

Section 1: First Level Regulatory Examination: FSPs (sole proprietors) and Key Individuals in Categories I, II, IIA, III and IV

[Heading of s. 1 substituted by BN 95/2009 and BN 60/2010]

All FSPs (sole proprietors) and key individuals in relation to Categories I, II, IIA, III and IV are required to complete the first level regulatory examination, based on the qualifying criteria:

[Preamble substituted by BN 60/2010]

No.	Task	Knowledge Criteria	Skill Criteria
1.	Describe the role of the key individual in terms of the FAIS Act.	<p>Describe the roles and responsibilities of key individuals as defined in the FAIS Act.</p> <p>Explain the requirements for licensing by the FSB for the role of the key individual.</p> <p>Describe what the key individual's management responsibility entails regarding the regulated functions of the FSP.</p> <p>Describe what the honesty and integrity requirements are for a key individual.</p> <p>Explain what the implications are for the key individual if a key individual's personal situation changes and he/she is no longer fit and proper. (Refers to honesty and integrity requirement.)</p> <p>Explain what the implications are for the FSP if a key individual's personal situation changes and he/she is no longer fit and proper. (Refers to honesty and integrity requirement.)</p> <p>Explain the competence/qualification requirements that a key individual needs to meet.</p>	<p>Perform the necessary management and oversight functions regarding their functioning within the FSP.</p> <p>Check whether a potential/current key individual meets the requirements regarding honesty and integrity.</p> <p>Take the appropriate action where a potential/current key individual does not meet the requirements regarding honesty and integrity.</p> <p>Check, where applicable, whether a potential/current key individual meets the competence/qualification requirements.</p>

No.	Task	Knowledge Criteria	Skill Criteria
		<p>Explain the experience requirements that the key individual must meet.</p> <p>Explain what management responsibilities should be carried out by a key individual.</p> <p>Explain when an individual can commence acting as a key individual.</p>	<p>Check, where applicable, whether a potential key individual meets the experience requirements.</p> <p>Oversee the implementation of processes and controls to ensure the sufficient management and oversight of the financial services rendered.</p>
2.	Describe the role of the representative in terms of the FAIS Act.	<p>Describe the roles and responsibilities of representatives as defined in the FAIS Act.</p> <p>Explain the requirements for licensing by the FSB for the role of the representative.</p> <p>Explain when an individual is obliged to be registered as a representative in terms of FAIS.</p> <p>Explain the fit and proper requirements that apply to the representatives.</p> <p>Discuss the purpose of the register of representatives.</p> <p>Explain the qualification requirements for representatives.</p>	<p>Verify that the FSP maintains a register of representatives in accordance to the FAIS requirements.</p>
3.	Manage and oversee the appointment of representatives.	<p>Describe the Fit and Proper requirements that apply to representatives in terms of the legislation.</p> <p>Explain what recruitment and appointment procedures have to be implemented when appointing representatives.</p> <p>Explain when representatives can act under supervision.</p> <p>Describe the supervision requirements that must be in place when representatives act under supervision.</p>	<p>Verify that the necessary HR processes are developed/amended to enable the FSP to check, at recruitment stage, whether a potential representative meets at least the entry level Fit and Proper requirements.</p> <p>Confirm that there are enough role-players (key individuals/ representatives) that meet the criteria and can act as supervisors.</p> <p>Ensure that the supervisors understand their roles and have the capacity to carry this out.</p> <p>Verify that there are levels of supervision in place to</p>
4.	Manage the rendering of services under supervision.		

No.	Task	Knowledge Criteria	Skill Criteria
			oversee the representatives. Perform the necessary management and oversight functions regarding the representatives that are overseen by you.
5.	Manage and oversee the ongoing development/ employment of representatives.	Explain the disclosure requirements that representatives are responsible for. Describe the implications of Section 8 and Section 13 of the Act, and what this means in terms of training and development of representatives.	Check that disclosures are adequate to enable client's ability to make an informed decision. Verify that the processes are documented to ensure that records are kept of training programmes attended, including continued educational training for your key individuals and representatives. Implement and maintain a documented process to ensure that all representatives are trained, competent and will provide financial services on behalf of the FSP efficiently, honestly and fairly. Check that there are training processes in place to provide representatives with information and skills regarding: <ul style="list-style-type: none"> • Processes • Systems • Products • Services • Compliance requirements • Regulatory requirements when rendering financial services.
6.	Debar representatives that have been found to act fraudulently, or committed any other act that gives rise to debarment.	Describe the implications if a representative does not meet all the requirements in terms of Fit and Proper by the relevant date. Discuss the purpose of debarment. Describe when the debarment of a representative should take place.	Check that the necessary HR processes are developed/amended to enable the FSP to check at regular intervals, whether a representative is making the required progress regarding reaching all the Fit and Proper requirements as it applies to his/her appointment conditions. Check that the employment/ mandatory agreement with representatives include the reasons for possible debarment. Confirm that all role players in the FSP are informed about:

