



Determination of Fit and Proper Requirements for Financial Services Providers

Summary

The Determination for the Fit and Proper Requirements for Financial Services Providers was published in Government Gazette no. 41321 on 15 December 2017 (the Determination). This Determination, which will come into force on 1 April 2018, replaced the Determination of Fit and Proper Requirements that was published in Board Notice 106 of 2008 and the Determination of Qualifying Criteria and Qualifications for Financial Services Providers published in Board Notice 105 of 2008.

Some of the key changes, which are discussed in more detail below, include:

- **Honesty, Integrity and Good Standing** – A person that is not a natural person (e.g. a company) must show that it complies with this requirement through its corporate behaviour and through the personal behaviour or conduct of the persons who control or govern such person.
- **Competence Requirements** – An FSP and representative must complete the class of business training or product specific training before rendering any financial services for a particular financial product.
- **Operation Ability** - Additional requirements relating to governance, outsourcing of functions to persons other than representatives and automated advice have been included.
- **Financial Soundness Requirements** – The solvency requirements have been extended to juristic representatives.

1. Honesty, Integrity and Good Standing

A person who is not a natural person (e.g. a company) must show that it complies with the requirements for honesty, integrity and good standing. Compliance can be shown through its corporate behaviour and through the personal behaviour or conduct of the persons who control or govern such person. This includes the directors, members, trustees, partners or key individuals of that person.

An example of when a person is not honest or lacks integrity or is not of good standing is where the person has frequently or repetitively been subject to remedial or enforcement action by the Registrar of Financial Services (the Registrar) or a regulatory authority.

2. Competence Requirements

An FSP and representative must complete the class of business training or product specific training before rendering any financial services for a particular financial product. A key individual must complete the class of business training for the classes of business it manages or oversees before managing or overseeing the rendering of any financial service for which it is approved to act as key individual or for which the approval is sought.

Similarly, an FSP must ensure that its key individuals and representatives are proficient in, understand and have completed appropriate class of business training and product specific training that is relevant to the particular financial products for which they render financial services or manage or oversee the rendering of financial services.

Class of business training, where appropriate, must include training on the:

- range of financial products within the class of business;
- general and special characteristics, terms and features of financial products in the class of business;
- typical fee structures, charges and other costs associated with products in the class of business; and
- general risks associated with investing, buying or transacting in the products in the class of business.

Product specific training, where appropriate, must include training on:

- the nature and complexity of the financial product and any underlying components of that product;
- how the financial product and any underlying components of the product are structured and priced;
- the fee structure, charges and other costs associated with the product and their impact on the real return or benefits of the product; and
- the impact of tax on the benefits or real return of the product.

The competency requirements relating to class of business training do not apply to:

- a Category I FSP, its key individuals and representatives that are authorised, approved or appointed only to render financial services, manage or oversee financial services in respect of financial products: Long-term insurance subcategory A and/or Friendly Society Benefits; and
- a representative of a Category I FSP that is appointed to only:
 - perform the execution of sales for a Tier 1 financial product, provided that certain requirements in the Determination are met; and
 - render financial services for a Tier 2 financial product.

The competency requirements for product specific training do not apply to:

- a Category II, Category IIA or Category III FSP or its representatives; and
- key individuals of all categories of FSPs, provided that certain requirements in the Determination are met.

3. Operational Ability

Governance requirements

Governance requirements were introduced in the Determination. It requires the governance framework of an FSP must be proportionate to the nature, scale, risks and complexity of the business of the FSP. The framework must also include, but not be limited to, effective and adequate systems of corporate governance, risk management and internal controls which include:

- A business plan that sets out the aims and scope of the business.
- Accounting policies and procedures to enable the FSP to record, report and deliver financial reports to the Registrar.
- A business continuity policy aimed at ensuring, in the case of an interruption to the FSP's systems and procedures, that losses are limited.

Requirements for FSPs that provide automated advice

The Determination also introduced additional requirements for FSPs that provide automated advice. An FSP must have adequate and appropriate human resources that have the required competence to understand the technology and algorithms used to provide the automated advice; identify the risks to clients arising from the automated advice, and monitor and review the automated advice generated by the algorithms to ensure the quality and suitability of the advice.

The FSP must establish, implement and maintain adequate policies and procedures to monitor, review and test the algorithms and the advice generated by it. The FSP must also have adequate and sufficient technological resources to maintain client records and data integrity as well as protect confidential and other information.

Outsourcing of functions

When outsourcing functions to a person other than a representative of an FSP, the FSP must exercise due skill, care and diligence when entering into an outsourcing agreement with such person. The FSP must ensure that that person has the ability, capacity and any authorisation required by law to perform the outsourced functions, services or activities reliably and professionally.

The FSP must have a written contract that governs the outsourcing arrangement and provides for all material aspects of the outsourcing arrangement, such as addressing the rights, responsibilities and service-level requirements of all parties. The FSP must properly supervise the carrying out of the outsourced functions and adequately manage the risks associated with the outsourcing.

4. Financial Soundness Requirements

The financial soundness requirements, which apply to all FSPs, have been extended to juristic representatives (representatives that are not natural persons). The requirements do not apply to an FSP that is a registered bank as defined in the Banks Act or a registered insurer as defined in the Short-term or Long-term Insurance Acts, provided that the FSP meets the financial soundness requirements in those Acts.

An FSP and a juristic representative must at all times maintain financial resources that are adequate, both in relation to the amount and quality to carry out their activities and supervisory arrangements, and ensure that liabilities are met as they become due.

Additional requirements apply to specific categories of FSPs and juristic representatives. For example, a Category II, IIA and III FSP is required to comply with the additional asset, working capital and liquidity requirements set out in the Determination. These FSPs as well as juristic representatives are also

required to submit to the Registrar, on a half yearly basis in terms of the FSP's financial year, a Liquidity Calculation Form setting out the FSP's liquidity calculation for that reporting period.

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