



What is the purpose of the FAIS Act?
Protecting the consumer



What is the FAIS Act?

The Financial Advisory and Intermediary Services Act, 2002 (FAIS Act), came into operation on 30 September 2004. The purpose of the FAIS Act is to protect consumers of financial services and to professionalise the financial services industry. To achieve this, the FAIS Act imposes certain requirements on providers of financial services to ensure that consumers receive proper financial advice, that they are provided with sufficient information to make informed investment decisions and that they are dealing with fit and proper advisors and intermediaries.

Who looks after the FAIS Act?

The Government, through the legislation of the country, has created a number of bodies, called regulators, to ensure that the laws are adhered to. The Financial Services Board is the regulator that supervises financial services providers. The FAIS Act is one of the laws administered by the Financial Services Board.

Who can give advice and/or render intermediary services (financial services)?

The FAIS Act requires that any person who gives advice and/or renders an intermediary service in respect of a financial product must be authorised as a **financial services provider**, also referred to as an FSP, or must be appointed as a **representative** of an authorised financial services provider.

Persons rendering financial services on behalf of an FSP are called representatives. The FSP is authorised by the Financial Services Board and representatives are appointed by the FSP. An FSP can be a natural person (sole proprietor) or a legal entity.

An FSP must have one or more key individuals that are responsible for the management or oversight of that part of the business of the FSP relating to the rendering of financial services. The key individual of an FSP is subject to the approval of the Financial Services Board to ensure that only persons who are fit and proper are appointed as such.

It is the responsibility of the FSP to ensure that its representatives are fit and proper. This, among others, entails that the FSP must check that its representatives are persons who have character qualities of honesty and integrity and that they are competent to render financial services.

What should you check?

You should check that the person providing the advice and/or rendering the intermediary service is either an FSP or a representative of an FSP and that he/she is authorised to render financial services in respect of the financial product he/she wants you to invest in, buy or sell.

Ask the following about the FSP:

If the person rendering the financial service claims to be an FSP you can confirm the correctness thereof by doing the following:

1. Ask for the FSP number – if he/she is authorised they should have an FSP number.
2. Phone the Financial Services Board's Call Centre on 0800 202 087 / 0800 110 443 and ask the operator to check whether the person you are dealing with is an FSP and whether he/she is authorised to render financial services in respect of the financial product to which the service relates or check the person's status on the Financial Services Board's website – **<http://www.fsb.co.za>**, select the FAIS link, then select “search for financial services providers”.



Ask the following about the representative:

If the person rendering the financial service claims to be a representative you can confirm the correctness thereof by doing the following:

1. Ask for a written confirmation certified by the FSP whom the representative represents that he/she is a representative of such an FSP and that the FSP accepts responsibility for the actions of the representative. A representative must be able to provide you with such confirmation.
2. Phone the Financial Services Board's call centre on 0800 202 087 / 0800 110 443 and ask the operator to check whether the person you are dealing with is a representative of the FSP who had provided the confirmation and whether he/she is authorised to render financial services in respect of the financial product to which the service relates, or check on the website of the Financial Services Board – <http://www.fsb.co.za>, whether the person is a representative of the FSP, select the FAIS link, then select “search for representative”.



It is important that you protect yourself. Therefore, take the time and confirm that the person who is rendering the financial service is allowed to do so. You have the right to choose your advisor or intermediary.

If you are uncomfortable with the person providing the service, you can either insist to speak to another representative of the FSP or you can engage the services of another FSP.



What financial products are governed by the FAIS Act?

The following products are regarded as financial products for purposes of the FAIS Act:

1. Any type of long-term insurance policy (eg. life, disability, funeral cover and long-term savings plans)
2. Any type of short-term insurance policy, including cover for personal and business purposes (eg. house, household content, car insurance, cellphone and commercial etc.)
3. Bank deposits (eg. call deposits, notice deposits and savings accounts)
4. Retirement and pension fund benefits (retirement annuities, provident funds and pension funds)
5. Collective investment schemes (Unit trusts)
6. Securities and instruments, including shares, equities, derivatives, bonds and money market instruments
7. Health Service benefits (hospital plans and medical aid plans)
8. Foreign investment business
9. Friendly society benefits

Must everyone be an authorised financial services provider?

