What is the purpose of the Financial Advisory and Intermediary Services (FAIS) Act?

The Financial Advisory and Intermediary Services Act was designed to protect consumers of financial products and services. It applies to any provider of financial services and its representatives, as well as to any person who gives financial advice or who provides an intermediary service. The main purpose of the FAIS Act is to:

- protect consumers of financial products and services;
- regulate the selling and advice-giving activities of FSPs (FSPs);
- ensure that the consumers are provided with adequate information about the financial product they use and about the people and institutions who sell these financial products. This must be done in a competent and open manner; and
- establish a properly regulated financial services profession.

How does the FSB ensure that the different aspects of the Financial Advisory and Intermediary Services (FAIS) Act are adhered to?

The FSB’s FAIS division consists of three departments, namely Registration, Supervision and Enforcement to carry out the full function of the FAIS Act.

- The Registration Department processes new licence applications, profile changes and is responsible for levy collection.
- The Supervision Department in terms of a risk-based supervision approach analyses financial statements and compliance reports and conducts on-site visits to FSPs.
- The Enforcement Department investigates unregistered business and liaises with the Ombud for Financial Services Providers (FSPs), the FAIS Ombud. The department is also responsible for the suspension and withdrawal of licences and recording of debarments of representatives.

When does a FSP qualify for a licence in terms of the FAIS Act?

All FSPs must obtain a licence for the class or classes of businesses about which they provide advice. The FAS Department will only grant a licence to a FSP if that provider is considered to be fit and proper to advise on and/or sell that class of business. The FSP must also comply with the codes of conduct and other laws governing that particular type of business.

What are the “fit and proper” requirements that FSPs are required to meet?

The fit and proper requirements of the FAIS Act includes the need for FSPs to demonstrate honesty and integrity, competency-based and appropriate qualifications, as well as relevant experience, operational ability and financial soundness.

What is the General Code of Conduct for FSPs as stipulated in the FAIS Act?

The General Code of Conduct for FSPs is based on:

- the operational ability of FSPs to manage financial records, maintain internal controls, keep client records and deal with client funds;
- the ability of FSPs to deal with clients, including providing a financial needs analysis to a client properly disclose who they are, specify the financial products and services they are permitted to provide, who supplies the products and give specific information relating to the nature and features of the products as well as the cost for the client in obtaining any product or service;
- proper conduct for advertising, marketing and canvassing;
- the FSP having a complaints procedure; and
- a structure and contingency plan on how a FSP will be closed down.

Which other bodies help the FSB to enforce the Financial Advisory and Intermediary Services Act (FAIS) in order to protect you?

The FAS Act alone cannot guarantee consumer protection, so the Ombud for Financial Services Providers (“FAIS Ombud”) plays an integral role in providing consumer protection by acting as a “defender of the people”. The FAIS Ombud deals with consumer complaints against FSPs and provides an efficient and affordable dispute resolution mechanism. The Office of the Ombud for Financial Services Providers became mandated on 30 September 2004 to accepting and dealing with complaints.

What are the powers vested in the Office of the Ombud for Financial Services Providers?

The Ombud’s determinations are binding. The Ombud may order payment of monetary awards, damages and costs with interest.

What action can be taken by the Registrar of FAIS at the FSB against FSPs who fail to comply with the FAIS Act?

- The FAIS Act mandates the Registrar to: take action on behalf of a group of consumers of financial products and services;
- apply to the courts for restraining orders to stop any particular activity that is considered illegal;
- declare a FSP “undesirable”; and
- give investigating powers to the FAIS Advisory Committee.

What kind of penalties can be imposed on FSPs for non-compliance to the FAIS Act?

Penalties for not complying with the FAIS Act include fines up to R1 million and/or imprisonment for up to 10 years, as well as the withdrawal of the FSP’s licence or debarment of a representative.

What are your rights and responsibilities as a consumer of financial services?

- Always make sure that the FSP you are dealing with is registered with the FSB. Ask for an FSP licence number – if they are authorised, they will have a number.
- Phone the FSB on 0800 2020 87/ 0800 1104 43 to check whether you are dealing with an authorised FSP. You can also visit the FSB website – http://www.fsb.co.za.
- When you meet the FSP for the first time, ask for a copy of the “Disclosure and appointment letter”. These documents will tell you:
  i. who the person is
  ii. the name and contact details of the business he/she works for
  iii. what products the person is allowed to give advice on or provide intermediary services against
  iv. the product supplier(s) the person may give advice on or provide intermediary services against – the names of the companies must be listed on the document
  v. how much commission they earn, and how this is made up
  vi. who should you contact if you are not satisfied with the service you receive.

When you meet the FSP for the first time, ask for a copy of the document. These documents tell you:

- Remember to give the FSP copies of your ID, salary advice and proof of residence to ensure that someone else can’t do business in your name (identity theft) and create a lot of problems for you. This will help to avoid money laundering;
- The FSP must ascertain whether you can actually afford and need to take out extra or new financial products (affordability and suitability test);
- The FSP must tell you about the amount you will pay and how that amount will be paid;
- You have the right to know the commission charged by the FSP;
- The FSP must send you a report every year in which an update on the status of your financial product is given;
- You are entitled to a copy of the agreement within 30 days after you signed the agreement;
- Don’t sign documents if you are not sure about the details of the contract. Also, never sign any blank documents, particularly when the FSP tells you he will complete the form for you afterwards.

Dispute Resolution mechanisms:

Firstly, raise your complaint with the authorised FSP who rendered the service to you. If the dispute is not resolved satisfactorily, refer your complaint to the Ombud for FSPs. The contact details for the Office of the Ombud for Financial Services Providers are as follows:

Physical address:
The Office of the Ombud for Financial Services Providers
Basabo House, Eastwood Office Park
Lynnwood Road, Pretoria
Postal address:
PO Box 74571
Lynnwood Ridge
0040
Customer contact details
0860F AISOM (0860 324 766)
Tel: 012 470 9080
Fax: 012 348 3447
E-mail: info@faisombud.co.za

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