



Financial Sector
Conduct Authority

SMME Support Workshops

2019/2020

Agenda

08:00- 08:45	Registration
08:45	Introduction
09:00	Client Interaction
10:15	Tea
10:30	Client Interaction
12:15	Lunch
13:00	Maintaining your license
16:00	Close

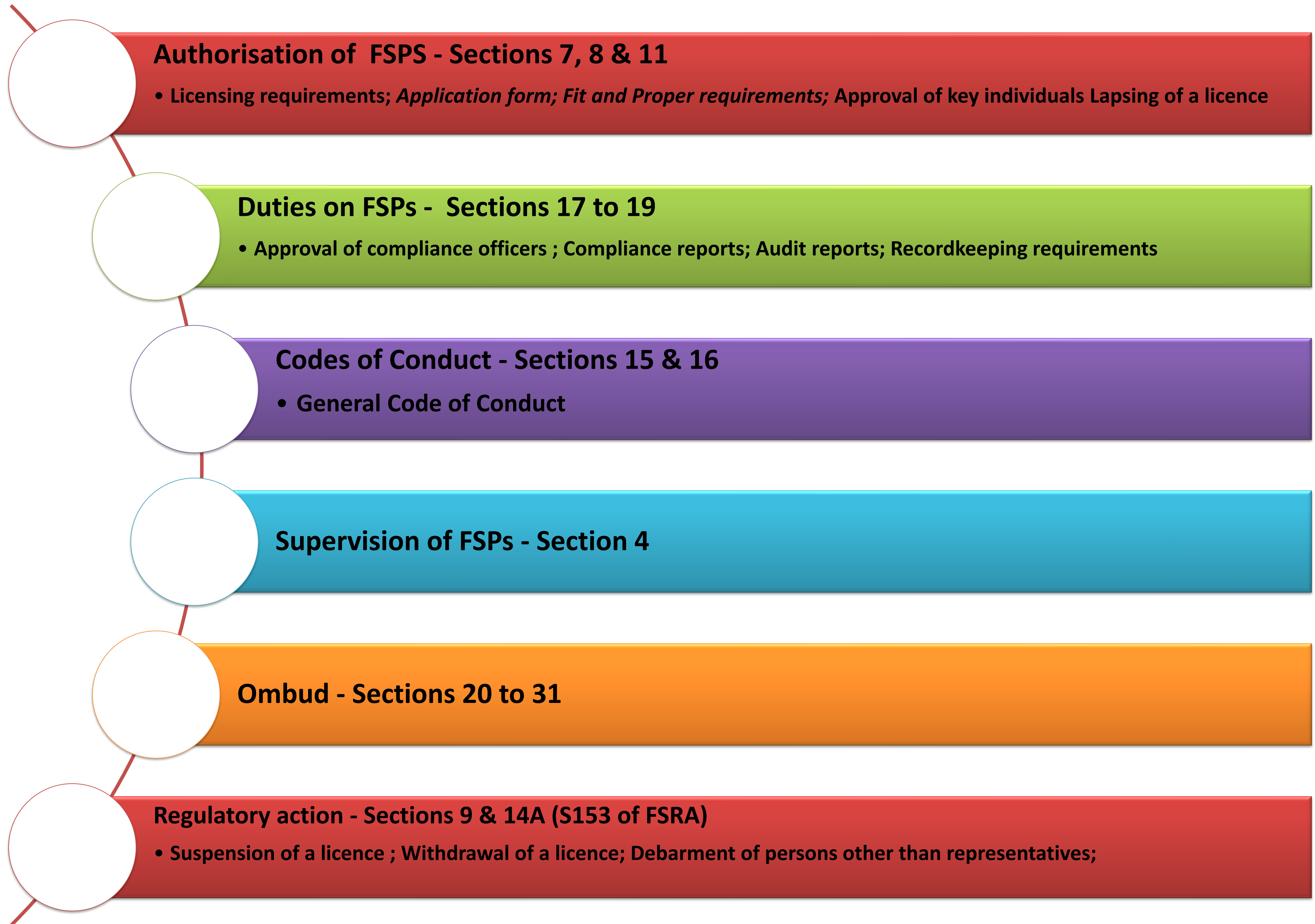
Client Interaction



Applicability of Act, Codes and other legislation

- Operate its license
- Every action is governed by a Code of Conduct
- If the FSCA or Ombud scrutinises the actions of a FSP, KI or representative – will do this against the requirements of the Act and the relevant Code of Conduct







