- Code of Conduct for Discretionary FSPs.
- Code of Conduct for Administrative FSPs.
- Code of Conduct for FSPs involved in FOREX investment business.
- Code of Conduct for FSPs conducting short-term deposit business.

The subsections following consider the main requirements in terms of the Code of Conduct.

2.11.1 General Duty of the Financial Services Provider

An FSP and representatives must render financial services in the following manner:

- Honestly and fairly.
- With due skill, care and diligence.
- In the interests of clients.
- In the interest of the integrity of the financial services industry.

2.11.2 Representations of Information

The following provisions must be considered when rendering a financial service to a client:

Information provided must be factually correct, in plain language, avoid uncertainty and not be misleading.

Information must be adequate and appropriate for a particular financial service and consider the clients factually established or reasonably assumed level of knowledge of the client.

Information must be provided timeously to ensure that the client has sufficient time to make an informed decision.

Information may be provided orally and confirmed in writing on request of the client within a reasonable time after such a request.

Written information (by standard format or otherwise) must be in a clear and readable print size, spacing and format.

Information must be reflected in specific monetary terms regarding all amounts, sums, values, charges, fees, remuneration or monetary obligations mentioned therein or if not reasonably pre-determinable, its basis of calculation must be adequately described.

Information need not be duplicated or repeated for the same client unless material changes or significant changes have occurred, or the relevant financial service renders it necessary. Material or significant changes must be disclosed to the client without delay.

2.11.3 Duties When Contacting Clients

An FSP must act honourably, professionally and with due regard to the convenience of the client when making contact arrangements with a client.

At the commencement of any contact, visit or call initiated by the FSP, the representative must explain the purpose thereof and at the earliest opportunity, provide the client with the required information regarding the FSP.

2.11.4 Furnishing of Advice

Before providing advice to a client, an FSP other than a direct marketer, must prior to provide a client with advice, fulfil the following duties:

1. Take reasonable steps to seek appropriate and available information regarding the client's financial situation, financial product experience and objectives to enable the FSP to provide the client with suitable advice.
2. Conduct an analysis based on the information obtained.
3. Identify the financial product appropriate to the client's risk profile and financial needs, subject to legal or contractual limitations imposed on the FSP.
4. Take reasonable steps to establish whether the financial product identified is wholly or partially a replacement for an existing financial product of the client and if it is such a replacement, the FSP must comply with the disclosure requirements regarding replacement products.

An FSP must take reasonable steps to ensure that the client understands the advice and will be able to make an informed decision.

I) Replacement of Long-Term Insurance Policy

An FSP providing advice to a client to replace an existing long-term insurance policy with any other financial product must at the earliest practical opportunity but not later than the date on which any transaction requirement is submitted to the product supplier, notify the issuer of the long-term insurance contract or policy of such advice.

II) Special Circumstances

If the representative was unable to complete a needs analysis because the client did not provide all information requested or there was insufficient time to do so, the FSP must fully inform the client orally of the following and ensure that the client understand the implications thereof:

- That a full needs analysis of the client could not be undertaken.
- Limitations on the appropriateness of the advice provided may exist.
- The client should take care to consider whether the advice is appropriate in the light of the client's objectives, financial situation and particular needs.

Where the client elects a product different from the one recommended by the FSP or elects not to follow the advice or receive information or elects to receive more limited information or advice than the FSP is able to provide, the FSP must advise the client orally of the risks involved and to consider whether the advice is appropriate in the light of the client's objectives, financial situation and particular needs.

III) Other Considerations

A product supplier which is an FSP and which has entered into an intermediary contract with another financial services provider (not a representative) for purpose of rendering a financial service, must provide the other financial services provider with sufficient particulars to enable the provider to comply with the disclosure requirements of the General Code of Conduct relating to the furnishing of details of the product supplier and product in question.

An FSP that can provide clients with financial services in respect of a choice of product suppliers, must exercise judgment objectively in the interest of the client concerned. An FSP may not in dealing with a client, compare different financial products, product suppliers, FSPs or representatives unless the differing characteristics of each are made clear.

The FSP may also not make inaccurate, unfair or unsubstantiated criticisms of any financial product, product supplier, FSP or representative.

