Task 2 – Notes

Task 2: Contribute towards maintaining a FSP licence.

Qualifying Criteria (QC) 1: Explain the requirements a FSP must meet to maintain a FSP licence.

sbs Study Guide Topic number	Topic
2.1	**Authorisation of Financial Services**
	FSP Licence
	An authorised financial services provider or representative may only conduct financial services related business with a person rendering financial services if that person has, where lawfully required, **been issued with a licence** for the rendering of such financial services and the conditions and restrictions of that licence authorises the rendering of those financial services, **or is a representative** as contemplated in the FAIS Act.
2.2	**Application for authorisation**
	Submission of licence application
	An application for an authorisation, including an application by an applicant not domiciled in the Republic, must be submitted to the Authority in the form and manner determined by the Authority by notice on the Authority's website, and be accompanied by information to satisfy the Authority that the applicant complies with the fit and proper requirements.
	Additional Information for licence application
	The registrar may: a) **require an applicant to furnish such additional information**, or require such information to be verified, as the registrar may deem necessary; and b) **take into consideration any other information** regarding the applicant or proposed key individual of the applicant, derived from whatever source, including the Ombud and any other regulatory or supervisory authority, if such information is disclosed to the applicant and the latter is given a reasonable opportunity to respond.
	Licence conditions and restrictions
	Where an application is granted, the registrar may impose such conditions and restrictions on the exercise of the authority granted by the licence, and to be included in the licence, as are necessary, having regard to: a) all facts and information available to the registrar pertaining to the applicant and any key individual of the applicant;

b) the category of financial services which the applicant could appropriately render or wishes to render;
c) the category of financial services providers in which the applicant is classified for the purposes of this Act; and
d) the category or subcategory of financial products in respect of which the applicant could appropriately render or wishes to render financial services.

Conditions and restrictions may include a condition that where after the date of granting of the licence:

a) any key individual in respect of the licensee's business is replaced by a new key individual; or
b) any new key individual is appointed or assumes office; or
c) any change occurs in the personal circumstances of a key individual which renders or may render such person to be no longer compliant with the fit and proper requirements for key individuals,

No person may be permitted to take part in the conduct, management or oversight of the licensee's business in relation to the rendering of financial services, unless;

- such person has on application been approved by the registrar as compliant with the fit and proper requirements for key individuals, in the manner and in accordance with a procedure determined by the registrar by notice on the official website.

Licensing conditions regarding products and services

When a license is issued, there is an attachment which contains the conditions and restrictions that are relate to that particular license. Although these conditions could vary from license to license, there is a standard format, which is as follows:

Condition 1: This indicates whether the FSP is licensed to provide advice or intermediary services or both. It also lists the financial products and financial services that the FSP is entitled to render.

Condition 2: Condition 2 provides all the further conditions and restrictions.
Usually, the first part includes a demand that should any of the business information that was included in the application **change**, such information should be provided to the registrar within 15 days of it occurring.

The second part refers to key individuals and requires the FSP to retain the key individuals or if not possible to replace them in accordance with the requirements in Section 8 of the Act. Notification of such changes must also be notified to the FSCA in accordance with condition 1 above.

The third part deals with the representative's register and requests the FSP to provide the regulator with a complete register of representatives within 1 month of the issue of the license, and thereafter make appropriate changes to the register **within 15 days** of the change.

The fourth part states that the FSP cannot change its name or operate in another name without first obtaining permission from the registrar. Before providing permission, the registrar will want to