- All FSPs must comply with the General Code of Conduct
 - Recordkeeping
 - Complaints
 - Advertising
 - Client funds
 - Advice:
 - Suitability analysis
 - Record of advice
 - Single needs analysis
 - Replacement of financial products
 - Disclosure requirements



Relationships (1) With Clients

Section 2

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

Section 3: Specific duties of a provider

Representations to clients

Record Keeping

Conflict of interests: Mitigate & disclose

Confidential information

Section 6

- Act honourably, professionally and with due regard to the convenience of the client
- At the commencement of any contact, visit or call initiated by the provider, explain the purpose thereof

Specific duties of the FSP

- Factually correct
- Avoid uncertainty/ confusion
- Not misleading
- Plain language
- Easy to read if in writing
- Adequate & appropriate to circumstance
- Provided timeously
- In accordance with contractual relationship, reasonable requests, instructions of client
- Executed as soon as possible, with interest of client in mind



Relationships (3)

- There is an agreement to form a relationship
- You need to make disclosures (S5):
 - The FSP
 - You and your role & nature of mandate with FSP
 - Details of service provided
 - Details of product suppliers



Relationships (4)

- The FSP has the relationship with the client
- The representatives **represent** the FSP





Relationships (5)

- Continuous relationship:
 - Give regular feedback to clients
- Termination of relationship (S20)
 - Inform the client
 - Inform the product supplier
- After termination of relationship
 - record keeping for 5 years



Disclosure requirements (1)



Disclosure requirements (2)

- Name, location
- Address & telephone numbers
- Registration details

Details of FSP

- Name
- Contact details

Compliance Officer

- Advice/ Intermediary services
- Products

Authorised to offer

- PI
- Fidelity, IGF

Insurance held

- Appointment mandate
- Services under supervision

Representatives

- Any exemptions granted

Exemptions

- Contracts
- Contact details
- +30% remuneration
- +10% shares

Product suppliers

Disclosure requirements (3) when, how, what?

FSP's

- Establishing relationship
- Provide disclosure upfront

FSPs = Direct marketer

- Include in script
- Record





Disclosure requirements (4) The Representative

- Written certificate – FSP has contract/ mandate with representative
 - Name & contact details of representative
 - Type of financial services & products the representative may render obo the FSP
 - Type of relationship FSP & representative
 - The FSP takes responsibility for actions of representative
- 



Disclosure requirements (5) The Financial Services

- Full disclosure of all information needed to let client make **informed decision**
 - What requirements must be met for transaction to be completed/ submitted:
 - Client disclose all material facts related to transaction –
 - All information supplied in application form is client's responsibility
- 



Disclosure requirements (6) The Financial Products

- Name, class & type of product
 - Details of benefits provided by the product
 - Guarantees provided by the product supplier
 - Details of limitations, terms etc
 - Extent the product is realisable/ accessibility of funds
 - Early termination/ withdrawal
 - Tax implications
 - Cooling-off periods
 - Risks
- 



Disclosure requirements (7) Client Obligations

- Obligations assumed by client on behalf of:
 - The product supplier
 - The FSP





Disclosure requirements (8) Investments

- Value of investment
- Fees & charges against product
- Past investment performance
- Rebate arrangements
- Platform fees





Disclosure requirements (9) Replacement Products

- Financial implications
- Costs
- Comparison “old” & replacement product
- Insurance products – age & health impact
- Record of advice – specific requirements





Disclosure requirements (10) Replacement Products

Guiding principle:

- *... 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.*
- Therefore, where a replacement is done, evidence the fact that it was done in the client's interest.