No.	Task	Knowledge Criteria	Skill Criteria
7.	Awareness of the regulatory environment in which the FSP functions.	<p>Discuss how the debarment of a representative should take place.</p> <p>Explain the actions a representative may take that would give rise to debarment procedures.</p> <p>Describe the ramifications for a FSP if it debars a representative unfairly.</p> <p>Explain the processes that should be followed before a representative is debarred.</p> <p>Explain the process and timeframe to notify the Registrar that a representative has been debarred.</p>	<ul style="list-style-type: none"> • The reasons why debarment would be considered, • The process that would be followed in such instances, • Any recourse a representative may have. <p>Verify that the FSP's HR and disciplinary code has been amended to provide for debarment procedures.</p> <p>Verify that there are internal processes and procedures that are followed when a representative is debarred.</p> <p>Verify that there are internal processes and procedures that are followed to inform the Registrar when a representative is debarred.</p> <p>Check that the compliance officer performs monitoring procedures on all cases where representatives are debarred.</p> <p>Interact with the regulator when and where required.</p> <p>Check that there are processes in place to check whether the Registrar has published notices regarding "undesirable business practices".</p>

No.	Task	Knowledge Criteria	Skill Criteria
			Verify that there are processes in place to ensure that the business is informed about "undesirable business practices" and that they cease any such actions.

8.	Awareness of the specific obligations in terms of the relevant Code of Conduct and other subordinate legislation.	Explain the obligations and requirements when client funds or premiums are received.	Confirm that there is a separate bank account with a registered bank into which client monies are deposited.
		Explain the importance of disclosures.	Check that disclosures are adequate to enable client's ability to make an informed decision.
		Discuss how to ensure transparency and manage conflict of interests.	
		Distinguish between actions regarded as advice and intermediary services in terms of the Act.	
		Describe the concept of ethical conduct in the financial services environment.	
		Discuss the impact and requirements regarding the disclosure rules on the FSP.	Apply the requirements of the General Code of Conduct.
		Discuss the effect of disclosure requirements on commission is explained with reference to line of business and specific product/policy.	
		Describe the disclosure requirements regarding the FSP, product suppliers, product suppliers acting as FSPs and financial services.	Apply disclosure requirements in terms of financial products.
		Explain the manner in which complaints are to be handled by the industry with reference to the FAIS General Code of Conduct.	Verify that complaints procedures and processes are in place.
		Explain the steps that must be taken by a FSP/ representatives when providing advice.	
		Explain the provisions of the General Code relating to- <ul style="list-style-type: none"> • custody, • complaints, • risk management, • insurance, 	

		<ul style="list-style-type: none">• advertising and• termination.	
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<p>9. Oversee and manage the compliance functions as required by the FAIS Act.</p>	<p>Explain the requirements for approval of a Compliance Officer by the Registrar. Describe the role and function of a Compliance Officer.</p>	<p>Check that the CO is approved by the Registrar. Replace the intended CO if he/she does not have the required approval of the Registrar. Confirm that the compliance practice has sufficient resources to provide a proper compliance service, where an outsourced compliance practice is used.</p>
<p>Explain why it is important for the Compliance Officer to be/act independent from the management of the FSP.</p>	<p>Confirm that the CO / compliance practice can function objectively and sufficiently independent of the FSP. Verify that any internal compliance function is staffed and equipped to provide a proper compliance service.</p>	<p>Confirm that the CO / compliance practice can function objectively and sufficiently independent of the FSP. Verify that any internal compliance function is staffed and equipped to provide a proper compliance service.</p>
<p>Explain why it is important for the Compliance Officer to be able to avoid conflicts of interest regarding the execution of their duties.</p>	<p>Manage potential conflict of interest where management is also responsible for the compliance function, i.e. a sole proprietor.</p>	<p>Manage potential conflict of interest where management is also responsible for the compliance function, i.e. a sole proprietor.</p>
<p>Explain what internal audit and control functions are required to enable the CO to function in a manner ensuring that no actual or potential conflicts of interests arise as regards the duties and functions of other employees.</p>	<p>Implement internal audit and control functions to enable the CO to function in a manner ensuring that no actual or potential conflicts of interests arise as regards the duties and functions of other employees.</p>	<p>Implement internal audit and control functions to enable the CO to function in a manner ensuring that no actual or potential conflicts of interests arise as regards the duties and functions of other employees.</p>
<p>Demonstrate understanding of the content of the compliance report in order to be able to sign it off.</p>	<p>Verify that the FSP has procedures in place to monitor the compliance of supervisors with the requirements as set out in the relevant Determination.</p>	<p>Verify that the FSP has procedures in place to monitor the compliance of supervisors with the requirements as set out in the relevant Determination.</p>
		<p>Check that the compliance officer performs</p>