	check that the new name is lawful and complies with any other law dealing with registration of companies. The FSP cannot trade in any new name, even if accepted by the registrar, until an appropriately amended license is issued. The fifth part states that the FSP must at all times ensure that any financial product in respect of which the FSP intends to render a financial service qualifies as a financial product in terms of the Act, and that the product supplier is authorised to deliver such a product. The remainder of the conditions relate to specific conditions or restrictions imposed on that particular FSP. **Condition 3:** This provides a list of any exemptions that apply to the FSP. In the event of any of these licensing conditions not being met, the registrar can suspend or withdraw the license until such time as the conditions have been met or any other time determined by the registrar. **The requirements of the Act around the display of licenses** A FSP must: • display a certified copy of the license in a prominent and durable manner within every business premises of the licensee; • **ensure that a reference to the fact that such a license is held is contained in all business documentation, advertisements and other promotional** material; • **ensure that the license is at all times immediately** or within a reasonable time available for production to any person requesting proof of licensed status under authority of a law or for the purpose of entering into a business relationship with the licensee. A person may not in any manner make use of any license or copy thereof for business purposes where the license has lapsed or has been withdrawn or during any time when the licensee is under provisional or final suspension.
	Honesty and Integrity of Directors, members, partners…etc.
	(a) Where a provider is a corporate or unincorporated body, a trust or a partnership, the provider must: (i) at all times be satisfied that **every director, member, trustee or partner** of the provider, who is not a key individual in the provider's business, **complies with the requirements in respect of personal character qualities of honesty, integrity and good standing**.
2.4	**Suspension and withdrawal of authorization**
	Reasons for suspension or withdrawal of a licence
	The registrar may, and irrespective of whether the registrar has taken or followed, or is taking or following any step or procedure, at any time suspend or withdraw any licence (including the licence

of a licensee under provisional or final suspension) if satisfied, on the basis of available facts and information, that the licensee:

(a) **does not meet or no longer meets the fit and proper requirements** applicable to the licensee, or if the licensee is a partnership, trust or corporate or unincorporated body, that the licensee or any key individual of the licensee does not meet or no longer meets the fit and proper requirements applicable to the licensee or the key individual;
(b) **did not**, **when applying for the licence**, **make a full disclosure** of all relevant information to the registrar, or furnished false or misleading information;
(c) **has failed to comply with any other provision of the FAIS Act** or any requirement under the Financial Sector Regulation Act, including a conduct standard, a prudential standard or a joint standard;
(d) **has failed to pay a levy, an administrative penalty, or any interest in respect thereof**;
(e) **does not have an approved key individual**;
(f) **has failed to comply with a regulator's directive**; or
(g) has failed to comply with any condition or restriction imposed under the FAIS Act.

Responsibilities by the Registrar when suspending or withdrawing a licence

(a) Before suspending or withdrawing any licence, the registrar:
  (i) may consult any regulatory authority; and
  (ii) must inform the licensee of the intention to suspend or withdraw and the grounds for suspending or withdrawing and must give the licensee a reasonable opportunity to make a submission in response to the suspension or withdrawal.
(b) Where the registrar contemplates the suspension or withdrawal of any licence, the registrar must also inform the licensee of:
  (i) the intended period of the suspension; and
  (ii) any terms to be attached to the suspension or withdrawal, including:
    (aa) a prohibition on concluding any new business by the licensee as from the effective date of the suspension or withdrawal and, in relation to unconcluded business, such measures as the registrar may determine for the protection of the interests of clients of the licensee; and
    (bb) terms designed to facilitate the lifting of the suspension.
(c) The registrar must consider any response received, and may thereafter decide to suspend or withdraw, or not to suspend or withdraw, the licence, and must notify the licensee of the decision.
(d) Where the licence is suspended or withdrawn, the registrar must make known the reasons for the suspension or withdrawal and any terms attached thereto by notice on the official web site and may make known such information by means of any other appropriate public media.

Provisional suspension by the registrar

The registrar may ***under urgent circumstances***, where the registrar is satisfied on reasonable grounds that **substantial prejudice to clients or the general public may occur**:
(a) provisionally suspend or withdraw a licence, and inform the licensee of the:
  (i) grounds therefore; and