Not all financial services are regulated by the Financial Services Board, or fall under the FAIS Act. The National Credit Regulator regulates persons that provide credit (credit provider). However, in some instances the FAIS Act will also be applicable where for example the credit provider requires you to take out insurance to cover the asset that you are financing and the credit provider facilitates the conclusion of the insurance transaction. The following scenario is an example where both the FSB and the National Credit Regulator would be involved:

Mrs. Dlamini goes to XYZ Furniture store to buy a new stove. She does not have enough money to buy the stove. She, therefore, applies for credit in order to pay for the stove over a period of 12 months. The application for credit is a credit transaction and the National Credit Regulator regulates it. The credit provider may, if Mrs Dlamini does not already have insurance, require Mrs. Dlamini to take out an insurance policy to ensure that if for example, the stove is damaged or Mrs Dlamini loses her job, the credit provider is repaid. The facilitation by XYZ Furniture store of the insurance transaction falls under the FAIS Act and the store must comply with the requirements of the FAIS Act.

What should the FSP or representative ask you before investing or buying a financial product?

There are a number of questions the FSP or representative should ask you when he/she is helping you to decide what financial product(s) you should invest in, buy, sell or cancel. Remember, you may already have enough financial products to cover all your financial needs. It may not always be appropriate to buy or invest in extra products.

Some questions that you must be asked:

1. What is your current financial situation? You may be asked to provide a list of your assets and liabilities and a copy of your payslip to determine your income.
2. Can you afford to buy or invest in a financial product?
3. Why do you want to buy or invest in a financial product? In other words, what are your needs?
4. Do you already have any other financial products?



5. Do you understand the financial product you currently have or in which you want to invest or buy?
6. What are your expectations?
7. Are you prepared to invest in or buy a financial product where there is a risk that you may lose money?
8. Do you understand the risks associated with a particular financial product?

The FSP or representative is further required to confirm your identity and your place of residence by requesting you to provide a copy of your ID document and proof of your residential address.

What information should the FSP and/or representative provide to you?

The FSP and/or representative must at the first meeting provide you with the following information:

1. The full business and trade names, registration number and contact details of the FSP and/or representative.
2. The name and contact details of the FSP if you are dealing with a representative.
3. The names and contact details of the Compliance Officer or Compliance Department of the FSP.
4. Whether the representative is rendering services under supervision.
5. Details of the financial services and financial products the FSP and/or representative is authorised to provide.

It is important to note that FSPs and representatives may only be able to sell the products of one particular product supplier. This means that they cannot compare the product they want to sell to you with a similar product of another product supplier. They will also not be able to give you quotes on a similar product from different product suppliers. It is therefore, important to ask the FSP or representative whether he is allowed and/or able to sell financial products from more than one product supplier. Other FSPs or representatives

may sell products of more than one product supplier and will therefore be able to give you quotes from different product suppliers.

The FSP or representative must provide you with the following information regarding the product and product supplier:

1. The product name.
2. The name and contact details of the product supplier.
3. The key features and benefits of the product.
4. The terms, conditions and exclusions of the product, for example what will happen if you do not pay the premium or monthly instalment, increases (including the amount of the increased premium for the first five years), the waiting period, excesses, restrictions or circumstances in which benefits will not be provided.
5. Breakdown of the costs.

The FSP and/or representative must make sure that you understand the terms and conditions of the product. This includes your obligations (such as paying the premium every month), but also the obligations the product supplier must adhere to. In some instances the product supplier may decide not to pay out a claim, if you did not provide them with all the information they needed, or if you do something within a specific period after you entered into the contract. These terms and conditions change from product to product and also from product supplier to product supplier. You must ask questions, to ensure that you understand it.

The FSP and/or representative must also inform you of the following:

1. The rand amount of commission and/or fees the FSP and/or representative will earn for selling you the product. In other words, where the FSP or representative informs you that he will earn 5% commission on the transaction he must inform you that 5% in rand amount eg. R100.



2. Any other incentive that will or may become payable to the FSP and/or representative, for example rewards, prizes, gifts and bonuses etc. This information is important as the FSP or representative may be advising you to buy the product so that he can win a competition or earn or qualify for a bonus.
3. How often he will receive a fee, commission or incentive, for example once a year or every month.

The FSP and/or representative must provide you with a record of advice. This record must contain the following:

1. A summary of the advice provided.
2. The financial products that were considered.
3. The financial product that was recommended and why this product satisfied your needs.

The product supplier must send you a copy of the formal agreement (contract) within thirty days after you have entered into the agreement.

It is important to note that some FSPs or representatives don't charge a commission that is included in the premium, but instead charge a fee for their advice. They have to tell this to you at the first meeting and you can then decide whether you are willing to pay a fee. If you are unable or unwilling to pay the fee, then you will have to find another representative to help you.

If the FSP or representative gives you advice that leads you to buy a financial product or he renders ongoing financial services, he/she must send you a statement every year, wherein he/she gives you an update on the status of your financial product.

Don't sign documents if you are not sure about the details of the contract. Also, never sign any blank documents where the FSP or representative tells you that he will complete the form afterwards. The FSP or representative is not allowed to ask you to waive your rights.