No.	Task	Knowledge Criteria	Skill Criteria
		<p>Explain what the compliance function requirements are within the FSP.</p>	<p>monitoring procedures on rendering of services under supervision. Establish the compliance function within the FSP.</p>
			<p>Confirm that where the compliance officer found any instances of non-compliance that this is addressed and rectified. Confirm that the CO performs monitoring procedures on rendering of financial services within the limitations on categories and subcategories for which the license is issued. Manage the licensing conditions.</p>
10.	<p>Maintain the license of the FSP including the management of the licensing conditions.</p>	<p>Explain the impact of licensing conditions on an FSP. Explain what the implication is for a FSP if a key individual leaves the employ of the FSP. Explain what levies are payable to the Registrar and when should this be paid. Describe what civil remedies and penalties the Registrar may impose under FAIS. Describe what actions will lead to the Registrar imposing civil remedies and penalties under FAIS. Explain what changes must be reported. Explain what licensing conditions regarding products and services must be met.</p>	<p>Confirm that all role-players are informed and able to execute their duties. Verify that there are processes in place to pay the levies, and that this is done within the correct timeframes. Confirm that the Registrar is informed within 15 days of any changes to the FSP licensing details. Confirm that the FSP has procedures in place to ensure that it can comply with condition 1 of the licensing conditions that requires the FSP to update its business information as provided during applications within 15 days of any change occurring. Verify that if the FSP changes the name of the financial services business (as reflected on the license concerned) that FSP obtains prior approval from the Registrar in compliance with condition 4 of the licensing conditions.</p>

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		<p>Describe the implications for a FSP if the Registrar publishes a notice regarding an undesirable business practice.</p> <p>Explain what the implications are for a key individual and/or FSP if an accreditation is suspended or withdrawn or lapsed in terms of the Medical Schemes Act, 1998, or any other enabling legislation such as the Banks or Insurance legislation.</p> <p>Discuss the requirements around the display of licences.</p> <p>Describe the conditions under which suspensions, withdrawals and reinstatements of authorisation may be imposed.</p> <p>Provide an overview of the different types of financial services and financial products a FSP can deal with.</p> <p>Explain the different financial products with examples of products in each category.</p> <p>Explain the relationship between different industry players.</p> <p>Describe the interrelationships between FSP's in terms of co-responsibility.</p>	<p>Verify that the FSP has internal controls and procedures in place to ensure that financial services are rendered within the limitations on categories and subcategories for which the license is issued.</p>
11.	Take the necessary action if the FSP voluntarily lapses its license.	<p>Discuss the effect of voluntary sequestration, winding-up or closure of a business on its licensing status. (Section 38)</p> <p>Explain the reasons why a license can be suspended or withdrawn.</p> <p>Discuss what recourse the FSP has in such a case where a license was suspended / withdrawn. (Sections 9 and 10)</p> <p>Discuss the reasons why a FSP would lapse a license.</p> <p>Describe how lapsing a license differs from</p>	

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12.	Verify that the proper record keeping activities are carried out.	<p>suspension or withdrawals. (Section 11)</p> <p>Explain the record keeping obligations as imposed by the FAIS Act.</p> <p>Explain the requirements regarding records and the maintenance thereof in terms of the FAIS Act.</p> <p>Describe the requirements imposed when record keeping is outsourced to a third party.</p> <p>Explain in what format the records should be stored and retrieved in accordance to the industry standard.</p> <p>Explain what the security requirements for these records are in terms of confidentiality and access to records.</p> <p>Explain the reporting obligations imposed by the Act.</p> <p>Understand the requirements regarding records and the maintenance thereof in terms of the Act and other applicable legislative requirements, including FIC Act.</p> <p>Explain the requirements regarding the maintenance of records in Section 18 of FAIS.</p> <p>Describe what are the operational ability requirements that the FSP must meet.</p> <p>Explain what does the requirement regarding financial soundness implies for the FSP.</p> <p>Explain the requirements in terms of monthly management accounts.</p> <p>Explain what it means if an application is granted by the Registrar, but conditions and restrictions are imposed.</p> <p>Explain what gives rise to a profile change and</p>	<p>Ensure that there are processes in place to provide the management information that is required to complete the reports required by the legislation.</p> <p>Ensure that there are processes in place to submit the reports required by the legislation by the due dates.</p> <p>Confirm that third party outsourcing agreements are executed correctly.</p> <p>Verify that the necessary checks and balances are carried out regarding the record keeping functionality, including retrieval of records.</p> <p>Verify that the reporting obligations are met in accordance to the Act.</p> <p>Ensure that there are processes in place to submit the reports required by the legislation by the due dates.</p>
13.	Manage and oversee / participate in the setting up and/or managing of the infrastructure of the FSP.	<p>Establish a fixed business address.</p> <p>Confirm that the requirements regarding financial soundness are adhered to, and where this is not in place, actively towards achieving it.</p> <p>Confirm that there is adequate access to communication facilities including at least a full-time telephone or cellphone service, typing and document duplication facilities.</p> <p>Confirm that there is adequate storage and filing</p>	<p>Establish a fixed business address.</p> <p>Confirm that the requirements regarding financial soundness are adhered to, and where this is not in place, actively towards achieving it.</p> <p>Confirm that there is adequate access to communication facilities including at least a full-time telephone or cellphone service, typing and document duplication facilities.</p> <p>Confirm that there is adequate storage and filing</p>