Suitability Analysis (1)

- Section 8(1) –(4) of GCOC
- In simple form it is the matching of clients **NEEDS** to advice given together with products recommended
- It is **more** than an affordability test



Suitability Analysis (2)

Before giving advice:

- Seek appropriate and available information regarding the client's financial situation, financial product experience and objectives
- Conduct Analysis
- Identify financial products appropriate to clients' risk profile and financial needs

No analysis conducted due to:

- Client not providing sufficient information as requested
- Time constraints

- Disclose actual and potential financial implications, costs and consequences of replacement to client
- Maintain record of advice with regards to:
 - Comparisons made
 - Reasons for suitability of the replacement product

Content of a record of advice:

- Brief Summary of information and material
- Financial Product(s) Considered
- Financial Product(s) recommended and explanation



Suitability Analysis (3)

- Recommendations must be appropriate and address client needs
- Documenting advice given
- Ensuring clients understand risks
- Avoid unsuitable advice – replacement of products
- Single needs client



Suitability Analysis (4)

- Use plain language and avoid jargon
- Analyse the information which the client has provided, in order to conduct a needs analysis
 - What they need (Now, future)
 - Affordability
- Use this to base recommendations on
- If no needs analysis/ limited needs analysis done:
 - Selection of product is client's responsibility



Suitability Analysis (5) TCF perspective

- Target products to the right clients
- Appropriateness, fairness and reasonable pricing of their financial products
- Contractual terms should be fair
- The rendering of financial services should be done in a fair, efficient and transparent manner
- Provide information before, during & after sale
- Assist with complaints & where allowed to, claims

Suitability Analysis (6)

- Take reasonable steps to:
 - ensure that the client understands the advice
 - that the client can make an informed decision.
 - establish if the proposed financial product will replace an existing financial product of the client



Suitability Analysis (7)

- If client chooses to:
 - conclude a transaction that differs from that recommended by the provider,
 - not to follow the advice furnished, or
 - receive more limited information or advice than the provider is able to provide
- the provider must make the client aware of:
 - the clear existence of any risk to the client,
 - the need to take particular care to consider whether any product selected is appropriate to the client's needs, objectives and circumstances.



Suitability Analysis (8)

No suitability
analysis

- No analysis done
- Appropriateness of advice is limited
- Client must consider if advice appropriate

Advice not
taken/
different
decision than
recommended
action taken

- Alert client to any risks that may exist
- Advise client to take care to consider whether product selected is appropriate

Suitability Analysis (9) “Single Needs”

- If the client has not provided all information requested by a FSP furnishing advice, as part of the analysis or
- where the FSP was unable to conduct such an analysis because there was not reasonably sufficient time to do so,
- the FSP must fully inform the client thereof and ensure that the client clearly understands that-
 - a full analysis in respect of the client could not be undertaken;
 - there may be limitations on the appropriateness of the advice provided; and
 - the client should take particular care to consider on its own whether the advice is appropriate considering the client’s objectives, financial situation and particular needs

Suitability Analysis (10) Replacements

- If a financial product replaces another product (total/ partial) then:
- Fully disclose to the client the actual and potential financial implications, costs and consequences of such a replacement



Record of Advice (1)

- A provider must maintain a record of the advice furnished to a client
- Documentation or record of:
 - Client needs
 - the advice given
 - Issues considered
 - Recommendations & reasons
 - Final decision & reasons
- The record of advice is only required to be kept where client entered into a transaction as a result of the advice given to the client
- Must provide a client with a copy of the record in writing.

