

BOARD NOTICE 194 OF 2017

FINANCIAL SERVICES BOARD

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

**DETERMINATION OF FIT AND PROPER REQUIREMENTS FOR FINANCIAL SERVICES
PROVIDERS, 2017**

I, Caroline Dey da Silva, the Deputy Registrar of Financial Services Providers, hereby under section 6A of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), determine the fit and proper requirements for financial services providers as set out in the Schedule.



CD da Silva,
Deputy Registrar of Financial Services Providers

CHAPTER 6**FINANCIAL SOUNDNESS*****Part 1 Application and General Requirements*****Application of Chapter**

43. The fit and proper requirements relating to financial soundness contained in this Chapter –
- (a) subject to paragraph (b), apply to-
 - (i) all FSPs; and
 - (ii) juristic representatives;
 - (b) do not apply to-
 - (i) a key individual or a representative that is a natural person; and
 - (ii) an FSP who is a registered Bank as defined in section 1 of the Banks Act, or a registered insurer as defined in sections 1 of the Short-term Insurance Act or Long-term Insurance Act, provided that the FSP complies with the financial soundness requirements prescribed by those Acts.

General requirements

44. (1) An FSP and a juristic representative must at all times maintain financial resources that are adequate both as to amount and quality to carry out their activities and supervisory arrangements and to ensure that liabilities are met as they fall due.
- (2) An FSP, other than a Category I FSP that does not hold or receive monies in respect of a financial product, and a juristic representative of such FSP, must have sound, effective and comprehensive strategies, processes and systems to assess and maintain, on an ongoing basis, the amounts, types and distribution of financial resources that it considers adequate to cover:
- (a) the nature and level of the risks to which it is, or might be, exposed;
 - (b) the risk that the FSP or juristic representative might not be able to meet the requirements set out in this Chapter.
- (3) No person may become or continue as an FSP or juristic representative if-
- (a) declared insolvent or provisionally insolvent;
 - (b) placed under liquidation or provisional liquidation;
 - (c) subject to section 9(3), it is subject to any pending proceedings which may lead to an outcome referred to in paragraph (a) to (b); or
 - (d) subject to section 9(3), it seriously and persistently failed or fails to manage any of its financial obligations satisfactorily.
- (4) No person may become an FSP or a juristic representative if business rescue proceedings have commenced in respect of that person.

Part 2: Requirements for specific Category I FSPs and their juristic representatives**Application of Part and Requirement**

45. (1) This part applies to a Category I FSP and a juristic representative of a Category I FSP that does not hold, control or has access to client assets or that does not collect, hold or receive premiums or other monies in respect of a financial product.
- (2) The assets of a –
- (a) Category I FSP; and
 - (b) juristic representative of a Category I FSP,
- must at all times exceed the liabilities of that FSP or that juristic representative.

Part 3: Requirements applicable to specific Categories of FSPs and juristic representatives

Application of Part

46. (1) The requirements contained in this Part -

- (a) apply, subject to paragraph (b) to-
 - (i) a Category I FSP that holds, controls or has access to client assets or that collects, holds or receives premiums or other monies in respect of a financial product;
 - (ii) a Category II, IIA, III and IV FSP; and
 - (iii) a juristic representative of an FSPs referred to in subparagraph (ii);
- (b) does not apply to-
 - (i) a Category I FSP that does not hold, controls or has access to client assets or that does not collect, hold or receive premiums or other monies payable in respect of a financial product.

Definitions

47. For purposes of this Part, unless the context indicates otherwise, -

“additional asset requirement” means the additional asset requirement referred to in Table B of this Part;

“annual expenditure” means -

- (a) the expenditure set out in the latest set of financial statements of an FSP; or
- (b) in the case of an applicant commencing business, the budgeted expenditure as expressed in the budget or financial accounts,

less-

- (i) staff bonuses;
- (ii) employees' and directors', partners' or members' share in profit;
- (iii) emoluments of directors, members, partners or sole proprietor;
- (iv) other appropriation of profits to directors, members and partners;
- (v) remuneration that is linked to-
 - (aa) a percentage of the FSP's revenue; or
 - (bb) a percentage of the revenue generated by an employee, representative or contractor of the FSP; and
 that in the absence of such revenue the FSP has no obligation to pay the remuneration;
- (vi) depreciation;
- (vii) bad debts; and
- (viii) any loss resulting from the sale of assets;

“assets” in relation to the general solvency requirement and the additional asset requirement means the assets of an FSP excluding the following assets:

- (a) goodwill;
- (b) intangible assets; and
- (c) investments in and loans to related parties;

“general solvency requirement” means the requirement referred to in section 48(1);

“liabilities” in relation to the general solvency requirement means the liabilities of the FSP excluding loans subordinated in favour of other creditors;

