

FINANCIAL SERVICES BOARD



FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002 (“FAIS ACT”)

FAIS CIRCULAR 02/2010
DATE: 31 MARCH 2010

Circular on the Fit and Proper competency (qualifications) requirements for Sole proprietors (FSPs) and Key Individuals

1. Background

The competency requirements for Sole proprietors, Key individuals and Representatives are set out in the Determination of Fit and Proper Requirements for Financial Services Providers (Fit and Proper), as published in Board Notice 106 of 2008, on 15 October 2008.

In terms of section 8 of the FAIS Act, an application for an authorisation referred to in section 7(1), including an application by an applicant not domiciled in the Republic, must be submitted to the Registrar in the form and manner determined by the Registrar by notice in the *Gazette*, and be accompanied by information to satisfy the Registrar that the applicant complies with the requirements for fit and proper financial services providers or categories of providers, determined by the Registrar by notice in the *Gazette*, after consultation with the Advisory Committee, in respect of personal character qualities of honesty and integrity; the **competence** and operational ability of the applicant to fulfil the responsibilities imposed by this Act; and the applicant’s financial soundness.

In the Determination of Fit and Proper Requirements for Financial Services Providers, Section 2 of Part III, being the competency requirements, states that subject to paragraphs (3) to (7), an FSP of any Category and, where applicable, any key individual and/or representative of such FSP must comply with the applicable minimum experience requirements referred to in Part IV of the above Board Notice; have the relevant qualification referred to in Part V of the same Board Notice; have successfully passed the

relevant first and/or second level Regulatory Examination(s), as may from time to time be set by the Registrar and as set out in Part VI of the said Board Notice and comply with the CPD requirements as set out in Part VII the said Board Notice.

2. Date of first appointment: 2004 to 2007

For Sole Proprietors and Key Individuals who were authorised or appointed in terms of the FAIS Act between **2004 (when the Act went into effect) and 31 December 2007**, the requirements were that they must have met the relevant qualification requirements by **31 December 2009**. These requirements can be found in Part 10 of the Determination of Fit and Proper Requirements for Financial Services Providers.

3. Date of first appointment: 2008 - 2009

The competence requirements for Sole proprietors and Key Individuals, who were appointed for the first time in respect of a specific product category in 2008 or 2009, are also provided for in Part 10 of the Determination of Fit and Proper Requirements for Financial Services Providers.

Sole proprietors and Key Individuals with a date of first appointment in 2008, have a choice of either completing an appropriate skills programme by 31/12/2011 or a qualification as published by the Registrar, by 31/12/2013.

Failure by a representative to meet the competency requirements by the relevant date means that the FSP is required to take appropriate action, as explained in FAIS circular 1/2010.

4. Implications if a Sole proprietor or Key Individual does not meet the qualification requirements:

Failure by the Sole proprietor or Key Individual to meet the necessary qualification requirements means that the Sole proprietors (FSPs) or Key Individual is no longer fit and proper in terms of section 8(1) of the FAIS Act.

Section 3 of the FAIS Act states that, subject to the provisions of this Act, any notice given, approval or exemption granted, determination made, requirement or condition determined or imposed, or any other decision taken by the registrar under an enabling provision of this Act, is valid only if it is reduced to a durable written or printed form or, where communicated electronically, has been correctly transmitted in a legible form.

5. Appropriate action by the FSP:

The Registrar of Financial Services Providers has deemed it proper that if the FSP (sole proprietors) or Key Individual does not meet the required qualifications or appropriate skills programme as specified in

Table E, Part 10 of the Determination of Fit and Proper Requirements for Financial Services Providers, the FSP may do as follows:

In respect of a FSP (sole proprietor):

- Request a profile change to remove the product/s for which the FSP (sole proprietor) is not qualified for; or
- If the FSP (sole proprietor) does not meet any of the qualification requirements, request the Registrar to lapse the license.

In respect of a Key Individual:

- Request a profile change to amend the approval of the Key individual to remove the product/s for which the Key Individual is not qualified for; or
- If the Key Individual does not meet any of the qualification requirements, request the Registrar to amend the approval of the Key Individual in its entirety to reflect the fact that the Key Individual does not meet any of the requirements.

In terms of condition 1 of the licensing conditions imposed on FSPs, an FSP is required to inform the Registrar within 15 days of any change to its licensing conditions. This means that the FSP is required to inform the Registrar of the failure to meet qualification requirements by a FSP (sole proprietor) or Key Individual within 15 days after the due date for meeting the relevant qualification requirements.

Where FSPs have failed to inform the Registrar of any instances as described above, in respect of the 31 December 2009 deadline, the Registrar will accept such notification up to and including the 30 April 2010. Any omissions in this regard will be regarded as a failure to comply with Section 8 of the Act, and the Registrar will take regulatory action such FSPs.

REGISTRAR OF FINANCIAL SERVICES PROVIDERS

DATE: 30 March 2010