Dear Student

Please note the changes to the following pages of the Section 4 book (from version g to h):

**Addition under heading 1.1**
- Page 26, 29
- Page 33
- Page 55
- Page 62, 67
- Page 71, 75, 79
- Page 82
- Page 92, 93, 95, 99
- Page 100-101, 104, 106
- Page 111, 112, 113, 115, 116
- Page 131
- Page 149-152
- Page 162, 168
- Page 171, 178-181, 186, 188, 189
- Page 191, 192, 197, 198
- Page 201
- Page 219
Addition under heading 1.1:

(Source: [www.fsb.co.za](http://www.fsb.co.za))

**Enforcement Committee and Board of Appeal**

The Enforcement Committee (EC) is an administrative body established to adjudicate on all alleged contraventions of legislation, regulations, codes of conduct, etc. administered by the Financial Services Board. The Committee may impose unlimited penalties, compensation orders and cost orders. Such orders are enforceable as if it was a judgment of the Supreme Court of South Africa.

The FSB has stipulated effective enforcement as an important factor in its strategic plan. To aid effective enforcement, the FSB Enforcement Committee
(EC) was established by statute in the Financial Institutions (Protection of Funds) Act, 2001. The Committee considers cases of alleged contraventions of legislation administered by the FSB. The Committee is appointed by the Board of the FSB.

**Which cases may be referred**

If the Registrar is of the opinion that any provision of any Act administered by the FSB has been contravened, he may refer the case to the EC. However, if the Registrar himself is by law empowered to impose a penalty, such case may not be referred to the EC. In other words, the Registrar and the EC do not have dual jurisdiction.

In simple cases of late submissions and returns, the Registrar retains his authority to impose penalties. Every other case of non-compliance with FSB legislation (and subordinate legislation) may be referred to the EC.

**Board of Appeal**

The Appeal Board first came into existence by virtue of section 26 of the Financial Services Board Act, No. 97 of 1990 (the FSB Act) and was re-established in expanded form and with amended procedures under the Financial Services Laws General Amendment Act, No 22 of 2008. The latter Act introduced sections 26A and 26B to the FSB Act which now deal with the Appeal Board, its panels and appeal proceedings.

The Appeal Board is an independent tribunal comprising members who are neither employees of the FSB nor active participants in the financial services industry.

(Source: [www.fsb.co.za](http://www.fsb.co.za))

**Page 26:** Note deleted.

**Page 29:** Wording changed in section 1.4.1.

A person who wants to be licensed as an FSP and key individual or authorise as a representative has to show that he is an honest person who has integrity.

**Page 33:** Note added in block.
**Note:**

When the representative is a sole proprietor (FSP, representative & key individual) he/she cannot work under supervision, and therefore has to meet all the above mentioned requirements before a license will be granted.

**Page 55: Change in diagram.**

Changed ”To a client“ to ”To a group of clients.“

**Page 62: Information replaced.**

The following are the requirements for FSPs for work under supervision as stated in the FSB Board Notice 104 of 2008:

- An FSP’s representative register must indicate whether a particular representative is acting under supervision and must differentiate between representatives acting under supervision and those who are not acting under supervision.
- A supervisor must have completed and have met all the relevant requirements regarding experience and qualifications and at least the first level Regulatory Exam in relation to the specific categories or subcategory for which he will be acting as supervisor, before he may be allowed to act as supervisor.
- The FSP must maintain records of how the supervision was carried out, the assessments and reviews of the financial services rendered and the approvals by the supervisor.

**Page 67: First row of table replaced.**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The FSP must have adequate systems and procedures in place to record verbal and written communications relating to the provisions of financial services to clients. The records must be kept in accordance with the Telephonic conversations regarding the provision of financial services must be recorded and the records kept for five years, subject to point 8 below.</td>
</tr>
</tbody>
</table>
requirements of Section 3(2)(a) of the General Code.

**Page 71: Replace.**

Banks and insurance companies will normally have designated key individuals and representatives.