“liquid assets” means-

- (a) cash;
- (b) a participatory interest in a money market portfolio;

- (c) 70% of the market value of a participatory interest in a collective investment scheme, other than an investment in a money market portfolio or a CIS hedge fund; or
- (d) 70% of the market value of a security listed on a licensed exchange provided it does not constitute more than 50% of total liquid assets,
- (e) provided that -
 - (i) the assets referred to in paragraphs (a) and (b) are capable of being converted, without any penalty on capital in terms of the conditions of the asset, into cash as follows:
 - (aa) 50% within 7 days; and
 - (bb) 50% within 30 days; and
 - (ii) the assets referred to in paragraphs (c) and (d) are capable of being converted into cash within 7 days;

“liquidity requirement” means the liquidity requirement referred to in Table B of this Part;

“money market portfolio” means a money market portfolio as contemplated in the Collective Investments Schemes Control Act;

“remuneration” for purposes of the definition of ‘annual expenditure’, includes salaries, wages, commissions, fees and any other payment, paid directly or indirectly by an FSP to an employee, representative or contractor of that FSP either directly or indirectly;

“working capital requirement” means the working capital requirement referred to in Table B of this Part.

Specific requirements

48. (1) The assets of a person referred to in section 46(1)(a) must at all times exceed the liabilities of that person.
- (2) A person referred to in section 46(1)(a) must at all times comply with the additional asset, working capital and liquidity requirements as set out in Table B.
 - (3) An FSP referred to in section 46(1)(a) must submit to the Registrar Form A in Annexure Six -
 - (a) in the case of a Category II, IIA and III FSP, on a half yearly basis calculated in terms of the FSP’s financial year;
 - (b) in the case of a Category I and IV FSP, on an annual basis.
 - (4) A juristic representative referred to in section 46(1)(a) must submit to its FSP, on a half yearly basis calculated in terms of the representative’s financial year, Form A in Annexure Six.
 - (5) The form referred to in subsections (3) and (4) must be submitted -
 - (a) in the case of persons referred to in subsections (3)(a) and (4), within 45 days after every half year-end of the FSP or juristic representative as the case may be; and
 - (b) in the case of Category I and IV FSPs, simultaneously with the financial statements of the FSP as contemplated in section 19 of the Act.

TABLE B			
Category of FSP and juristic representative	Additional Asset Requirement	Working Capital Requirement	Liquidity Requirement
Category I	N/A	Current assets must exceed current liabilities	Liquid assets equal to or greater than 4/52 weeks of annual expenditure
Category II	N/A	Current assets must exceed current liabilities	Liquid assets equal to or greater than 8/52 weeks of annual expenditure
Category IIA	Assets of the FSP must exceed the FSP's liabilities by at least R3 million	Current assets must exceed current liabilities	Liquid assets equal to or greater than 13/52 weeks of annual expenditure
Category III	Assets of the FSP must exceed the FSP's liabilities by at least R3 million	Current assets must exceed current liabilities	Liquid assets equal to or greater than 13/52 weeks of annual expenditure
Category IV	N/A	Current assets must exceed current liabilities	Liquid assets equal to or greater than 4/52 weeks of annual expenditure

Early warning requirements

- 49.** (1) An FSP referred to in section 46(1)(a) must, in writing, immediately notify the Registrar when-
- the assets of the FSP or that of its juristic representative exceed the liabilities by less than 10%;
 - the current assets of the FSP or that of its juristic representative exceeds the current liabilities by less than 10%;
 - in respect of a Category IIA and III FSP and juristic representatives of that FSPs, the additional assets of the FSP or that of its juristic representative exceeds the minimum requirement by less than 10%;
 - the FSP or its juristic representative does not meet any of the requirements in this Chapter; or
 - the FSP becomes aware of an event or situation that may or will result in the effect contemplated in paragraphs (a), (b) and (c).

- (2) The notification referred to in subsection (1) must be certified by the chief executive officer, controlling member, managing or general partner, or trustee, of the FSP as the case may be.
- (3) The requirements set out in subsection (1) apply, with the necessary changes to a juristic representative referred to in section 45(1)(a)(iii), provided that the notification referred to in that subsection must be made to the FSP of the juristic representative.
- (4) If any of the factors in subsection (1) arises, the FSP may not directly or indirectly make any payment by way of a loan, advance, bonus, dividend, repayment of capital or a loan or any other payment or other distribution of assets to any director, officer, partner, shareholder, related party or associate without the prior written approval of the Registrar.

Multiple Category FSPs

50. A person authorised as an FSP or appointed as a juristic representative under more than one category of FSP must comply with the most onerous of the financial soundness requirements applicable to the different categories of FSPs for which that person is authorised or appointed.