

FAIS Conflict of Interest Rules

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The amendment mainly dealt with the potential conflict of interest that affected the way FSP's dealt with their clients. The main objective of the amendment was to try and ensure that FSP's would place clients with Product Providers that provided the best products, and not because of any other relationship that may exist between the Product Provider and the FSP.

The legislation seeks to deal with conflict of interest in the following three ways; each one designed to mitigate potential conflict where it cannot be avoided, with first prize clearly being, to completely avoid the conflict:

1) Disclosure of the **nature of the conflict**, so the client can make his or her own mind up as to whether they still want to do business with that FSP. The disclosure should be made at the earliest possible opportunity and this obligation comes into effect on **20 July 2010**.

2) The drafting by the FSP, of a comprehensive **conflict of interest policy**, which needs to be made accessible to clients and which sets out the following in detail:

- the various conflicts that exist,
- what has been done to mitigate such conflicts,
- how the staff in the FSP's office are trained and obligated to comply.

(Disclosure to the client could take many forms; probably simplest of all, would be for the FSP to utilise its own website or any other form of media at its disposal)

3) What constitutes, "**Financial Interest**" received by an FSP or its representatives?

a) Prohibited Financial Interest is defined widely in the act and includes any:

- cash, or cash equivalent,
- voucher,
- gift,
- service,
- advantage,
- benefit,
- discount,
- domestic or foreign travel,
- hospitality,
- accommodation,
- sponsorship,
- other incentive or valuable consideration, with the only exception being, '**training**' that is not made exclusive to a certain group of FSP's.

b) Permissible Financial Interest a FSP may receive or offer is:

- **commission** legislated in terms of the appropriate legislation,
- **fees** where services are being provided which warrant the fees being paid, or where fair value commensurate to the value of the financial interest is given in return, and
- an **Immaterial Financial Interest**, which is a Financial Interest with a determinable value of not more than R1,000.00 aggregated over a calendar year. Where a FSP has more than one representative, then each representative can receive this Financial Interest of up to R1,000.00 per annum. *(For example an Insurer cannot buy say, a general gift for a Brokerage, exceeding R1,000.00 per year, but they can buy each representative of such Brokerage a gift separately, for R1,000.00 per year. It is important to note that although this example is Brokerage related, the amendments apply equally to any FSP or its representatives, hence it includes a UMA who itself is an FSP or who may be a representative of an Insurer who is a FSP)*

The above become effective six months from the effective date of the legislation. This legislation, as already mentioned, was passed on 19 April 2010 and so the amendment with respect to ***offering or receiving a Financial Interest*** will come into effect on **20 October 2010**, but, if such interest is offered or received prior to this date, but after 20 July 2010, that would have to be disclosed to clients in terms of the disclosure rules that come into play on 20 July 2010.

In conclusion and in essence, the authorities are not saying that one cannot have relationships with service providers as it is important to understand that the industry is to a very large degree based on relationships, what they are saying, is that where these relationships are enhanced or cultivated, the parties must pay their own way, or it creates an unacceptable conflict of interest.

The provider should be placing its business with the best product provider with the best products and services (*hence training is an exemption so the insurer can ensure their product is well understood*) and not with an Insurer or affected party, providing the best trips and gifts.



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