2.11.5 Record of Advice

An FSP must maintain a record of advice furnished to a client if a transaction or contract in respect of a financial product is concluded because of advice furnished. The record must include the following:

- A summary of the information and material on which advice was based.
- The financial products which were considered.
- The financial product or products recommended with an explanation of why the products selected will meet the needs of the client.

The FSP (other than a direct marketer) must provide a client with a copy of the record of advice in writing as soon as a transaction is entered into. A direct marketer (other than a telemarketer) must provide the client with a copy of the record of advice within 30 days from date of transaction. A telemarketer only needs to provide a copy of the record of advice on request within a reasonable time.

2.11.6 Custody of Financial Products and Funds

The General Code of Conduct stipulates the procedures to be followed by an FSP when receiving funds, financial products or premiums from clients. These provisions are subject to any other legislation which may be more prescriptive regarding the custody of financial products and funds

I) Custody of Funds

The General Code of Conducts provides for the following requirements, regarding client's funds received:

- An FSP who receives funds into safe custody without the mediation of a bank, must issue a written receipt immediately.
- The FSP must open and maintain a separate bank account, designated for client funds and must deposit funds received on behalf of clients within one business day into such an account.
- The bank account is exclusively for client's funds and may not contain funds of the FSP.
- The FSP is liable for bank charges except those charges directly relating to a client's deposit or withdrawal.
- Interest accruing in the trust account is payable to the client or the owner of the funds.

The provisions are not applicable to short-term insurers if they comply with the requirements stipulated in section 45 of the Short-term Insurance Act, 1998.

In addition, the, FSP, must also adhere to the following:

- The client must readily have access to such funds subject to the deduction of fees and charges allowed by law and subject to any applicable contractual or statutory provisions.
- The FSP must ensure that funds held by it or by a third party on its behalf are adequately safeguarded.
- The FSP must take steps to ensure that funds are dealt with strictly in accordance with the mandate.
- The FSP must take reasonable steps to ensure that client's funds are readily discernible from the FSP's funds.

II) Documents of Title

When documents of title are lodged with an FSP on behalf of a client, written confirmation of receipt identifying the documents must be issued immediately.

The FSP must ensure that documents of title held by it or by a third party on its behalf are adequately safeguarded. The documents of title must be readily discernible from the assets of the FSP.

III) Original Agreement

The FSP must ensure that any transaction or agreement that has been recorded in writing is delivered to the client for safe custody.

2.11.7 Remuneration Disclosures

If the FSP and the relevant product supplier is not the same entity, a representative must disclose the nature, extent and frequency of the following:

- All applicable remuneration or considerations.
- All applicable commissions, fees or brokerages.
- All bonuses or incentives received.

The identity of the product supplier or any other person that provides this must also be disclosed. Where the maximum amount is prescribed by law, the FSP may elect to disclose the actual amount or the prescribed maximum amount.

Remuneration need not to be disclosed by the representative of an entity if the same legal entity is a product supplier and an FSP.

2.11.8 General Disclosures: Face to Face Representatives

Disclosures is an essential part of ethical conduct in the financial services sector as disclosures assist clients to make informed decision.

FSPs and product suppliers make certain disclosures, as discussed in the subsections following.

Disclosure may be made orally but must be confirmed in writing within 30 days of rendering of the financial services.

I) Information Regarding Financial Services Provider

An FSP (other than a direct marketer) must as soon as possible provide the client with the information regarding the FSP outlined in the table following.

Contact details	Contractual agreements	Other disclosures
Full business and trade names Registration number if any Postal and physical address Telephone number and cell phone number if applicable Internet and e-mail addresses The names and contact details of appropriate contact person or offices Contact details of the compliance department	Arrangements with product suppliers Status of agreements with product suppliers Details of the legal and contractual status of the FSP regarding the product supplier clarifying which entity accepts responsibility for the actions of the FSP or representative and the extent to which the client will have to accept such responsibility	Financial services and products which the FSP is authorised to provide in terms of its license Any condition, restriction, or exemptions applicable to the license If the FSP or representative holds or do not holds guarantees, professional indemnity or fidelity insurance

Table 2.6: Information Regarding FSP to be Disclosed

II) Information Regarding the Product Suppliers

An FSP (other than a direct marketer) must as soon as possible provide the client with the information regarding the product supplier outlined in the table following.