**Page 75: Question 6 deleted.**

**Page 75: Question 7 changed.**

Elise has been working as a sales consultant for more than eight years. She is well-loved by clients and colleagues due to her professional and friendly attitude. Elise has just finished Financial Planning on NQF level 6, and would now like to specialise in call centre selling. What is Elise’s current status regarding fit and proper requirements?

a) Not applicable, she is not regarded as a representative, as defined in the FAIS Act
b) She is working under supervision until she has passed the Regulatory Examination
c) Not yet fit and proper at this time because, in terms of FAIS, she requires a qualification on a higher level
d) Regarded as fully fit and proper as she meets all the current requirement in terms of FAIS

**Page 79: Question 10 answer changed.**

Charne (a representative) is faced with a difficult choice: the FAIS Code of Conduct requires her to act in the interests of the customer and the integrity of the financial services industry. If she tells her customer about a certain feature of product A, she may lose the sale, but her company needs to boost sales of product A in order to achieve their strategic objectives. Which one of the following options presents the most appropriate course of action?

a) Charne tells the customer about the feature and, if he does not purchase product A, she must work harder to attract suitable buyers
b) Charne must first conclude the sale and then tell the customer about the features to make sure that there are no undisclosed relevant facts
c) Charne must encourage the customer to purchase the product that suits his needs, even if her sales do not reflect the targets provided.

d) Charne must continue to promote the product, together with a service or other innovative solution that overcomes the negative feature.

Page 82: Heading 1.2 changed.

THE REQUIREMENTS THAT AN FSP MUST MEET TO MAINTAIN A LICENCE

Page 92: Heading 2.4.1 changed.

License displaying requirements.

Page 93: Wording changed.

Reference must also be made to the licence in all advertisements, business documentation and promotional material – it is not necessary to refer to the licence number in promotional material. In addition, the licence must be available for production to anyone who requests proof that the business is licensed.

Page 93: Heading 2.4.2 changed.

Reasons for suspension or withdrawal

Page 93: Heading deleted.

Suspension or withdrawal of a licence

Page 95: Headings deleted.

2.4.3 Suspension or withdrawal

2.4.3 Urgent suspension or withdrawal
The licensee (FSP) is FINALLY LIQUIDATED or DISSOLVED

The licensee (FSP) becomes permanently UNABLE to CARRY ON BUSINESS because of PHYSICAL or MENTAL ILLNESS

The licensee (FSP) DIES

The licence of ANY OTHER PERSON may lapse in the following instances:

The licensee (FSP) is FINALLY LIQUIDATED or DISSOLVED

The BUSINESS of the licensee (FSP) has become DORMANT

In ANY OTHER CASE where the licensee VOLUNTARILY AND FINALLY SURRENDERS THE LICENCE TO THE REGISTRAR
2.4.8 Distinguish between suspension and withdrawals

Suspension or withdrawal of a licence is the result of non-compliance with the requirements of the FAIS Act. Lapsing of a licence is the result of factors other than non-compliance.

<table>
<thead>
<tr>
<th>Suspension or withdrawal of a FAIS licence</th>
<th>Lapsing of a FAIS licence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Suspension or withdrawal of a licence is initiated by the Registrar, following actions or omissions by the FSP. We discuss these aspects and requirements in Section 2.4 of this Chapter.</td>
<td>Lapsing of a licence is initiated by the FSP, following an event which gave reason for the lapse.</td>
</tr>
<tr>
<td>The Registrar may allow reinstatement of a suspended licence under certain conditions.</td>
<td>There are no provisions in the Act for the reinstatement of a lapsed licence.</td>
</tr>
<tr>
<td>After withdrawal of a licence, the person will be debarred from applying for a new licence. This is slightly different to debarment, as applicable to honesty and integrity.</td>
<td>There are no requirements for debarment in terms of lapsing a licence.</td>
</tr>
<tr>
<td>There are implications for accredited FSPs under the Medical Schemes Act (discussed in Section 2 of Chapter 9 above), as the FSP will lose the accreditation if the FAIS licence is suspended or withdrawn, and vice versa.</td>
<td>There are no implications in terms of other legislation when a FAIS licence lapses.</td>
</tr>
</tbody>
</table>

As you have seen, the three stage process for withdrawing or suspending a licence is the same. The difference between these two is that:

- A withdrawn licence cannot be reinstated. The entity will need to start afresh after a period of time, and will need to apply for a new licence.
But this can only happen if that entity has not been permanently debarred from receiving a licence for that product

- The Registrar can reinstate a suspended licence once all the conditions have been met
- The Registrar may impose conditions if a suspension or withdrawal is lifted. These conditions may include certain actions by the FSP in relation to its business.