	(ii) period and terms of suspension, and give the licensee a reasonable opportunity to respond thereto and to provide reasons why the provisional suspension or withdrawal should be lifted or why the period and terms should be changed; and (b) make known such provisional suspension or withdrawal by notice on the official web site and, if necessary, by means of any other appropriate public media.
	Lifting or rendering the Provisional suspension final
	(a) The registrar must, within a reasonable time after receipt of any response from the FSP consider the response, and may thereafter decide to: (i) lift the provisional suspension or withdrawal; or (ii) render the provisional suspension or withdrawal final, and must inform the licensee accordingly. (c) The registrar must make known the terms of and reasons for such final suspension or withdrawal, or the lifting thereof, by notice on the official web site and, if necessary, in any other appropriate public media.
2.5	**Lapsing of licence**
	Reasons for lapsing a licence
	A licence lapses: (a) where the licensee, being a natural person: (i) becomes permanently incapable of carrying on any business due to physical or mental disease or serious injury; (ii) is finally sequestrated; or (iii) dies; (b) where the licensee, being any other person, is finally liquidated or dissolved; (c) where the business of the licensee has become dormant; and (d) in any other case, where the licensee voluntarily and finally surrenders the licence to the registrar.
	Notifying the registrar about the lapsing of a licence and the reasons
	The registrar must be advised in writing by the licensee, any key individual of the licensee, or another person in control of the affairs of the licensee, as the case may be, of the lapsing of a licence and the reasons for lapsing and **the registrar may make known any such lapsing of a licence by notice on the official website** and, if necessary by means of any other appropriate public media announcement.
3.1	**Qualifications of representatives**
	Status: what qualifies a person to render financial services

A person may not:

(a) **carry on business** by rendering financial services to clients **for or on behalf of any person who:**
   (i) **is not authorised** as a financial services provider; and
   (ii) **is not exempted** from the application of the FAIS Act relating to the rendering of a financial service;

(b) **act as a representative** of an authorised financial services provider, **unless such person**:
   (i) prior to rendering a financial service, **provides confirmation, certified by the provider**, to clients:
      (aa) that **a service contract or other mandate, to represent the provider, exists**; and
      (bb) that **the provider accepts responsibility for those activities of the representative** performed within the scope of, or in the course of implementing, any such contract or mandate;
   (iA) **meets the fit and proper requirements**; and
   (ii) **if debarred**, **complies with the requirements** determined by the registrar by notice in the Gazette, **for the reappointment of a debarred person** as a representative; or

(c) render financial services or contract in respect of financial services other than in the name of the financial services provider of which such person is a representative.

Compliance with fit and proper requirements and the code of conduct

An authorised financial services provider must:

(a) at all times be satisfied that the provider's representatives, and the key individuals of such representatives, are, when rendering a financial service on behalf of the provider, competent to act, and **comply with:**
   (i) **the fit and proper requirements**; and
   (ii) any other requirements

(b) take such steps as may be reasonable in the circumstances to ensure that representatives **comply with any applicable code of conduct** as well as with other applicable laws on conduct of business.

The register of representatives and key individuals

An authorised financial services provider must:

(a) **maintain a register of representatives, and key individuals of those representatives**, which must be regularly updated and be available to the Authority for reference or inspection purposes; and

(b) **within five days** after being informed by the Authority of the debarment of a representative or key individual by the Authority, remove the name of that representative or key individual from the register.

Contents of the register of representatives

The register of representatives must:

	(a) contain every representative's or key individual's name and business address, and state whether the representative acts for the provider as employee or as mandatory; and (b) specify the categories in which such representatives are competent to render financial services.
5.3	**Accounting and audit requirements**
	Maintain accounting records and prepare financial statements
	Except to the extent exempted by the registrar, an authorised financial services provider must, in respect of the business carried on by the provider as authorised under the provider's licence: (a) **maintain full and proper accounting records on a continual basis**, brought up to date monthly; and (b) **annually prepare**, in respect of the relevant financial year of the provider, **financial statements** reflecting: (i) the financial position of the entity at its financial year end; (ii) the results of operations, the receipt and payment of cash and cash equivalent balances: (iii) all changes in equity for the period then ended, and any additional components required in terms of South African Generally Accepted Accounting Practices issued by the Accounting Practices Board or International Financial Reporting Standards issued by the International Accounting Standards Board or a successor body; and (iv) a summary of significant accounting policies and explanatory notes on the matters referred to in paragraphs (i) to (iii)
	Submission of audited financial statements to the registrar
	(a) An authorised financial services provider **must cause the financial statements to be audited** and reported on in accordance with auditing pronouncements as defined in section 1 of the Auditing Professions Act, 2005 (Act 26 of 2005) by an external auditor approved by the registrar. (b) The financial statements must: (i) fairly represent the state of affairs of the provider's business; (ii) refer to any material matter which has affected or is likely to affect the financial affairs of the provider; and (iii) be **submitted by the authorised financial services provider to the registrar not later than four months after the end of the provider's financial year** or such longer period as may be allowed by the registrar.
7.1	**Fees and Penalties**
	Submission of returns, information or documents
	(a) A person who fails to furnish the registrar with a return, information or document, as provided by this Act, within the period specified or any extension thereof, is, irrespective of any criminal proceedings instituted against the person under this Act, but subject to