Contact details	Contractual agreements	Other disclosures
Name of product supplier Place of product supplier Postal address Telephonic contact details Contact details of the complaints <u>or</u> compliance department	The existence of any conditions or restriction imposed by the product supplier regarding the types of financial products or services that may be provided by the FSP The contractual relationship with the product supplier (if any), If there are contractual relationships with other product suppliers as well	If FSP directly or indirectly holds more than 10% of the product supplier's shares, or has any equivalent substantial interest in the product supplier If FSP received more than 30% of total remuneration, including commission, from the product supplier during the last 12 months

Table 2.7: Information Regarding Product Supplier to be Disclosed

The FSP must convey any changes thereafter regarding such information at the earliest opportunity to the client.

A product supplier which is an FSP and which has entered into an intermediary contract with another FSP (not a representative) for purpose of rendering a financial service, must provide the other FSP with sufficient particulars to enable the FSP to comply with the disclosure requirements of the General Code of Conduct relating to the furnishing of details of the product supplier and product in question.

III) Information Regarding the Financial Service/Product

An FSP, other than a direct marketer, must provide a client with the information regarding the financial service/product outlined in the table following.

General information	Terms and condition	Monetary concerns
<p>A reasonable and appropriate general explanation of the nature and material terms of the transaction and such other information that will enable the client to make an informed decision</p> <p>Full and frank disclosure of any info that would reasonable be expected to enable the client to make an informed decision</p> <p>Any material contractual information and illustrations, the possession of the FSP, when reasonable and appropriate i.e. any info provided by the product supplier</p>	<p>Name, class or type of financial product</p> <p>The nature and extent of benefits to be provided</p> <p>The way benefits are derived or calculated</p> <p>The way which benefits will accrue or be paid</p> <p>Special terms or conditions</p> <p>Exclusions of liability</p> <p>Waiting periods</p> <p>Loadings and penalties</p> <p>Excesses</p> <p>Restriction or circumstances in which benefits will not be provided</p> <p>Any guaranteed minimum benefits or other guarantees.</p> <p>To what extent the product is readily realisable, or the funds concerned are accessible</p> <p>Any restrictions on or penalties for early termination of the product or other consequences of such termination or withdrawal (if any)</p> <p>Material tax considerations</p> <p>Whether cooling-off rights are offered and, if so, procedures for the exercise of such rights</p> <p>Any material investment or other risks associated with the product including any risk of loss of any capital amount invested due to market fluctuations</p>	<p>The nature and extent of monetary obligations assumed by the client in favour of the product supplier and product supplier respectively</p> <p>The manner of payment of these monetary obligations</p> <p>The consequences of non-compliance with these payment obligations</p> <p>The applicable remuneration disclosures</p> <p>In the case of an insurance product, the amount of the increased premium, if any, for the first five years and thereafter on a five-year basis but not exceeding 20 years</p>

Table 2. 8: Disclosure Regarding the Product/Service to be Disclosed

IV) Additional Disclosures for Investment Products

The following disclosures should be made in addition to the general disclosures where the financial product is an investment or have an investment component:

- The way the value of the investment is determined, including concise details of any underlying assets or other financial instruments.
- In a separate disclosure (not a mere disclosure of all-inclusive fees) disclose the following regarding charges and fees:

- The amount and frequency thereof.
- The identity of the recipient.
- The services or other purpose for which each fee or charge is levied.
- Where any charges are to be levied in respect of investment performance, details of the frequency, performance measurement period (including any part of the period prior to the client's particular investment) and performance benchmarks or other criteria applicable to such charges or fees.
- Where the specific structure of the product entails other underlying financial products, such details as will enable the client to determine the net investment amount ultimately invested for the benefit of the client.
- Any rebate arrangements must be disclosed and thereafter on a regular basis, (but not less frequently than annually).
- Any platform fee arrangements, which may be disclosed by informing the client that a platform fee of up to a stated percentage may be paid by the product supplier to the administrative FSP concerned, rather than disclosing the actual monetary amount.

Provide information (on request) pertaining to the past investment performance of the product over periods and at intervals which are reasonable regarding the type of product involved, including a warning that past performances are not necessarily indicative of future performances.