What happens if I am not satisfied with the advice or the service I receive?

As a consumer you have the right to complain. You should first try to resolve the complaint with the FSP who provided the advice or rendered the intermediary service when you entered into the agreement. If they are unable to resolve the complaint to your satisfaction, you may lodge a complaint with the Ombud for Financial Services Providers (FAIS Ombud).

Lodging a complaint with the FAIS Ombud:

- You must lodge your complaint within six months after the FSP decided to reject your complaint.
- You can only complain about events that occurred after 1 October 2004.
- You must have proof in writing that you had complained to the FSP (You must therefore keep a copy of the complaint submitted to the FSP).
- You can contact the Office of the FAIS Ombud on:
 - Telephone: 0860 324 766
 - Fax: (012) 348 3447
 - E-mail: info@faisombud.co.za
 - Postal services:
The Ombud for Financial Services Providers
P.O. Box 74571
Lynnwood Ridge
0040

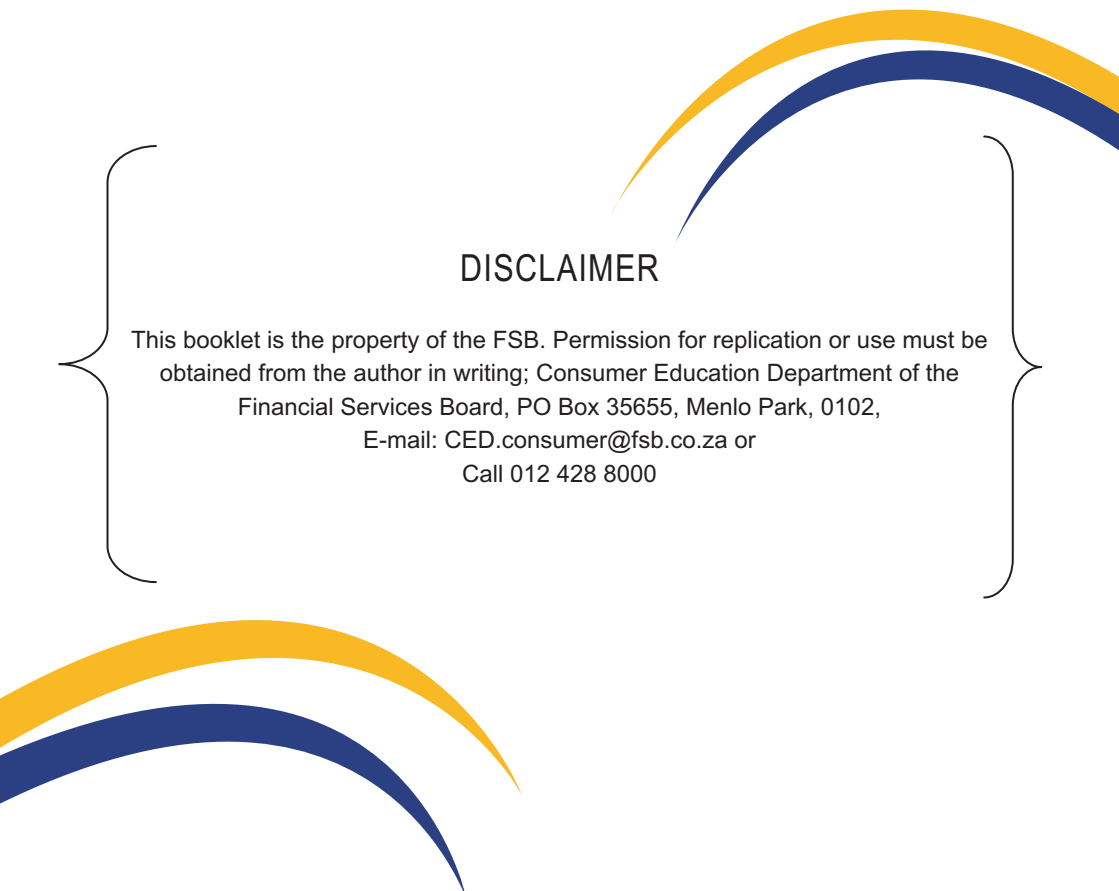


When the FAIS Ombud cannot help you?

The Ombud can't help you if any of these apply:

- The problem occurred before 1 October 2004.
- You have instituted legal action against the FSP and/or representative.
- You waited more than six months after the FSP rejected your complaint.
- The amount involved is more than R800 000. However, if you agree to abandon that amount of your claim that exceeds R800 000, the Ombud will still consider your complaint.
- The complaint relates to the performance of an investment.

DON'T BE AFRAID TO ASK QUESTIONS



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