<table>
<tr><td></td><td>paragraph (b), liable to a penalty not exceeding R1 000 or any greater amount prescribed, for every day during which the failure continues unless the registrar, on good cause shown, waives the penalty or any part thereof.

The penalty may be imposed by the registrar by notice to the person concerned, and such imposition must be preceded by a procedure giving such person a reasonable opportunity to be heard, and takes effect on a date specified in such notice which may be a date prior to the date of the notice.</td></tr>
<tr><td>Annexure E</td><td>Notice on requirements for Professional Indemnity and Fidelity Insurance for Providers
These requirements only apply to providers and not to representatives

Categories I, II, IIA, Ill and IV providers
Subject to the provisions of this Schedule:

(a) A person who is a Category I or IV provider and who does not receive or hold clients' financial products or funds on the date of commencement must, with effect from a date 12 months after that date, maintain in force in respect of clients:
(i) suitable guarantees of a minimum amount of R1 million; or
(ii) suitable professional indemnity cover of a minimum amount of R1 million.

(b) A person who is a Category I or IV provider and who receives or holds clients' financial products or funds of or on behalf of a client on the date of commencement must, with effect from a date 12 months after that date, maintain in force in respect of clients:
(i) suitable guarantees of a minimum amount of R1 million; or
(ii) suitable professional indemnity and fidelity insurance cover of a minimum amount of R1million.

(c) A person who is a Category II provider and who does not receive or hold clients' financial products or funds of or on behalf of a client on the date of commencement must, with effect from a date six months after that date, maintain in force in respect of clients:
(i) suitable guarantees of a minimum amount of R1 million; or
(ii) suitable professional indemnity cover of a minimum of R1 million.

(d) A person who is a Category II provider and who receives or holds clients' financial products or funds of or on behalf of a client on the date of commencement must, with effect from a date six months after that date, maintain in force in respect of clients:
(i) suitable guarantees of a minimum amount of R5 million; or
(ii) suitable professional indemnity and fidelity insurance cover of a minimum amount of R5million, respectively.

(e) A person who is a Category IIA provider and who does not receive or hold clients' financial products or funds of or on behalf of a client on the date of commencement must, with effect from a date six months after that date, maintain in force in respect of clients:
(i) suitable guarantees of a minimum amount of R5 million; or
(ii) suitable professional indemnity cover of a minimum amount of R5 million.</td></tr>
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	(f) A person who is a Category IIA provider and **who receives or holds** clients' financial products or funds of or on behalf of a client on the date of commencement must, with effect from a date six months after that date, maintain in force in respect of clients: (i) suitable **guarantees** of a minimum amount of **R5 million**, or (ii) suitable **professional indemnity and fidelity insurance cover** of a minimum amount of **R5million, respectively**. (g) A person who is a Category III provider and **who receives or holds clients'** financial products or funds of or on behalf of a client on the date of commencement must, with effect from a date six months after that date, maintain in force in respect of clients: (i) suitable **guarantees** of a minimum amount of **R5 million**; or **(ii) professional indemnity and fidelity insurance cover** of a minimum amount of **R5 million, respectively.**

QC 2: Assist in maintaining a FSP licence by executing the required actions as a Representative, in terms of the Act