2.11.9 Transactional Disclosures

The representative must inform the client of the following regarding the completion or submission of any transaction requirement by a client:

- A statement that all material facts must be accurately and properly disclosed, and that the accuracy and completeness of all answers, statements or other information provided by or on behalf of the client, are the client's own responsibility.
- A statement that if the FSP completes or submits any transaction requirement on behalf of the client, the client should be satisfied as to the accuracy and completeness of the details.
- A statement of the possible consequences of the misrepresentation or non-disclosure of material facts or the inclusion of incorrect information.
- The client's right to be supplied, on request, with a copy or written or printed record of any transaction requirement within a reasonable time.

2.11.10 Disclosure Requirements for Replacement Products

Where the financial product is to replace an existing financial product wholly or partially held by the client, the representative must fully disclose to the client the actual and potential consequences of such a replacement including where applicable the following:

- Fees and charges in respect of the replacement product.
- Special terms and conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided, which may be applicable to the replacement product.
- In the case of an insurance product, the impact of age and health changes on the premium payable.
- Differences between tax implications of the replacement product.
- Material differences between the investment risk of the replacement product and the terminated product.

- Penalties or unrecovered expenses deductible or payable due to termination of the terminated product.
- To what extent the replacement product is readily realisable or the relevant funds accessible, compared to the terminated product.
- Vested rights, minimum guaranteed benefits or other guarantees or benefits that will be lost because of the replacement.
- Any incentive, remuneration, consideration, commission, fee or brokerage received, directly or indirectly, by the FSP on the terminated product or payable, directly or indirectly, to the FSP on the replacement product where the FSP rendered financial services on both the terminated and replacement product.
- The reasons why the replacement product considered is a more suitable to the client's needs than retaining or modifying the existing product.

2.11.11 Confidentiality of Client Information

An FSP may not disclose a client's confidential information unless-

- The client has given written permission.
- Disclosure is required in public interest.
- Disclosure is required in terms of the law.

2.11.12 Contract and Instructions

Financial services must be rendered in terms of the contract and instructions must be executed as soon as is reasonably possible.

When providing the financial service, clients' interests must enjoy priority over the FSP's interests.

Transactions of a client must be accurately accounted for.

The FSP or representative may not deal in any financial product for his own benefit based on advance knowledge of pending transactions on behalf or with clients or on any non-public price-sensitive information.

2.11.13 Prohibition on Signing of Blank Forms

No FSP may during the rendering of a financial service request any client to sign any written or printed form or document unless all details required to be inserted thereon by the client or on behalf of the client have already been inserted.

2.11.14 Risk Management

The Code of Conduct stipulates that an FSP must always have the necessary resources, procedures and technological systems (that can be reasonable expected) to eliminate as far as possible the risk of financial loss to clients, product suppliers and other FSPs or representatives through theft, fraud, other dishonest acts, poor administration, negligence, professional misconduct or culpable omissions.

This implies that the FSP must have proper risk management procedures in place as well as the necessary insurance to protect clients.

I) Risk Management Procedures

The FSP must develop a risk management policy. The risk management policy must be submitted as part of the compliance reporting annually to the Financial Services Board.

The objective of the risk management policy is to ensure that an FSP, other than a representative, structures the internal control procedures as to provide reasonable assurance that-

- The business can be carried on in an orderly and efficient manner.
- The financial and other information is reliable.
- Relevant laws are complied with.

II) Insurance

An FSP must maintain suitable guarantees or professional indemnity or fidelity guarantee insurance if and to the extent required by the Registrar.

Fidelity insurance pay for losses caused by employee acts such as embezzlement, fraud etc. Personal indemnity is taken out to protect the FSP from any losses or damages suffered by a client as result of a professional act of the FSP or its employees, for example where a representative did not make appropriate disclosures. Guarantees provide for a 3rd party to accept responsibility for an obligation if the FSP cannot meet the responsibility.

2.11.15 Termination of Agreement or Business

Subject to the contractual obligations, an FSP must give immediate effect to a request of a client to voluntarily terminate an agreement relating to a financial product or advice.

Where the client makes the request to terminate on the advice of the FSP, the FSP must take reasonable steps to ensure that the client understands all the implications of the termination.

If an FSP (other than a representative) ceases to operate, it must immediately notify all affected clients and take, where reasonably necessary or appropriate in consultation with the clients and product suppliers, reasonable steps to ensure that outstanding business is completed promptly or transferred to another FSP.