Record of Advice (2)

Gather Information

Conduct a suitability analysis

Identify the financial product/ service

Provide disclosures about the financial service

Provide a record of advice

Reporting (1) To clients

- Statutory requirements
- Section 7(4) of the General Code of Conduct for Authorised FSPs and Representatives (“General Code”) sets out the reporting requirements for FSP.
- A financial services provider (“FSP”) is required by legislation to report to its clients at least once a year.



Reporting (2) To clients

- At least annually
- Written statement:
 - Products that still exist
 - Ongoing monetary obligations
 - *the main benefits provided by the products;*
 - *investment /investment component:*
 - *value of the investment*
 - *amount of such value which is accessible to the client;*
 - *ongoing incentives, consideration, commission, fee or brokerage payable to the provider in respect of such products:*
- *The statement is not required if:*
 - *the client is aware, or ought reasonably to be aware,*
 - *that the provider concerned does not render or has ceased rendering ongoing financial services in respect of the client or the products concerned.*

Contacting clients

- Act honourably, professionally and with due regard to the convenience of the client; and
- When contacting the client:
 - Explain the purpose
 - As soon as possible provide the information about the FSP.



Intermediary services

Receive an
instruction from
the client

Disclose on the
financial product
and service

Enter into a
transaction obo
the client or
perform the
intermediary
service



Maintaining your license



License Certificate

- Legal entity – Name on Certificate
 - Sole proprietor
 - Partnership – partners are key individuals
 - Juristic person – appoint key individuals
 - Close corporation
 - Company
 - Trust
- Trade name on certificate
- Annexure to licence certificate
 - Restrictions to licence – product categories
 - Conditions – what you must do
 - Exemptions





Important Obligations

- Comply with the fit and proper requirements on an ongoing basis
 - Comply with Codes of Conduct applicable to FSP
 - Comply with Financial Intelligence Centre Act
 - Keep records
 - Submit the required reports
 - Prepare monthly accounts
 - Maintain financial soundness
 - Annual levies payable to the FSCA
- 



Business Continuity and Succession Planning

- Legislative requirements
- Continuity of business when an emergency occurs
- Plan for when the FSP is incapacitated
- Making clients aware of who they can approach
- Inform the product suppliers
- Inform the FSCA





Insurance required (BN 123 of 2009)



Protect if bad
advice/
negligence

Minimum of R1
million



Protect if fraud
or theft of
client assets/
money

Minimum of R1
million





Risk Management

- Identification of risks
- Implementation of controls
- Monitoring of risk
- Good business practice
 - documenting a risk management plan
 - Consider all the risks the business face, not just the compliance risks

