

FAIS LEGISLATION

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A SUMMARY OF THE FAIS ACT

How does it affect the broker?

Most brokers have taken note of the FAIS Act and the majority know what it entails. Some are calm and know that the transition will take place without any difficulty in their environment, others are less calm at that thought. Everyone must realise that there are going to be changes and that the changes will have an effect on especially administrative costs.

Aim of the FAIS act?

The aim of the Act is to regulate the furnishing of advice and the services provided by the financial industry to clients. It requires that all service providers be honest, fair and have the necessary knowledge and integrity when they provide clients with advice.

WHO ARE AFFECTED?

Sec. 1

of the Act describe certain definitions that relates to the content of the Act. The most important is surely the description of who will be affected by the Act. The Act states that any person that delivers financial advice (including Short Term Insurance) to a client, must be registered at the FSB.

Advice

A description that is important is what the word Advice really means. The Act describe Advice as any recommendation or proposal that a client will need to make an informed decision to buy a financial product (policy). The description also includes the supplying of Intermediate Services.

Therefore, if you act as a broker or agent, you must be licensed before you may advise clients on financial products. Insurers and Underwriting Bureaus must also be licensed and the Act compel them to discontinue the facilities of any broker or agent if the individual or company is not licensed by the FSB to continue with its operation. It goes without saying that all Underwriting Bureaus and Insurers will require a certified copy of your FAIS license

Key Individual

Another important description is that of a Key Individual. Every organisation must appoint a Key individual(s). This person performs the following role in an organisation:

- A person in a managing position or supervisor
- Any director or person in an executive position

Please take note that the appointed Key Individual is responsible for the general management of the organisation and that the Compliance Officer and the FSB must see to it that this person(s) continuously comply with the requirements of the Act. Above mentioned persons must also see to it that the representatives of the organisation act within the boundaries of the FAIS Act.

Representative

Finally, another description that is important is that of the Representative. Any person that acts as a Broker, Claims- or Underwriting personnel is considered to be a representative. Such a person can, by way of an employment contract, or by mandate (example an Agent) act on behalf of the organisation. A person that only does clerical work, is not a representative (as described in the Act), as long as their actions do not entail giving advice to clients. It will be people like Personal Assistants, Switchboard Operators and Cleaners.

Key Individuals and Representatives must comply with certain minimum qualifications and experience (See Sec.8)

LICENSING

Sec's. 7 & 13

of the Act prohibit inter alia any person or organisation in the financial sector (including Short Term Insurance) to operate without the necessary license. Any person that operates without such license will have to face criminal and civil

actions. It will also be impossible to have, or keep facilities at any Insurer or Underwriter without a license

Sec. 8

explains the requirements that must be met in order to qualify for a license

The most important requirements are:

1. Personal qualities:
No person must've been found guilty of a criminal offence or of any dishonesty, mismanagement or incompetence.
2. Competency:
Qualifications and experience. The Act contains an annexure that explains the minimum qualifications standards and experience that an individual must comply with, to be able to qualify for a license. After the approval of a FAIS license there are further criteria to be met by personnel and, depending on the type of business, be obtained within a prescribed period.
3. Operational Requirements:
Every organisation must have at least the following:
 - an office and equipment
 - a fixed business address
 - full access to telecommunication (telephone & fax)
 - storage and filing facilities
 - an account with a registered bank
 - training available to personnel (internal or external)
4. Financial position:
The organisation must not be insolvent and its assets must exceed its liabilities.

Legacy FAIS status

FSP no: 13783

CATEGORY I

Short-Term Insurance: Personal Lines (Advice and Intermediary Services)

Short-Term: Commercial Lines (Advice and Intermediary Services)

WHAT DOES THE ACT REQUIRE?

Sec. 13

requires that a broker or agent must be able to show their clients a certified confirmation from the Insurer or Underwriting Bureau, authorising them to sell their products. The Insurer or Underwriting Bureau will not issue such confirmation to the broker or agent without the required license.

Sec. 14

determines that where a person does not comply with all the requirements of the Act, the concerned brokerage or agency must see to it that the person does not operate any further, until the requirements have been met. It is here where the Key Individual play an important role, as it will be one of his duties to see to it that all the personnel comply with these requirements.

Sec. 17

requires the appointment of a Compliance Officer. This person can be appointed internally or externally. A sole proprietor can appoint himself as his own Compliance Officer and is exempted from the relevant requirements with respect to the appointment of such person. One condition is that he must be the sole proprietor and thus also be the only representative, there may not be any employee involved that acts as an advisor in any way.

