

FAIS Insurance Requirements - A note for SAVCA members

The SAVCA Regulatory Sub-Committee continues to engage with the Financial Services Board on the applicability of the Financial Advisory and Intermediaries Act (FAIS) legislation to the private equity industry.

Indeed the committee is to be commended for its efforts and its successes in securing certain exemptions from various FAIS requirements for category 11 licence holders.

Many private equity firms continue to be registered as category 11 FSP's until the much anticipated new category that the FSB has promised is introduced. Progress from the FSB in this regard unfortunately seems to be slow.

Notwithstanding the exemptions, those firms who hold category 11 FAIS licences must be aware that the insurance requirements pertaining to these FSP's still apply and are not exempt. As such private equity firms who do not carry the legislated insurances are technically in breach of the law.

The insurance requirements for category 1,11,11A,111 and IV providers is set out in the Government Gazette Notice of 21 September 2009 (no 32587) as well as in the FAIS Newsletter dated 31 August 2013 (volume 15). The table below summarises these requirements:

CATEGORY OF FSP	COVER REQUIRED
Cat I or IV FSP <i>(FSP doesn't receive client funds)</i>	Suitable guarantee of minimum of R1 million or PI cover for a minimum R1 million
Cat I or IV <i>(FSP receives client funds)</i>	Suitable guarantee of minimum of R1 million or PI and Fidelity cover minimum R1 million
Cat II <i>(FSP doesn't receive client funds)</i>	Suitable guarantee of minimum of R1 million or PI cover minimum R1 million
Cat II <i>(FSP receives client funds)</i>	Suitable guarantee of minimum of R5 million or PI and Fidelity cover minimum R5 million
Cat IIA <i>(FSP doesn't receive client funds)</i>	Suitable guarantee of minimum of R5 million or PI cover for a minimum R5 million
Cat IIA <i>(FSP receives client funds)</i>	Suitable guarantee of minimum of R5 million or PI and Fidelity cover minimum of R5 million
Cat III	Suitable guarantee of minimum of R5 million or PI and Fidelity cover minimum R5 million

In addition to the above requirements, the FAIS newsletter (volume 15) recommends that all FSP's insurances include:

- Legaldefense costs;
- Fidelity guarantee;**
- Loss of documents;
- Staff dishonesty;**
- Computer Crime.**

Notwithstanding that certain categories seem to require only professional indemnity insurance, the recommendation by the FSB that fidelity guarantee, staff dishonesty and computer crime be included, suggests that comprehensive crime cover is also required. Comprehensive crime insurance will cover these risks.

Those private equity firms who only purchase professional indemnity cover should therefore reassess their insurances to ensure compliance with FAIS. There are bespoke insurance products for private equity firms which cover professional indemnity, directors and officers liability, and comprehensive crime.

Firms that have only purchased professional indemnity cover should consider either purchasing a separate comprehensive crime policy or having their existing policies extended to cover the crime requirements. These options will depend on the risk profile of the private equity firm and the insurer with whom the existing insurances are placed.

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