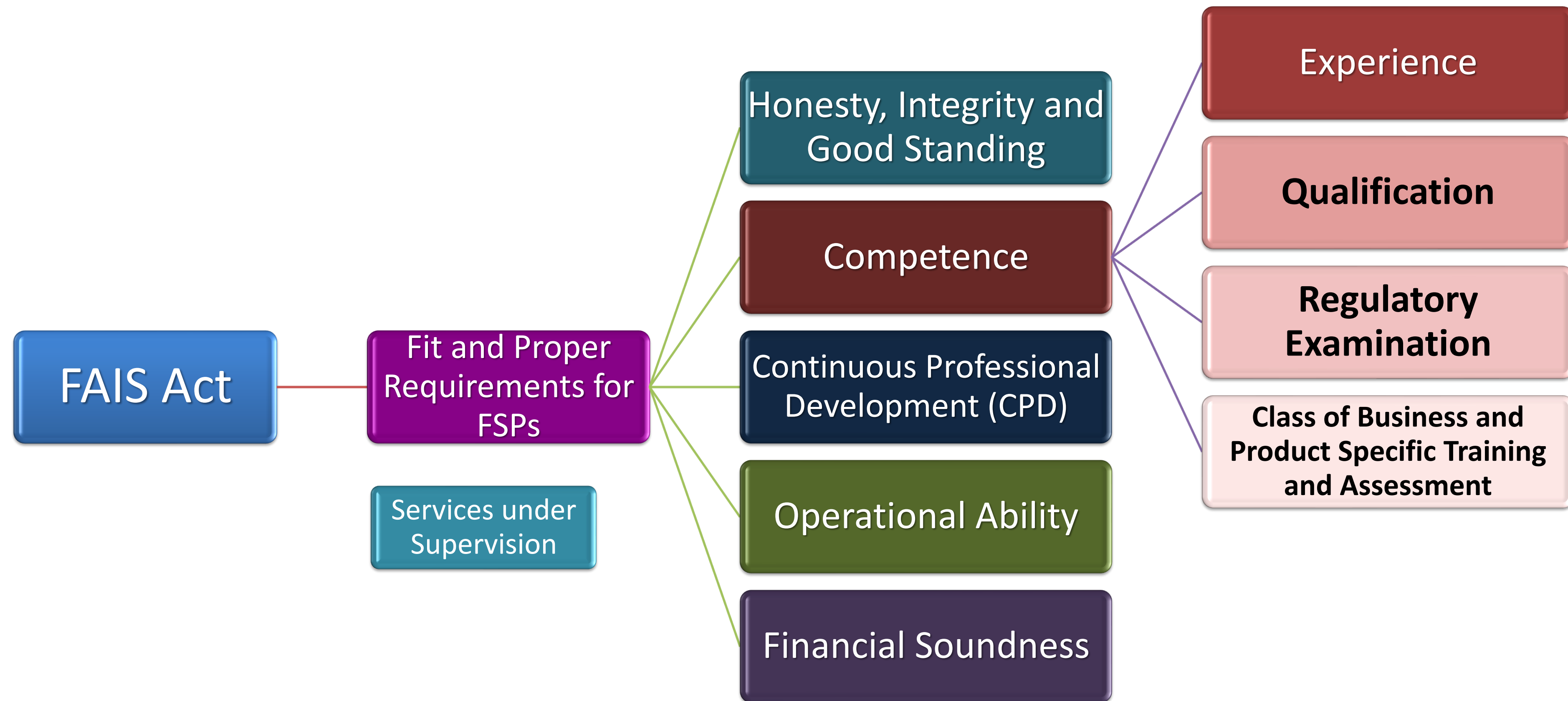




Conflict of Interest (S3A of the General Code)

- Avoid conflict of interest
 - Develop conflict of interest management policy
 - Change disclosure documentation
 - Implement controls to ensure comply with prohibitions on financial interest
 - FSPs dealing with other FSPs
 - Financial interest
 - Immaterial interest
 - FSPs representatives
 - Compliance officer/ KI/ FSP must monitor the COI implementation
- 

Competence requirements



Regulatory Exams

	Category I	Category IV
FSP (sole proprietor – natural person)	RE1	RE1
KI	RE1	RE1
Representative	RE5	RE5





Class of Business

- ❑ Content covered in class of business is generic in nature, and address the fundamental knowledge a person requires to identify a product in that particular class of business based on generic features, benefits, risks and principles.
- ❑ Class of Business training can be recognised for CPD purposes (if done to update skills and knowledge)





Product Specific Training

- ❑ Must be assessed
- ❑ Can be offered by the FSP, a product provider or any other person/ body
- ❑ Must meet requirements of section 29(5) of Fit and Proper



Class of Business & Product Specific training

	Applies to	Does not apply to
Class of Business	All KIs for the class of business approved/ seeking approval	Cat 1.1 and 1.19 – FSP, KI & Rep
	All Reps	Cat 1 Rep appointed to: • Execution of sales – Tier 1 products • Tier 2 financial products
Product specific	All Reps for cat I and IV	Cat II, IIA, III FSP or Reps
		KI's of all categories