Sec. 18

requires that every organisation must keep records of various aspects in the organisation, such as cancellations, complaints, qualifications and experience of personnel and for the fulfillment of the Act - for example.

The minimum period for keeping record is 5 years depending on the type of information kept.

Sec. 19

requires that certain organisations appoint external auditors to audit their financial statements and that these statements be made available to the FSB.

The Act also provides for a Statutory Ombudsman to focus mainly on the investigation of the complaints from the public concerning the specific broker or agent. Take note that you must, at all times, reveal this and several other information to the client. All complaints that are investigated by the Ombudsman, as well as the result of such investigation, must be declared to the FSB by the organisation / agent concerned.

Furthermore, the Act stipulates which penalties and fines an organisation can be charged with, if the organisation does not comply to the regulations. The highest is a penalty of R1 000 000.00 and 10 years imprisonment as well as the termination of the license. There are however, further penalties that have been stipulated in the Act and will be determined according to the seriousness of the offense.

Kindly take note that the contents of this document is not a summary of the FAIS Act and therefore does not contain full details of the requirements of said Act. The purpose of this document is merely to provide an indication of the extent of the Act. The FAIS Act is a complex document and should be studied with attention.

Finally, we at Legacy want to ensure our business partners that you are not alone and we will always be available to assist you with these new challenges.

COMPLAINTS PROCEDURE

Commitment by Legacy Underwriting Managers (PTY) LTD:

Prompt attention: Legacy Underwriting Managers undertake to handle any complaint with the necessary efficiency to be able to give a prompt outcome of the complaint to the client.

Fairness: Legacy Underwriting Managers undertake to investigate every complaint with the necessary seriousness and fairness will be of prime importance. Furthermore, Legacy Underwriting Managers undertake that a full and appropriate level of redress is offered to the client, without delay, where the complaint is resolved in favour of the client.

Transparency: Legacy Underwriting Managers undertake to handle every complaint with transparency and that the investigation process and procedure will be available for inspection by the client at any given time.

Where can complaints be lodged?

Complaints can be lodged at any of the Legacy Underwriting Managers Branches at the convenience of the client.

Complaints Procedure

- All complaints must be in writing and where applicable with the relevant documentation attached thereto.
- Complaints may be submitted by hand, by post, via fax or via e-mail.
- Complaints that are not immediately put in writing will still be handled provided that the expectation remains that the complaint must be submitted in writing.
- All complaints will be handled by the appointed Key Individual or Director.
- The responsible person will contact the client to inform the client who will be dealing with the complaint on behalf of the company.
- The complaint will be investigated by the person responsible and further information may be requested from the client to clarify certain issues where required.
- As stipulated by legislation, all complaints must be resolved within 6 weeks of receipt thereof.
- If the complaint cannot be resolved, the client will be notified in writing of the decision with the reasons therefore.
- If the client is not satisfied with the outcome of the investigation, the client have the right to take further action.
- The client may refer the matter to the FAIS Ombud within 6 months of the outcome of the investigation. The FAIS Ombud can be contacted at:
 - The FAIS Ombud
 - PO Box 74571
 - Lynnwood Ridge
 - 0040
 - Tel: (012) 470-9080
 - Fax: (012) 348-3447
- The complaint will be noted on the complaints register for future reference. The complaint will be kept on the register for a period of 5 years.

CONFLICT OF INTEREST MANAGEMENT POLICY

Introduction

In terms of the FAIS Act (Act 37 of 2002) as amended, Legacy Underwriting Managers (Pty) Ltd is required to develop and maintain a Conflict of Interest Policy to which all members of the company must comply with. Our Policy sets out the mechanisms in place to deal with the conflicts of interest. This document summarizes our Conflict of Interest Policy.

The purpose of this policy

Legacy Underwriting Managers (Pty) Ltd is an Authorized Financial Services Provider providing advice and intermediary services to our clients on short term insurance products and is therefore potentially exposed to conflicts of interest. The purpose of this policy is to set out the process of how our company will comply with the requirements on conflicts of interest as set out by law.

What is a Conflict of Interest?