If a representative ceases to operate as a representative of an FSP, the FSP must immediately take, where reasonably necessary or appropriate in consultation with the clients and product suppliers, reasonable steps to ensure that outstanding business is completed or transferred to another the FSP or another representative of the FSP.

2.11.16 Advertising

The following provisions are applicable to advertisements by FSPs:

- Advertisements may not contain any statements, promises or forecasts that is fraudulent, untrue or misleading.
- Performance data (if included in the advertisement), including awards and rankings must include references as to their source and date.
- Illustrations, forecasts or hypothetical data used in an advertisement must disclose the basic assumptions on which they are based and must have a reasonable prospect of being met under current circumstances. It should be made clear that they do not imply a guarantee but are provided for illustrative purposes only. Any dependence on the performance of underlying assets or other variable market factors, must be stated clearly.
- A warning statement regarding the risks involved in buying and selling a financial product must be prominently displayed.
- If information regarding past performances is provided, a warning must be included that past performances are not necessarily indicative of future performance.
- Investments that are not guaranteed must contain a warning that they are not guaranteed.

I) Direct Marketing Advertising

The following provisions are applicable to direct marketing advertisements by FSPs:

- Where an FSP advertises a financial service by telephone, an electronic, voice logged record of all communications must be maintained. Where no financial service is rendered because of the advertisement, such record need not be maintained for a period exceeding 45 days.
- Where an FSP advertises a financial service by telephone a copy of all such records must be provided on request by the client or the Registrar within 7 days of the request.
- Where an FSP advertises a financial service by telephone, only basic information such as the business name, telephone number and address of the product supplier or FSP and their compliance departments must be provided. However, if a transaction is concluded, full details about the product supplier or FSP must be provided in writing within 30 days after the interaction.
- Radio advertisements need only provide the business name of the FSP.
- Complaints Handling by FSP

The FSP must maintain an internal complaints resolution system based on a comprehensive complaints policy. The internal complaints resolution system and procedures of the FSP must be designed to ensure the existence and maintenance of the following:

- Availability of adequate manpower and other resources.
- Adequate training of all relevant staff.
- Ensuring that responsibilities and mandates are delegated to facilitate complaints resolution of a routine nature.
- Ensuring that there is provision for the escalation of non-routine serious complaints and the handling thereof by staff with adequate expertise.
- Internal follow-ups to avoid occurrences giving rise to complaints or improve services.

The complaints policy, including any updates or upgrades, must be in writing. Clients must have access to the complaints policy at every branch or electronically and clients must be made aware of the procedures by public press, electronic announcements or client communications.

The complaints policy must contain the duties of the FSP and the rights of the client. A clear summary of the FAIS Act pertaining to the pursuance of a claim through the Ombud after dismissal of a claim by the FSP must also be included as well as the contact details of the Ombud.

The internal complaints resolution system and procedures must stipulate the following:

- Complaints should, if possible be in writing and copies of relevant documentation should be attached thereto.
- Complaints must be properly recorded by the relevant staff.
- Record of complaint must be maintained for a minimum period of 5 years from date of complaint.
- After receiving and recording the complaint, the complaint must as soon as possible be forwarded to the relevant staff appointed to consider its resolution.
- The FSP must provide acknowledgement of receipt of complaints in writing. Such acknowledgement must include the details of staff dealing with complaints. Such acknowledgement should be issued within 3 weeks of receiving the complaint.
- The complaint must receive proper consideration and appropriate management controls must be available to ensure that the consideration process is effectively controlled.

- The client must be informed of the results of the consideration within 6 weeks of making the complaint.
- Where the outcome is not favourable to the client, full reasons must be provided, and the client advised that the complaint may be pursued through the Ombud within six months and the Ombud's details must be provided.
- Where a complaint is resolved in favour of a client, redress should be offered to the client without delay.

2.11.17 Waiver of Rights

No FSP may request a client to waive any right or benefit described to a client under the General Code of Conduct. Any such waiver is considered null and void.

2.12 FINANCIAL INTELLIGENCE CENTRE ACT (FICA)

The Purpose of the Financial Intelligence Centre Act (FICA) is to assist in the identification of the proceeds of unlawful activities, combat money laundering, combat the financing of terrorist and related activities by establishing the Financial Intelligence Centre and Anti-Money Laundering Advisory Council as well as imposing duties on institutions that can be used for money laundering (call accountable institutions).