No.	Task	Knowledge Criteria	Skill Criteria
		when should it be submitted.	systems for the safe keeping of records, business communications and correspondence.
		Explain what the offenses are under FAIS.	Verify that the FSP has an account with a registered bank, including, where required by the Act, specific account for depositing client monies.
		Explain all processes and procedures required when handling complaints.	Establish and maintain compliance and reporting arrangements for the FSP activities.
		Explain the requirements regarding advertising and direct marketing in terms of the Act.	Check that the compliance arrangements specify how often compliance with procedures are monitored and reported on.
			Implement and maintain a documented process to maintain the adequacy of your compliance and monitoring arrangements.
			Confirm that processes are documented to ensure records are kept of training programmes attended, including continued educational training, for your key individuals and/or representatives.
			Establish documented processes for the supervision and monitoring of representatives to ensure that they comply with the Act.
			Implement and maintain a documented process to ensure that all representatives are trained, competent and will provide financial services on your behalf efficiently, honestly and fairly.
			Implement and maintain guarantees, professional indemnity or fidelity insurance cover in respect of the clients of the provider or representatives.
			Ensure that written service level agreements are in place, where activities are outsourced.
			Check that there are processes in place to ensure that providers selected for any outsourced functions are suitable.
			Confirm that where outsourced entities provide advice and or intermediary services, that they are authorised FSP's.

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No.	Task	Knowledge Criteria	Skill Criteria
			<p>Check that there are processes in place to notify the FSB of any profile changes, and that this is done within the correct timeframes</p>
			<p>Ensure that there are processes in place to avoid actions that can give rise to civil remedies and/or fines being imposed under FAIS.</p>
			<p>Ensure that there are processes in place to avoid actions that can be regarded as offences under FAIS.</p>
			<p>Where applicable, implement and maintain guarantees, professional indemnity or fidelity insurance cover in respect of the clients of the provider or representatives.</p>
			<p>Ensure that there are policies and processes in place to deal with complaints.</p>
			<p>Ensure that there are processes in place to comply with the advertising and marketing provisions of the general Code of Conduct.</p>
		<p>Explain the importance of contingency planning / processes for the FSP.</p>	<p>Record a contingency plan for the FSP. Create a contingency plan for the FSP with regards to the KI (i.e. sole proprietor.)</p>
14.	<p>Manage and oversee the requirements that auditors/accounting officers must adhere to.</p>	<p>Describe what is the auditing and accounting requirements for an authorised FSP. Explain the financial record keeping requirements the FSP must adhere to.</p>	<p>Check that the required auditing and accounting requirements as it applies to the FSP, is in place and carried out accurately and timeously. Confirm that the auditing firm/accounting officer is organisationally independent from the FSP (or the group of which is it part of) and able to maintain an objective frame of mind in accomplishing its responsibilities. Confirm that the auditing firm / accounting officer is sufficiently knowledgeable about the industry for the engagement.</p>
15.	<p>Manage and oversee the FSP's adherence to the requirements of FICA and</p>	<p>Explain what FICA governs and requires.</p>	<p>Verify that there are written internal rules in place as required by the Financial Intelligence Centre Act (Act no. 38 of 2001) and that all staff are familiar</p>

No.	Task	Knowledge Criteria	Skill Criteria
	other relevant anti-money laundering legislation, as it applies to the FSP.		with this.
		Describe how the FSP is impacted by FICA.	Verify that the FSP has processes in place to ensure compliance with the identification, verification, record-keeping and reporting obligations under Act no. 38 of 2001, and that all staff are familiar with this.
		Explain what actions should be taken by the FSP in regard to FICA.	Check that there are processes in place to ensure that employees receive training in respect of, and are aware of, their obligation to report suspicious transactions.
16.	Manage any processes required in the event of an investigation by the FAIS Ombud.	Discuss the obligations of the FSP/key individual in respect of an investigation conducted by the FSB and FAIS Ombud. Explain what the role and powers of the Ombud are.	Check that there are processes in place to ensure that the business cooperates in the case of an investigation by the Ombud.