Topic number	Topic
1.2	**Definitions**
	"intermediary service" means any act other than the furnishing of advice, performed by a person for or on behalf of a client or product supplier: (a) the result of which is that a client may enter into, offers to enter into or enters into any transaction in respect of a financial product with a product supplier; or (b) with a view to: (i) buying, selling or otherwise dealing in (whether on a discretionary or non-discretionary basis), managing, administering, keeping in safe custody, maintaining or servicing a financial product purchased by a client from a product supplier or in which the client has invested; (ii) collecting or accounting for premiums or other moneys payable by the client to a product supplier in respect of a financial product; or (iii) receiving, submitting or processing the claims of a client against a product supplier;
	"representative" means a person employed or mandated by a financial services provider, who renders a financial service to a client for or on behalf of a financial services provider, in terms of conditions of employment or any other mandate.
2.2	**Application for authorisation**
	The application form and manner
	An application for an authorisation, including an application by an applicant not domiciled in the Republic, **must be submitted to the Authority in the form and manner determined by the Authority** by notice on the Authority's website, and be accompanied by information to satisfy the Authority that the applicant complies with the fit and proper requirements.
	Display of licence
	A licensee must: a) display a certified copy of the licence in a prominent and durable manner within every business premises of the licensee; b) ensure that a reference to the fact that such a licence is held is contained in all business documentation, advertisements and other promotional material; and c) ensure that the licence is at all times immediately or within a reasonable time available for production to any person requesting proof of licensed status under authority of a law or for the purpose of entering into a business relationship with the licensee.
3.1	**Qualifications of representatives**
	Status: what qualifies a person to render financial services

	A person may not: (a) carry on business by rendering financial services to clients for or on behalf of any person who: (i) is not authorised as a financial services provider; and (ii) is not exempted from the application of this Act relating to the rendering of a financial service; (b) act as a representative of an authorised financial services provider, unless such person: (i) prior to rendering a financial service, provides confirmation, certified by the provider, to clients: (aa) that a service contract or other mandate, to represent the provider, exists; and (bb) that the provider accepts responsibility for those activities of the representative performed within the scope of, or in the course of implementing, any such contract or mandate; (iA) meets the fit and proper requirements; and (ii) if debarred, complies with the requirements determined by the registrar by notice in the Gazette, for the reappointment of a debarred person as a representative; or (c) render financial services or contract in respect of financial services other than in the name of the financial services provider of which such person is a representative.
	Ongoing compliance with the fit-and-proper requirements and the code of conduct
	An authorised financial services provider must: a) at all times be satisfied that the provider's representatives, and the key individuals of such representatives, are, when rendering a financial service on behalf of the provider, competent to act, and comply with: (i) the fit and proper requirements; and (ii) any other requirements b) take such steps as may be reasonable in the circumstances to ensure that representatives comply with any applicable code of conduct as well as with other applicable laws on conduct of business.
5.1.1	**Compliance officers and compliance arrangements**
	Compliance reports
	(a) **A compliance officer** or, in the absence of such officer, the authorised financial services provider concerned, **must submit reports to the registrar** in the manner and regarding the matters, as from time to time determined by the registrar by notice on the official web site for different categories of compliance officers. (b) An authorised financial services provider must ensure that the reports are submitted in accordance with the specified provisions.
4.2.1	**GENERAL PROVISIONS**
	General duty of provider
	A provider must at all times render financial services: • honestly,

	• fairly, • with due skill, care and diligence, and • in the interests of clients and the integrity of the financial services industry
4.12	**WAIVER OF RIGHTS**
	Waiver of rights
	No provider may request or induce in any manner a client to waive any right or benefit conferred on the client by or in terms of any provision of the General Code of Conduct, or recognise, accept or act on any such waiver by the client, and any such waiver is null and void.

QC 3: Discuss the requirements around the display of licences

Topic number	Topic
2.2	**Application for authorisation**
	Display of licence copy
	A licensee must: a) display a certified copy of the licence in a prominent and durable manner within every business premises of the licensee; b) ensure that a reference to the fact that such a licence is held is contained in all business documentation, advertisements and other promotional material; and c) ensure that the licence is at all times immediately or within a reasonable time available for production to any person requesting proof of licensed status under authority of a law or for the purpose of entering into a business relationship with the licensee.

