

FINANCIAL SERVICES BOARD



FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002 ("FAIS ACT")

FAIS CIRCULAR 10/2010

DATE: 16 November 2010

Circular on the appointment of a Compliance Officer.

1. Background:

The Office of the Registrar of Financial Services Providers has received a number of queries as to when an authorised Financial Services Provider (FSP) is required to appoint a Compliance Officer. The requirements relating to compliance officers of FSPs were recently published in Board Notices 126 and 127 of 2010. It is therefore deemed appropriate to provide the following explanation for information purposes.

2. Information regarding the appointment of a Compliance Officer

2.1 Section 17(1)(a) of the FAIS Act provides that:

"Any authorised financial services provider with more than one key individual or one or more representatives must, subject to section 35(1)(c), appoint one or more compliance officers to monitor compliance with this Act by the provider and such representative or representatives, particularly in accordance with the procedures contemplated in subsection (3), and to take responsibility for liaison with the registrar."

2.2. This means that in a situation where an authorised FSP:

2.2.1 has two or more approved key individuals; and / or

2.2.2 has appointed one or more representatives

it is required to appoint a compliance officer.

2.3 Consequently, the following situation pertains :

- 2.3.1 where a FSP is a sole proprietor and has only one approved key individual and no representatives, the key individual is aware of what functions he performs on a daily basis and his own level of compliance with the legislation. Therefore there is no need to appoint a compliance officer;
- 2.3.2 where a FSP has more than one key individual and one or more representatives the key individual/s now has to ensure that other individuals are in compliance with the legislation and there is a need to monitor the compliance and actions of the other KI / representatives. Thus, the need to appoint a compliance officer.

NOTE:

- i. A compliance officer who is appointed by the FSP must have been approved by the Registrar; and
- ii. A compliance officer can be appointed even if the FSP doesn't require one.

2.4 How to check whether it is necessary to appoint a compliance officer:

Type of FSP	Compliance officer required?
Sole proprietor with no representatives	No
Sole proprietor with one representative	Yes
Close corporation with one approved key individual and no representatives	No
Close corporation with one approved key individual and one representative	Yes
Company with two approved key individuals and no representatives	Yes
Company with one approved key individual and no representatives	No
Company with two approved key individuals and one representative	Yes

3 FSP's who are not required to appoint a compliance officer:

- 3.2 An FSP who is not required to appoint a compliance officer may voluntarily opt to appoint a compliance officer to assist it with its compliance. This choice lies with the FSP and there is nothing prohibiting it from taking the decision to outsource its compliance function.
- 3.3 An FSP which is not required to appoint a compliance officer and who hasn't appointed a compliance officer:
 - is still required to comply with the Act;

- is still required to comply with all subordinate legislation; and
- the key individual is the person responsible for ensuring such compliance .

3.4 The key individual will be responsible for establishing the compliance function; and

3.5 The key individual will therefore be responsible, amongst other things, for completing and submitting the annual compliance report to the FSB.

4 Appoint of a compliance officer:

An FSP which is required to appoint a compliance officer has two options available to it:

Appoint an **external** compliance officer (outsourced) as defined in Board Notice 127 of 2010 as being a:

“compliance officer other than an internal compliance officer”.

An external compliance officer would be a compliance officer who has been approved by the FSB to render compliance functions for one or more FSPs and / or acts independently in a personal capacity.

Appoint an **internal** compliance officer (in-house) as defined in Board Notice 127 of 2010 as being a:

“compliance officer that is a natural person in the permanent employ of a financial services provider and that renders compliance services in respect of that particular provider or another financial services provider that is a subsidiary, holding company or subsidiary of the holding company of the first mentioned provider.”

An internal compliance officer is an employee of a specific FSP and may only perform the duties of the compliance officer of that specific FSP. It may occur that a person can be the internal compliance officer of more than one FSP but this would only occur where the compliance officer is an employee of more than one FSP or where the additional FSP forms part of a group as is mentioned in the definition.

5 Approval of compliance officers

5.2 A compliance officer needs to be approved by the FSB upfront before he/she can be appointed as the compliance officer of an FSP.

5.3 The documentation for the approval as a compliance officer can be obtained on the FSB website. The process here for is as follows:

- Go to: www.fsb.co.za;
- click on “FAIS” in top right hand corner;
- select “profile changes” under the heading “Registration Department”;

- scroll down to the heading “Compliance Officers”.

5.4 There are two types of approvals in respect of compliance officers:

Phase 1 approval whereby the compliance officer is approved to act as a compliance officer and whereby the applicant needs to satisfy certain qualifications, experience, honesty and integrity and operational ability requirements in order for he/she to be approved (refer to Board Notice 127 of 2010 for the full requirements). All the relevant Board Notices are accessible on the FSB’s website.

Phase 2 approval whereby an application is received for a compliance officer to be approved as the compliance officer for a specific FSP (the compliance officer must already have a Phase 1 approval). The requirements for the Phase 2 approval are contained in Board notice 127 of 2010.

The final decision as to whether the appointment of a compliance officer is approved or not is that of the Registrar (Phase 2 approval).

DEPUTY REGISTRAR: FINANCIAL SERVICES PROVIDERS