FICA contains a number of control measures aimed at facilitating the detection and investigation of money laundering and terrorist financing and imposes specific responsibilities on financial institutions before commencing a business relationship with a client, as well as during the lifecycle of the business relationship. These responsibilities include the following:

- Performing a customer due diligence.
- Keeping up-to-date records of identities of clients and transactions entered into with clients.
- Reporting certain financial transactions of a specific threshold or frequency of occurrence to the Financial Intelligence Centre.
- Reporting any suspicious or unusual transactions to the Financial Intelligence Centre.
- Formulating and implementing a Risk Management Plan and Compliance Program to risk rate client groups and transactions.
- Identifying Prominent Influential Persons (PEPS).
- Providing training to their employees.
- Appointing a Nominated Official to ensure compliance with the provisions of FICA.

The Financial Intelligence Centre Amendment Act of 2017 introduced a risk-based approach to customer due diligence and recognises that the risks of money laundering and terrorist financing vary within and between sectors.

The risk-based approach incorporates the following three key elements:

- Strengthening anti-money laundering and combating terrorist financing through a more consultative approach, based on partnerships between key stakeholders in both the public and private sectors.
- Improving co-ordination and collaboration to ensure more effective preventive measures and better enforcement measures.
- More customer-friendly and less-costly approach to implementation of anti-money laundering and combating terrorist financing, in line with the Treat Customers Fairly initiative.

The risk-based approach is intended to offer a better, more cost-effective alternative to the prescriptive tick box' approach, enabling financial institutions to spend more time only on customers assessed to be risky, in order to meet compliance requirements more efficiently.

The purpose of the new provisions is that institutions in the financial system are dealing with known customers, who are conducting legitimate business, and that they are able to spot when customers are conducting business that may be of an illicit nature and report that to the correct authorities.

2.13 PROTECTION OF PERSONAL INFORMATION ACT (POPI)

The Protection of Personal Information Act (POPI) was introduced in response to the perceived threat posed by the unregulated processing of personal information. It aims to regulate the processing of personal information, and to give effect to the constitutional right to privacy, by introducing measures to ensure that organisations use personal information in a fair, reasonable, responsible and secure manner.

All institutions who use personal information are bound by this piece of legislation, which applies to personal information of clients, prospects, employees, product suppliers or any other party.

Generally speaking, personal information must be collected directly from the client, and must be collected for a specific, explicitly defined, lawful purpose.

Therefore, financial services providers (FSPs) must be sure to define and know why they are collecting and processing personal information. The FSP must also ensure that the client is explicitly informed of the personal information that will be processed. This must be done in writing, and a record of the notification must be retained.

The FSP should only process personal information which is adequate, relevant and not excessive for the purpose of processing; in other words, only process what is necessary.

There is a duty on the FSP to take reasonable steps to ensure that personal information records are complete, accurate, not misleading and updated. This includes the obligation to ensure that reasonable steps are taken to update client information from time to time.

Records may not be retained for longer than is necessary in order to achieve the purpose for which they were collected and must be destroyed after that period. Retention policies should therefore be implemented to ensure compliance with this requirement.

Section 19 of the Act provides that the FSP ('responsible party') must ensure the integrity and confidentiality of the personal information in its possession, by putting the appropriate and reasonable technical and organisational measures' in place to prevent the loss of, damage to, unauthorised destruction of, unlawful access to, or unlawful processing of' the personal information.

2.14 SECTORIAL LAWS

Product suppliers are the entities that issues the financial products for example the pension fund or insurance companies.

Conduct of product suppliers and the stipulations to which the composition of financial must comply with is regulated under the following various sectorial laws:

- The Banks Act:** Regulates the deposit taking activities of a Bank

- The Long-term Insurance Act:** Regulates long term insurers
- The Short-term Insurance Act:** Regulates Short-term insurers
- The Pension Funds Act:** Regulates pension and provident funds
- The Medical Schemes Act:** Regulates Medical Schemes
- The Collective Investment Schemes Control Act (CISCA):** Regulates traditional Collective Investment Schemes and hedge fund Collective Investment Schemes.