QC 4: Explain the implications for a Representative if an accreditation is suspended or withdrawn or lapsed in terms of the Medical Schemes Act, 1998, or any other enabling legislation

Topic number	Topic
2.1	**Authorisation of Financial Services Providers**
	An authorised financial services provider or representative may only conduct financial services related business with a person rendering financial services if that person has, where lawfully required, **been issued with a licence** for the rendering of such financial services and the conditions and restrictions of that licence authorises the rendering of those financial services, or is a representative as contemplated in this Act.
2.2	**Application for authorisation**
	Accreditation under Medical Schemes or any other enabling legislation
	(a) **A person** granted accreditation under the Medical Schemes Act, 1998 (Act 131 of 1998), must be granted authority to render as a financial services provider under the FAIS Act of the specific financial service for which the person was accredited under the Medical Schemes Act, and must be issued with a licence. (b) The registrar must be satisfied that **a person** to be granted authority, and any key individual of **such person**, comply with the fit and proper requirements of the FAIS Act. (c) A person granted authority and licensed under the Medical Schemes, together with any key individual, are thereafter subject to the provisions of the FAIS Act. (d) If a FAIS licence: (i) is refused; (ii) is suspended; (iii) is withdrawn; or (iv) lapses, the accreditation is deemed to have lapsed in terms of the Medical Schemes Act, 1998, or to have been suspended or withdrawn, as the case may be. (e) If an accreditation is suspended or withdrawn or lapses in terms of the Medical Schemes Act, 1998, the FAIS licence issued is deemed to have been suspended or withdrawn or to have lapsed.
2.4	**Suspension and withdrawal of authorization**
	Reasons for suspension or withdrawal of a licence
	The registrar may, and irrespective of whether the registrar has taken or followed, or is taking or following any step or procedure, at any time suspend or withdraw any licence (including the licence of a licensee under provisional or final suspension) if satisfied, on the basis of available facts and information, that the licensee: (a) does not meet or no longer meets the fit and proper requirements applicable to the licensee, or if the licensee is a partnership, trust or corporate or unincorporated body, that the licensee or any key individual of the licensee does not meet or no longer meets the fit and proper requirements applicable to the licensee or the key individual; (b) **did not, when applying for the licence, make a full disclosure of all relevant information to the registrar, or furnished false or misleading information**;

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(c) has failed to comply with any other provision of this Act or any requirement under the Financial Sector Regulation Act, including a conduct standard, a prudential standard or a joint standard;
(d) has failed to pay a levy, an administrative penalty, or any interest in respect thereof;
(e) does not have an approved key individual;
(f) has failed to comply with a regulator's directive; or
(g) has failed to comply with any condition or restriction imposed under the FAIS Act.
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<tr><td></td><td>Responsibilities of the registrar when suspending or withdrawing a licence</td></tr>
<tr><td></td><td>
(a) Before suspending or withdrawing any licence, the registrar:
(i) may consult any regulatory authority; and
(ii) must inform the licensee of the intention to suspend or withdraw and the grounds for suspending or withdrawing and must give the licensee a reasonable opportunity to make a submission in response to the suspension or withdrawal.
(b) Where the registrar contemplates the suspension or withdrawal of any licence, the registrar must also inform the licensee of:
(i) the intended period of the suspension; and
(ii) any terms to be attached to the suspension or withdrawal, including:
(aa) a prohibition on concluding any new business by the licensee as from the effective date of the suspension or withdrawal and, in relation to unconcluded business, such measures as the registrar may determine for the protection of the interests of clients of the licensee; and
(bb) terms designed to facilitate the lifting of the suspension.
(c) The registrar must consider any response received, and may thereafter decide to suspend or withdraw, or not to suspend or withdraw, the licence, and must notify the licensee of the decision.
(d) Where the licence is suspended or withdrawn, the registrar must make known the reasons for the suspension or withdrawal and any terms attached thereto by notice on the official web site and may make known such information by means of any other appropriate public media.
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<tr><td>2.5</td><td>Lapsing of licence</td></tr>
<tr><td></td><td>Reasons for lapsing a FAIS Licence</td></tr>
<tr><td></td><td>
A licence lapses:
(e) where the licensee, being a natural person:
(iv) becomes permanently incapable of carrying on any business due to physical or mental disease or serious injury;
(v) is finally sequestrated; or
(vi) dies;
(f) where the licensee, being any other person, is finally liquidated or dissolved;
(g) where the business of the licensee has become dormant; and
(h) in any other case, where the licensee voluntarily and finally surrenders the licence to the registrar.
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<tr><td></td><td>Notifying the registrar about lapsing a licence</td></tr>
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	The registrar must be advised in writing by the licensee, any key individual of the licensee, or another person in control of the affairs of the licensee, as the case may be, of the lapsing of a licence and the reasons for lapsing and the registrar may make known any such lapsing of a licence by notice on the official website and, if necessary by means of any other appropriate public media announcement.