2.4.9 Conditions for reinstatement of a suspended license

A suspended license could be reinstated by the Registrar once all the conditions attached to the suspension have been fulfilled. These conditions could be to:

- prove fit and proper status to the Registrar
- provide acceptable reasons for non-disclosure of material information when applying for the license
- pay the said levy, etc

The Registrar could vary the period of suspension on good cause shown.

Page 104: Reference to website deleted.

Page 106: Deleted information.

“The management and oversight duties include the management of processes to ensure that the business co-operates in the case of an investigation by the Ombud”

Page 111: Replaced.

The difference between the suspension and withdrawal of a licence and lapsing is that lapsing is not initiated by the Registrar, for example, when a person dies or decides to surrender a licence. Suspension and withdrawal occurs as a result of enforced actions by the Registrar.
**Page 112: Question 3 changed.**

Which one of the following statements reflects all the actions with regard to complaints that are within the power of the Ombud for Financial Services Providers (FAIS Ombud)?

a) The Ombud may dismiss a complaint or uphold it

b) The Ombud may dismiss a complaint, uphold it or refer it to a court if more suitable to be heard by the court

c) The Ombud may dismiss a complaint, uphold it, decline it if it is received three years after the date of the issue of the complaint or decline refer it to a court of law if more suitable to be heard by the court

d) The Ombud may uphold a complaint or decline it if it is received three years after the date of the issue of the complaint

**Page 113: Question 6 changed.**

Under which of the following circumstances may a licence lapse?

a) Only when the licensee has died

b) Only when the licensee voluntarily surrenders his licence

c) When the licensee has died, is sequestrated or voluntarily surrenders his licence

d) When the licence is withdrawn

**Page 113: Question 8 deleted.**

**Page 115: Question 3 changed.**

Which one of the following statements reflects all the actions with regard to complaints that are within the power of the Ombud for Financial Services Providers (FAIS Ombud)?

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d) The Ombud may uphold a complaint or decline it if it is received three years after the date of the issue of the complaint
**Page 116: Question 6 changed.**

Under which of the following circumstances may a licence lapse:

a) Only when the licensee has died

b) Only when the licensee voluntarily surrenders his licence

c) When the licensee has died, is sequestrated or voluntarily surrenders his licence

d) When the licence is withdrawn

**Page 116: Question 8 deleted.**

**Page 131: Change.**

When an FSP renders a financial service, he must avoid, and where not possible mitigate any conflict of interest between a provider and a client or the representative and a client. The FSP/representative therefore has to disclose all amounts, sums, values, charges, fees, remuneration or monetary obligations. These must be reflected in specific monetary terms. The FSP must also disclose the nature, extent and frequency of any incentive, remuneration, consideration, commission or fee which will become payable to the provider, including non-cash incentives or benefits.

**Page 149–152: Updated**

### 3.7.1 Suitability

A provider other than a direct marketer, must, prior to providing a client with advice:

1. Take reasonable steps to get information from the client on his/her financial situation, experience and objectives.

2. Do an analysis for the purpose of advice, based on information obtained.

3. Identify the financial product or products that will be appropriate to the client’s risk profile and financial needs subject to the limitations imposed on the provider under the Act or any contractual arrangement.

4. Where a financial product is being replaced (the terminated product) by another financial product (the replacement product) held by the client, full disclosure must be made of the actual and potential financial implications, costs and consequences of the replacement, including:
   - comparison of fees and charges between the two products;
• special terms and conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided, applicable to the replacement product compared to the terminated product;
• the impact of age and health changes when an insurance product is replaced;
• the tax implications
• the material differences between the investment risks;
• penalties or unrecovered expenses due to early termination of product;
• to what extent the replacement product is readily realisable or the relevant funds accessible, compared to the terminated product;
• loss of rights and minimum guaranteed benefits which will be lost due to the replacement;
• any incentives, remuneration, consideration, commission, fee or brokerage received

5. If the client did not provide the information required in Step 1 above, or the provider did not do an analysis because there was not enough time, the provider must inform the client that it was not done and must make sure the client understands:
• a full analysis in respect of the client was not done;
• there may be limitations on the appropriateness of the advice provided;
• the client should take particular care to consider whether the advice is appropriate considering his/her objectives, financial situation and particular needs.

