



FINANCIAL SERVICES BOARD

FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002 ("FAIS ACT")

DATE: 17 DECEMBER 2015

INVITATION TO COMMENT ON PROPOSED AMENDMENTS TO PROFESSIONAL INDEMNITY REQUIREMENTS

1. Background

The Registrar of Financial Services Providers (Registrar) has published for public comment on the official web site of the Financial Services Board the proposed amendments to the professional indemnity requirements applicable to the different categories of financial services providers.

2. Purpose of proposed amendment

The purpose of the proposed amendments is to, *inter alia*,-

- (a) enhance the requirements to achieve the objects of the Financial Advisory and Intermediary Services Act, 2002;
- (b) address the practice of FSPs obtaining guarantees from their immediate family members or from other persons that are not registered Banks, most often resulting in the guarantees not being suitable;
- (c) remove the distinction in the requirements applicable to Category II, IIA and III FSPs based on whether or not they receive or hold client funds. The Registrar is of the view that irrespective of whether or not those FSPs receive client funds the same requirements should apply due to the inherent risks associated with their activities and the fact that they may exercise some form of control over the assets of clients;
- (d) incorporate the exemptions granted to Category I FSPs who are authorised to render financial services in respect of certain financial products only and to registered insurers who are also FSPs from having to comply with the professional indemnity insurance requirements; and
- (e) to extend the dispensation granted to insurers referred to in paragraph (d) to registered Banks.

3. Consultation process

- 3.1. Interested parties are invited to submit written submission on the proposed amendments to **FAIS.Consultation@fsb.co.za** by 28 February 2016.
- 3.2. All information (including name and address details) contained in submissions will be made available to the public on the FSB's official web site.
- 3.3. Submissions should include the name of your organisation (or your name if the submission is made as an individual) and contact details. For accessibility reasons, please email submission in a Word format. An additional PDF version may also be submitted.

4. Closing date for submissions

The closing date for submissions is **28 February 2016**. No submission received after that date will be considered.



CD da Silva
Deputy Registrar: Financial Services Providers

BOARD NOTICE OF 2015

FINANCIAL SERVICES BOARD

**FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002
(ACT NO 37. OF 2002)**

**NOTICE ON REQUIREMENTS FOR PROFESSIONAL INDEMNITY AND FIDELITY
INSURANCE COVER FOR PROVIDERS**

I, Caroline Dey da Silva, Deputy Registrar of Financial Services Providers, hereby under section 13 of the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003, require all providers to maintain suitable professional indemnity and fidelity insurance cover to the extent set out in the Schedule.

CD da Silva,
Deputy Registrar of Financial Services Providers

SCHEDULE

NOTICE ON REQUIREMENTS FOR PROFESSIONAL INDEMNITY AND FIDELITY INSURANCE COVER FOR PROVIDERS

Definitions

1. In this Schedule "the Act" means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), any word or expression to which a meaning is assigned in the Act has, unless the context indicates otherwise, that meaning, and-

"**Determination of Fit and Proper Requirements**" means the Determination of Fit and Proper Requirements for Financial Services Providers, 2008;

"**Friendly Society benefits**" has the meaning assigned to it in section 1(1) of the Determination of Fit and Proper Requirements.

"**FSP**" means an authorised financial services provider;

"**General Code**" means the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003;

"**Long-term Insurance subcategory A**" has the meaning assigned to it in section 1(1) of the Determination of Fit and Proper Requirements.

Application

2. The requirements contained in this Schedule-
 - (a) subject to paragraph (b), apply to all persons who apply for authorisation to become or who are FSPs;
 - (b) do not apply to-
 - (i) an FSP that is a registered Bank as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990);
 - (ii) an FSP that is a registered insurer as defined in sections 1 of the Short-term Insurance Act, (Act, No. 53 of 1998), and Long-term Insurance Act, (Act, No. 52 of 1998);
 - (iii) a Category I FSP who is authorised to render financial services in respect of the financial products Long-term Insurance subcategory A and/or Friendly Society Benefits only; and
 - (iv) a representative of an FSP.

General requirement

3. An FSP must effect and maintain at all times adequate and suitable professional indemnity insurance cover and where required fidelity insurance cover, issued by a registered insurer, for all the business activities which it carries on, or for which it is responsible.

Minimum levels of insurance

4. Without limiting the generality of paragraph 3, an FSP referred to in paragraph 2(a) must at all times maintain at least the minimum levels of professional

indemnity insurance cover and where applicable fidelity insurance cover as set out in Table A.

TABLE A		
Category of FSP	Professional Indemnity Insurance	Fidelity Insurance
Category I (FSP does not hold client assets or that does not collect, hold or receive premium or other monies payable in respect of a financial product)	R1 million	Not applicable
Category I (FSP holds client assets or that does not collect, hold or receive premium or other monies payable in respect of a financial product)	R1 million	R1 million
Category II	R5 million	R5 million
Category IIA	R5 million	R5 million
Category III	R5 million	R5 million
Category IV (FSP does not hold client assets or that does not collect, hold or receive premium or other monies payable in respect of a financial product)	R1 million	Not applicable
Category IV (FSP hold client assets or that does not collect, hold or receive premium or other monies payable in respect of a financial product)	R1 million	R1 million

Terms to be incorporated in the insurance

5. The contract of professional indemnity and fidelity insurance cover must incorporate terms which makes provision for:
 - (a) cover in respect of claims for which an FSP may be liable as a result of the conduct of itself, its employees and its appointed representatives (acting within the scope of their appointment); and
 - (b) appropriate cover in respect of legal defense costs.

Amendments and adjustments

6. The Registrar may at any time by notice in the *Gazette* amend any provision of this Schedule to the extent as the Registrar may deem necessary.

Construction of Notice

6. No provision of this Notice shall be construed as in any way restricting or otherwise prejudicially affecting a legally enforceable claim of any person against an FSP resulting from or connected with the rendering of financial services by the FSP to such person.

Repeal

7. The following notices are hereby repealed:
 - (a) the Notice on Requirements for Professional Indemnity and Fidelity Insurance Cover for Providers, 2009, published by Board Notice 123 of 2009 in *Government Gazette* 32587 of 21 September 2009; and
 - (b) the Notice on the Exemption of certain FSPs who are Long-term Insurers or Short-term Insurers from section 13 of the General Code of Conduct, published by FAIS Notice 50 of 2015.

Short title and commencement

8. This Notice is called the Notice on Requirements for Professional Indemnity and Fidelity Insurance Cover for Providers, 2015, and comes into operation two months after the date of publication in the *Government Gazette*.