QC 5: Explain what is meant by "undesirable practices".

Topic number	Topic
2.6	**Undesirable practices**
	Declaring a business practice undesirable
	The registrar **may by notice in the Gazette** declare a particular business practice to be undesirable for all or a category of authorised services providers, or any such provider.
	Guiding principles for declaring undesirable business practice
	The following principles must guide the registrar in considering whether or not a declaration of undesirable business practice should be made: a) That the practice concerned, directly or indirectly, has or is likely to have the effect of: (i) harming the relations between authorised financial services providers or any category of such providers, or any such provider, and clients or the general public; (ii) unreasonably prejudicing any client; (iii) deceiving any client; or (iv) unfairly affecting any client; and b) that if the practice is allowed to continue, one or more objects of the FAIS Act will or is likely to, be defeated.
	Implications for an authorised FSP on or after the date of publication of notice
	An authorised financial services provider or representative may not, on or after the date of the publication of a notice declaring a particular business practice to be undesirable, **carry on the business practice concerned**.
	Actions by the registrar if the business practice carries on
	The registrar may direct an authorised financial services provider who, on or after the date of the publication of a notice, carries on the business practice concerned in contravention of that notice, **to rectify** to the satisfaction of the registrar anything which was caused by or arose out of the carrying on of the business practice concerned.
	Timeframe to rectify undesirable business practice
	An authorised financial services provider concerned who is directed to **rectify** anything, must do so **within 60 days** after such direction is issued.

QC 7: Describe the implications for a Representative if the Authority declares a business practice to be undesirable.

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<tr><th>Topic number</th><th>Topic</th></tr>
<tr><td rowspan="9">3.2</td><td>Debarment of representatives</td></tr>
<tr><td>Reasons for debaring a representative or a key individual</td></tr>
<tr><td>a) An authorised financial services provider must debar a person from rendering financial services who is or was, as the case may be:
(i) a representative of the financial services provider; or
(ii) a key individual of such representative, if the financial services provider is satisfied on the basis of available facts and information that the person:
a. does not meet, or no longer complies with the fit and proper requirements referred; or
b. has contravened or failed to comply with any provision of the FAIS Act in a material manner;
b) The reasons for a debarment must have occurred and become known to the financial services provider while the person was a representative of the provider.</td></tr>
<tr><td>Actions before debarment</td></tr>
<tr><td>(a) Before effecting a debarment, the provider must ensure that the debarment process is lawful, reasonable and procedurally fair.
(b) If a provider is unable to locate a person in order to deliver a document or information, after taking all reasonable steps to do so, including dissemination through electronic means where possible, delivering the document or information to the person's last known e-mail or physical business or residential address will be sufficient.</td></tr>
<tr><td>Further Actions by the FSP before and during debarment</td></tr>
<tr><td>A financial services provider must:
(a) before debarring a person:
(i) give adequate notice in writing to the person stating its intention to debar the person, the grounds and reasons for the debarment, and any terms attached to the debarment, including, in relation to unconcluded business, any measures stipulated for the protection of the interests of clients;
(ii) provide the person with a copy of the financial services provider's written policy and procedure governing the debarment process; and
(iii) give the person a reasonable opportunity to make a submission in response;
(b) consider any response provided, and then take a decision; and
(c) immediately notify the person in writing of:
(i) the financial services provider's decision;
(ii) the persons' rights in terms of Chapter 15 of the Financial Sector Regulation Act; and
any formal requirements in respect of proceedings for the reconsideration of the decision by the Tribunal.</td></tr>
<tr><td>When the debarment process is finalised</td></tr>
<tr><td>Where the debarment has been effected, the financial services provider must:</td></tr>
</table>

