EXPLANATORY NOTES

THE ROLE OF THE KEY INDIVIDUAL

An FSP is usually a juristic entity, and where this is the case the business is carried on by people. These people can be divided into three categories, being:

- key individuals;
- representatives; and
- administration staff.

These notes deal with key individuals.

Before we can look at the roles and responsibilities of key individuals in terms of the Act, we must consider who should be appointed as a key individual. The Financial Services Board has issued guidance notes in this regard, which are published on its website www.fsb.co.za. For ease of reference the guidance notes are repeated hereunder in italics.

The Financial Advisory and Intermediary Services Act defines a key individual as follows:

"key individual", in relation to an authorised financial services provider, or a representative, carrying on business as-

(a) a corporate or unincorporated body, a trust or a partnership, means any natural person responsible for managing or overseeing, either alone or together with other so responsible persons, the activities of the body, trust or partnership relating to the rendering of any financial service; or

(b) a corporate body or trust consisting of only one natural person as member, director, shareholder or trustee, means any such natural person.

Sub-paragraph (b) of the definition requires little or no explanation, in that it deals with entities (persons) which are managed, owned or governed by one natural person only. In this scenario it is clear that this natural person is the key individual as defined.

Sub-paragraph (a) of the definition provides interpretation problems and I will break down and define the two functions mentioned in this sub-paragraph, that is the function of managing and the function of overseeing.
The Interpretation Act has no reference to these functions and reference is made to the Concise Oxford Dictionary for definition of the terminology.

Managing is defined as “having executive control or authority (Managing Director)”.

Overseeing or oversee is defined as “officially supervise (workers, work, etc.)”.

It is therefore clear from these definitions that a key individual mentioned in sub-paragraph (a) would include persons in executive control such as directors and other persons performing a managerial function over activities relating to the rendering of a financial service.

In a life insurance company, for example, key individuals would therefore include, directors, provincial managers, and depending on the structure of a particular entity, any other individual whom in the opinion of the controlling body is also engaged in overseeing the activities of a representative, in rendering a financial service regulated by the Act. However, it is not the intention to include every person in a supervisory capacity.

The key individual’s management responsibility in respect of the regulated functions of the FSP

It is clear from these notes that the role of a key individual is to ensure that:

- the FSP remains fit and proper;
- the license conditions are complied with;
- the obligations on FSP’s as detailed in the Act are complied with;
- the key individuals remain fit and proper;
- all persons falling within the definition of ‘representative’ are registered as representatives;
- the juristic representatives remain fit and proper;
- the employed representatives remain fit and proper;
- the representatives comply with all the requirements of the code of conduct;
- the appropriate returns are lodged with the Financial Services Board prior to the due date.

The key individual must ensure that the FSP has policies and procedures in place to ensure compliance with the above functions. For example, an FSP might have an action plan/procedure to deal with ‘fit and proper’ requirements, such as:

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<tr>
<th>Task</th>
<th>Procedure</th>
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<tr>
<td>Ensure that the key</td>
<td>When we hold our quarterly performance reviews, we ask our key</td>
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<tr>
<td><strong>individuals remain fit and proper;</strong></td>
<td><strong>individuals to sign a new honesty and integrity statement. If it proves clear, we merely file it on the personnel file. If there could be a problem, it is passed to Human Resource Department for handling.</strong></td>
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<td><strong>We have an ongoing CPD programme for all our staff, including key individuals, which form part of our Workplace Skills Plan. This is managed separately by our Skills Development Facilitator who produces monthly reports to management.</strong></td>
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<td><strong>Ensure that the juristic representatives remain fit and proper;</strong></td>
<td><strong>We hold quarterly monitoring compliance reviews with our juristic representatives during which we ensure that the fit and proper status is maintained. Where discrepancies are identified, a separate report is produced by our compliance officer, which is tabled at our Exco for discussion and action.</strong></td>
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<td><strong>Ensure that the employed representatives remain fit and proper;</strong></td>
<td><strong>This procedure is identical to the procedure for key individuals mentioned above.</strong></td>
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**Licensing a key individual**

To register a key individual, a special form has to be completed and submitted to the FSB. The information provided must satisfy the registrar that the key individual complies with the said requirements in respect of:

- personal character qualities of honesty and integrity; and

- competence and operational ability, to the extent required in order for such key individual to fulfil the responsibilities imposed on the key individual by the Act.

To satisfy the registrar, it is necessary for the applicant to list the relevant experience that the applicant has gained within the previous 5 years. Full details of the person’s responsibilities must be provided to illustrate that the person’s experience is relevant to the financial services and subcategory of financial products being applied for.

In addition, the applicant must indicate his/her experience in the management or oversight of the activities of a business or part thereof and enclose a reference letter from the employer substantiating this information. This must include the applicant’s experience for the categories of financial services and the subcategories of financial products in respect of which the key individual will be managing or overseeing.

Having received the application the registrar may:
require an applicant to furnish such additional information, or require such information to be verified, as the registrar may deem necessary; and

- take into consideration any other information regarding the applicant, derived from whatever source, including the Ombud and any other regulatory or supervisory authority, if such information is disclosed to the applicant and the latter is given a reasonable opportunity to respond thereto.

The registrar must after consideration of an application if satisfied that an applicant complies with the requirements of this Act, grant the application or if not satisfied, refuse the application.

Where an application is granted, the registrar may impose conditions and restrictions on the exercise of the authority granted to the key individual, having regard to;

- all facts and information available to the registrar pertaining to the key individual;
- the category of financial services which the key individual wishes to render.

The applicant must prove that he/she is honest and has integrity (see lesson 4), and this must be ongoing. In the event of any change occurring in the personal circumstances of a key individual which affects the fit and proper requirements, including honesty and integrity, this may render that person to be no longer a fit and proper person and would have to cease taking part in the conduct or management or oversight of the licensee's business in relation to the rendering of financial services.

When an individual can commence acting as a key individual

An individual can only act as a key individual when authorisation has been provided by the registrar.

The processes required to remain updated with regards to other legislation, amendments, updates and requirements

We discuss the ongoing training requirement for key individuals and representatives that is demanded in terms of the Act in lesson 3, but over and above this it is necessary for all staff to keep abreast of developments in the legislation that will have an impact on the FSP. Examples are the Companies Act 2008 and the Consumer Protection Act 2009. A further Act ‘in the pipeline’ is the protection of Private Information Act.

As and when information is provided by the appropriate authorities, it is necessary for the FSP to disseminate this information to all key individuals and representatives that it may affect. This cannot wait until a formal training session is developed, so there must be a procedure in place for this to take place effectively.
The impact of licensing conditions on an FSP if a key individual leaves the employ of the FSP

A FSP must operate with key individuals, and the experience and qualifications of the key individuals has a major bearing on the categories of license that the FSP may hold. If a key individual was to leave the employ of a FSP, the registrar will assess the FSP’s remaining competence to render those services for which the resigning key individual was responsible. The registrar has the right to impose new conditions on the licensee as necessary.

If the FSP has other key individuals with similar experience and competency as the resigning key individual, there will not be a problem. However, a license can only be maintained if at least one key individual is registered as a representative and has the experience and competency required in respect of the product categories included in the FSP’s license. If, for example, the FSP is licensed to provide products in five different sub-categories of license, the FSP’s key individuals between them must also be registered as representatives for the five products and have the experience and competency to provide advice and/or intermediary services in all the categories and sub-categories for which the FSP is licensed.