The FAIS Act defines a Conflict of Interest as any situation in which a provider or a representative has an actual or potential interest that may, in rendering a financial service to a client, -

- a. influence the objective performance of his, her or its obligations to that client; or
- b. prevent a provider or representative from rendering an unbiased and fair financial service to that client, or from acting in the interests of that client, including, but not limited to –
 - i. a financial interest
 - ii. an ownership interest
 - iii. any relationship with a third party

Our Objectives with this Policy

Legacy Underwriting Managers (Pty) Ltd, including our Management and Representatives will seek to avoid any conflict or potential conflict of interest which may arise from conducting our business. Where we are unable to avoid such conflict of interest we will take all reasonable steps to mitigate such conflict of interest and will also disclose such conflict of interest to all our clients where required.

Identification of Conflicts

Legacy Underwriting Managers (Pty) Ltd provides a range of short term insurance products to our clients. Due to the nature of our business we are faced with conflicts. All employees, including Management and the company's Compliance Officer are responsible for identifying specific instances of conflict and are required to notify their manager of any conflicts (or potential conflict) of interest they become aware of. The manager will then inform the Compliance Officer who will investigate the matter and will advise the manager on the implications of the conflict and how the conflict should be managed.

Managing Conflicts of Interest

If a conflict of interest exists or occurs it needs to be managed appropriately and adequately in order to mitigate the impact of such conflict. Once a conflict has been identified, a director of the company must assess the conflict and establish whether the conflict is actual or only perceived. If the conflict is actual, management will after consultation with the Compliance Officer decide whether it is viable and acceptable to proceed with the transaction or whether to decline the transaction. Where the company cannot avoid the conflict of interest, the company will:

- Where possible mitigate the conflict of interest
- Disclose such conflicts to all relevant parties where required by law
- Provide reasons why the conflict cannot be avoided.
- Keep record of the conflicts of interest

All staff members were informed of our Conflict of Interest Policy and have received a copy thereof. Where necessary staff members received guidance and training in these procedures.

Disclosure of Possible Conflicts of Interest

Legacy Underwriting Managers (Pty) Ltd wishes to disclose the following:

- Both Legacy Underwriting Managers and APBCO Brokers lease office space in certain areas in the same buildings. The purpose of this arrangement is to enable both parties to provide clients with more effective service.
- Legacy Underwriting Managers and APBCO utilize the same Human Resources, IT and Financial Organization to perform administration functions which include Reception, Switchboard, Accounting Services, IT and Human Resources.
- Furthermore it is to be noted that Legacy Underwriting Managers and APBCO Brokers employ a director who serves on both the boards of directors. This director acts as a mentor for both boards of directors.
- We are acting for different clients
- We are involved with several associates, product suppliers, distribution channels and other third parties in the rendering of our financial services to clients

Remuneration

Legacy Underwriting Managers (Pty) Ltd and its representatives receive only the following financial interests from financial services providers / suppliers and other third parties:

- Fees authorized under the Short-term Insurance Act, 1998 which fees are reasonably commensurate to the service being rendered
- Fees for rendering services to third parties, which fees are reasonably commensurate to the services being rendered to such parties

Legacy Underwriting Managers (Pty) Ltd and its representatives however are allowed to also receive the following financial interests from financial services providers / suppliers and other third parties:

- Commission authorized under the Short-term Insurance Act, 1998
- Fees for the rendering of a financial service in respect of which commission or fees (as stated above) is not paid, if these fees are specially agreed to by a client in writing and may be stopped at the discretion of that client.
- Subject to any other law, any immaterial financial interest (R1 000.00 rule)
- A financial interest, not referred to above for which a consideration, fair value or remuneration that is reasonably commensurate to the value of the financial interest, is paid by that provider or representative at the time of receipt thereof.

Legacy Underwriting Managers (Pty) Ltd may not offer any financial interest to any of our representatives for:

- Giving preference to the quantity of business secured for the company to the exclusion of the quality of the service rendered to clients
- Giving preference to a specific short term insurance supplier, where the representative may recommend more than one short term insurance supplier to a client
- Giving preference to a specific product of a short term insurance supplier, where the representative may recommend more than one product of that short term insurance supplier to a client

Non Compliance with the Conflict of Interest Policy

Any staff member that does not comply with this policy will be subjected to disciplinary action as dictated by the FAIS Act and the company's internal Code of Conduct. The action that resulted in the non compliance will be noted on the Non-Compliance Register and corrective measures will be investigated and where possible be implemented to prevent similar non compliance in future.

Legacy Underwriting Managers (Pty) Ltd is licensed as an Authorised Financial Services Providers with the Financial Services Board. Further information with regards to these relationships is available on request to all parties who have a legal right to this information. Any requests for this information must be directed to the Board of Directors.