	(a) immediately withdraw any authority which may still exist for the person to act on behalf of the financial services provider; (b) where applicable, remove the name of the debarred person from the register; (c) immediately take steps to ensure that the debarment does not prejudice the interest of clients of the debarred person, and that any unconcluded business of the debarred person is properly attended to; (d) in the form and manner determined by the Authority, **notify the Authority within five days** of the debarment; and (e) provide the Authority with the grounds and reasons for the debarment in the format that the Authority may require **within 15 days** of the debarment.
	Debarment of a person who no longer is a representative of the FSP
	A debarment that is undertaken in respect of a person who no longer is a representative of the financial services provider **must be commenced not longer than six months from the date that the person ceased to be a representative of the financial services provider**.
	Information provided by the Authority, the Ombud or other interested person
	For the purposes of debarring a person, the financial services provider must have regard to information regarding the conduct of the person that is furnished by the Authority, the Ombud or any other interested person.
	Record keeping in relation to debarment
	The Authority may, for the purposes of record keeping, require any information to enable the Authority to maintain and continuously update a central register of all persons debarred, and that register must be published on the website of the Authority, or by means of any other appropriate public media.
	Consequences of debarment
	A debarred person **may not render financial services or act as a representative or key individual of a representative of any financial services provider, unless the person has complied with the requirements for the reappointment** of a debarred person as a representative or key individual of a representative.
	Debarment by the Authority
	The debarment was done under ***section 14A*** of the FAIS Act if the FSCA conducted the investigation and debarment but that section is now removed by the Financial Sector Regulation Act 9 of 2017. This means that the responsibility rests with the FSP to debar any Key Individual or Representative that: (a) Does not meet the fit and proper requirements; and (b) has contravened or failed to comply with the provisions of the FAIS Act in a material manner.
2.7	**Offences and penalties**

Any person who:

(a) **contravenes or fails** to comply with a provision of section 7(1) or (3), 8(8), 8(10)(a), 13(1) or (2), 14(1), 17(4), 18, 19(2), 19(4) or 34(4) or (6);

Section	Context
7(1) or (3)	authorization of financial services providers; FSPs must have a licence and must deal with licenced businesses or persons
8(8)	application for authorization
8(10)(a)	honesty, integrity and good standing of director, member, trustee or partner of the provider
13(1) or (2)	Financial services providers and representatives must meet the fit and proper requirements
14(1)	debarment of representatives
17(4)	submission of compliance reports
18	maintenance of records
19(2)	accounting and audit requirements, auditing and reporting of financial statements
19(4)	the auditor must report any irregularity or suspected irregularity in the conduct or the affairs of the Financial Services Provider
34(4) or (6)	An authorized financial services provider or representative may not carry on the business practice after the same business practice has been declared undesirable by the registrar. An authorized financial services provider who is directed to rectify anything, must do so within 60 days after such direction is issued.

(b) in any application in terms of this Act, deliberately makes a misleading, false or deceptive statement, or conceals any material fact;

(c) in the execution of duties imposed by this Act gives an appointed auditor or compliance officer information which is false, misleading or conceals any material fact; or

(d) is not a representative appointed or mandated by an authorised financial services provider in accordance with the provisions of this Act, and who in any way declares, pretends, gives out, maintains or professes to be a person who is authorised to render financial services to clients on the basis that the person is appointed or mandated as a representative by another representative,

is guilty of an offence and ***on conviction is liable to a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or both such fine and such imprisonment.***