6. If the client elects to conclude a transaction that differs from that recommended by the provider, or elects not to follow the advice furnished, or elects to receive more limited information or advice than the provider is able to provide:
• the provider must alert the client as soon as reasonably possible of the clear existence of any risk to the client and
• must advise the client to take care to consider if any product selected is appropriate to the client’s needs, etc.
Subject to the record-keeping obligations of the General Code – discussed previously - and bearing in mind any contractual obligations, a provider must, with immediate effect, allow a request from a client for voluntary termination of an agreement with a provider or in relation to a financial service.

When a provider provides advice, the following steps have to be followed:

a) Conduct an analysis and recommend suitable financial products
b) Obtain information, conduct an analysis, identify suitable financial products and make the necessary disclosures regarding product replacements
c) Obtain information, identify suitable financial products and make the necessary disclosures regarding product replacements if applicable
d) Identify suitable financial products and make the necessary recommendations

When a provider provides advice, the following steps have to be followed:

a) Conduct an analysis and recommend suitable financial products
b) Obtain information, conduct an analysis, identify suitable financial products and make the necessary disclosures regarding product replacements if applicable
c) Obtain information, identify suitable financial products and make the necessary disclosures regarding product replacements
d) Identify suitable financial products and make the necessary recommendations

Furnishing of advice regarding replacements

Section 8 of the General Code of conduct defines a replacement contemplated in FAIS as the replacement of an existing financial product with another. Accordingly, the meaning of replacement is not confined to the replacement of a long-term policy with another long-term policy.
A provider advising a client to replace an existing long-term insurance policy with any other financial product must, within five working days from the date of providing the advice notify the issuer of the long-term insurance policy of such advice.

In the process of giving advice, the provider must give written motivation as to why a specific financial product is recommended to the client, he must ensure that the client understands the advice, so that the client is in a position to make an informed decision.

In the event of a replacement, the provider must disclose to the client the financial implications, costs and consequences, including:

- Fees and charges in respect of the replacement product.
- Special terms and conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided, which may be applicable to the replacement product.
- In the case of an insurance product, the impact of age and health changes on the premium payable.
- Differences between the tax implications of the replacement product and the terminated product.
- Material differences between the investment risk of the two products
- Penalties or unrecouped expenses deductible or payable due to termination of the terminated product.
- To what extent the replacement product is readily realisable compared to the terminated product.
- Vested rights, minimum guaranteed benefits or other guarantees or benefits which will be lost as a result of the replacement.
- Any incentive, remuneration, consideration, commission, fee or brokerage received

Where the client:
- elect to conclude a transaction that differs from that recommended by the provider; or
- not followed the advice furnished by the provider; or
- elect to receive more limited information/advice than what the provider is able to provide, the provider must:
o alert the client of the clear existence of any risk to the client; and
o advice the client to take particular care to ensure that any product selected is appropriate to his/her needs, objectives and circumstances

Where a client has not provided all the information requested, or there was not reasonably enough time to do so, the provider must fully inform the client thereof and ensure that the client understand that:
• a full analysis could not be done;
• there may be limitation to the advice given by the provider; and
• he/she must take particular care to consider on his/her own whether the advice is appropriate to his/her
  o objectives;
  o financial situation; and
  o particular financial needs
Which one of the following is not included in the steps that an FSP has to follow when providing advice?

a) Obtain appropriate and available information from the client
b) Conduct an analysis based on the information obtained as a basis for advice
c) Inform the client who the product supplier is and by whom the recommended product was developed
d) Identify the financial products that are suitable to the needs of the client
Question 5 changed.

A record of advice does not have to include:

a) A brief summary of the information and material on which the advice was based
b) The qualifications of the representative
c) The financial products considered
d) The financial products recommended and why these products are suitable for the client

Question 5 changed.

Which one of the following is not included in the steps that an FSP has to follow when providing advice?

a) Obtain appropriate and available information from the client
b) Conduct an analysis based on the information obtained as a basis for advice
c) Inform the client who the product supplier is and by whom the recommended product was developed
d) Identify the financial products that are suitable to the needs of the client

Question 5 changed.