CPD

Class / Subclass of Business	CPD Hours Required
Single subclass within a single class of business	6 hours per CPD cycle
• e.g. Class of business: Health Services Benefits, no subclass • 6 hours of CPD required	
More than one subclass of business within a single class of business	12 hours per CPD cycle
• e.g. Class of Business: Investments • Subclass: Shares • Subclass: Bonds • 12 hours of CPD required	
More than one class of business	18 hours per CPD cycle
• e.g. Class of Business: Short –term Insurance Personal lines, and • Class of Business: Short-term Insurance Commercial lines • 18 hours of CPD required	

Operational Ability (Ch 5 of Fit and Proper)

□ General Requirements:

- Financial products
- TCF framework
- Contact details
- Storage systems

Operational Ability (2)

☐ Governance Requirements:

- Business plan
- Risk management policies
- Accounting policies & procedures
- Sound & sustainable remuneration policies
- Regular monitoring & evaluation of the adequacy & effectiveness of systems

Operational Ability (3)

□ Appointment of representatives:

- Due diligence
- Remuneration
- Fit and proper

Representatives (1)

In terms of section 13(1)(a)(b), no person may render the financial services for or on behalf of a person who:

- is not authorised as an FSP
- is not exempted from being an FSP

Representatives (2)

- Nobody may act as a representative, unless such a person can provide information certified by the provider to the clients that:
 - a service contract to represent the FSP exists
- The FSP must record the representative on the representative register:
 - FSCA register:
 - Manually: filling in form FSP 5 or
 - Electronically.
 - FSP's register

Profile Changes

What is a PFC?

- A change of details (profile) that were given to the Authority.

What can be changed?

- Name of FSP
 - Addresses, telephone & cellphone contact numbers
 - Products & categories
 - Directors, Shareholders & CC member interest
 - Key Individuals, Representatives, Compliance Officers, Auditors
 - Mandates.
-
- **NB:** If you change from a Sole Proprietor to a CC or a CC to a Company you have to apply again.

Licensing Condition 2.1

Condition 2.1 of the Licensing Conditions/
Restrictions determined under Sec 8(5) of the FAIS
Act:

- The FSP must inform the Authority in writing, within 15 days after the change has taken place, of any change in respect of business information of the FSP.
- Profile changes: faispfc@fsca.co.za

Financial Soundness & Reporting to the FSCA

Financial Statements:

- Sec 19(2)(b)(iii) –
 - Submit Financial Statements within 4 months of the FSP's year end on an annual basis.
- Sec 19(1)(a) – A complete set of financial statements:
 - balance sheet,
 - income statement,
 - cash flow statement and
 - notes.

Financial Reporting to the FSCA (2)

- Sec 19(2) Auditors' report if required i.e.:
 - Public companies,
 - Private companies,
- Sec 19(3) Auditors report on separate bank account if client funds are handled.
- Sec 19(4) Material irregularities report – supplied with the financial statements or at a later stage if the auditors identify any such irregularity.

Financial statements

- Submit within 4 months of financial year-end
- Audited financial statements if premiums collected
- Separate bank account for premiums – audited
- Annexure A

Financial soundness (Ch 6 of Fit and Proper)

- Assets must exceed liabilities
- Must always have enough resources to carry out activities & meet liabilities as they are due
- Cannot become/ continue as FSP if:
 - Declared insolvent/ provisionally insolvent
 - Placed under liquidation/ provisional liquidation
 - Subject to proceedings that lead to above
 - Seriously & persistently fails to manage financial obligations
- May not become a FSP or Juristic Rep if business rescue proceedings have commenced.

Premiums collected (S10 of General Code & S19.3 of Act)

- Separate bank account
- Only used for premiums
- Pay the bank charges from FSP's business account
- Pay the premiums over timeously to product supplier
- Submit a section 19(3) report for **each separate bank account**
- **If collect short term insurance premiums:**
 - as from **28 September 2019**,
 - FSP will have to have a separate bank account
 - will have to submit the 19(3) reports.

Compliance Function

- If more than 1 KI or if KI + 1 Representative:
 - need a CO
- The CO must monitor the compliance of the FSP and report:
 - To the FSP
 - To the FSCA



THANK YOU