A record of advice does not have to include:

a) A brief summary of the information and material on which the advice was based
b) The qualifications of the representative
c) The financial products considered
d) The financial products recommended and why these products are suitable for the client

Heading changed.

5.1.2 Debarment by an FSP

Heading number added.

5.1.3 Debarment by the FAIS Registrar
7.1.2 Requirements regarding the maintenance of records in terms of the FAIS Act

Page 228: Note added.

...imprisonment for a period not exceeding 15 years, or a fine not exceeding R10 million.

Note:

In terms of the FIC Act, the penalties increased as from 1 December 2010 to 15 years imprisonment of a fine not exceeding R100 million.

Page 242: Change made.

3. The third stage consists of a series of more transactions, designed to make the funds available to the criminal again.

This is achieved by accessing the funds and using it for legitimate purposes. The funds are now fully integrated into the financial system.

Page 253: Note added.

1. Training staff

FSPs have to ensure that staff are suitably trained. In addition, they have to put in place a reporting of suspicious transactions procedure. Harsh penalties are set out, either for the individual who does not comply or for the organisation that does not comply, namely maximum imprisonment for a period not exceeding 5 years or a fine not exceeding R1 000 000.
Please note:
In terms of the FIC Act, these penalties changes as from 1 December 2010 to 5 years and R10 000 000

Page 258: Note added.

Accessibility of Information

An authorised representative of the Financial Intelligence Centre has access to records kept by an accountable institution during ordinary working hours and may examine, make extracts or make copies of such records. Where such records are not available to the general public, a warrant issued by a judge or magistrate of the region in which the accountable institution conducts business is required by the representative of the FIC. Such a warrant will only be issued if there are reasonable grounds to believe that the records will assist in identifying the proceeds of unlawful activities. An accountable institution which fails to provide this assistance, is guilty of an offence, punishable with imprisonment for a period not exceeding 15 years, or a fine not exceeding R10 million.

Please note:

These penalties changes as from 1 December 2010 to 15 years and R100 million.

Page 259: Changes made.

Reporting cash and suspicious transactions

The Act requires accountable institutions to report cash transactions above R25 000 as from 1 December 2010.

Page 264: Question 8 deleted.

Page 267: Question 8 deleted.

Page 270: Question 2 changed.

Nkosi has been authorised to act as a representative for Excel Life despite the fact that he does not meet the fit and proper requirement of "qualifications".
a) Nkosi has to work under supervision until he has completed the qualification requirement within five years of his appointment

b) Nkosi's authorisation has been granted on condition that he completes the qualification requirement within five years of his appointment

c) Nkosi has to work under supervision until he has completed the qualification requirement within six years of his appointment

d) Nkosi's authorisation has been granted on condition that he gains five years’ experience instead of having to complete the qualification

**Page 273: Question 8 changed.**

Your colleague wants to know which type of complaints the Ombud deals with. Which of the following examples does NOT correctly explain this type of complaint:

a) Complaints submitted by a specific client against another client.

b) Complaints relating to a financial service rendered by the representative of an FSP.

c) Complaints relating to an admin service rendered by an admin manager of an FSP.

d) Complaints relating to a financial service rendered by a sole proprietor

**Page 273: Question 11 deleted.**

**Page 279: Question 2 changed.**

Nkosi has been authorised to act as a representative for Excel Life despite the fact that he does not meet the fit and proper requirement of "qualifications".

a) Nkosi has to work under supervision until he has completed the qualification requirement within five years of his appointment

b) Nkosi's authorisation has been granted on condition that he completes the qualification requirement within five years of his appointment

c) Nkosi has to work under supervision until he has completed the qualification requirement within six years of his appointment

d) Nkosi's authorisation has been granted on condition that he gains five years’ experience instead of having to complete the qualification
Your colleague wants to know which type of complaints the Ombud deals with. Which of the following examples does not correctly explain this type of complaints:

e) Complaints submitted by a specific client against another client.

f) **Complaints relating to a financial service rendered by the representative of an FSP.**

g) Complaints relating to an admin service rendered by an admin manager of an FSP. Complaints relating to a financial service rendered by a sole proprietor

d) Complaints relating to a financial service rendered by a sole proprietor

**Page 282: Question 11 deleted.**