



STONEWOOD

ASSET MANAGEMENT

Debarment Policy

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Policy Owner: Stonewood Asset
Management (Pty) Ltd

Responsible Business Unit:
Operations

POLICY STATEMENT

- This policy forms part of the policy owner's internal business processes and procedures.
- Any reference to the "organisation" shall be interpreted to include the "policy owner".
- The organisation's governing body, its employees, volunteers, contractors, suppliers and any other persons acting on behalf of the organisation are required to familiarise themselves with the policy's requirements and undertake to comply with the stated processes and procedures.
- Risk owners and control owners are responsible for overseeing and maintaining control procedures and activities.

POLICY ADOPTION

By signing this document, I authorise the policy owner's approval and adoption of the processes and procedures outlined herein.

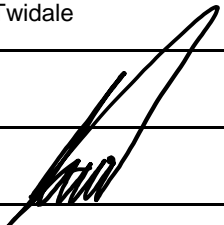
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1 INTRODUCTION

The Financial Advisory and Intermediary Services Act 37 of 2002 (“FAIS”) aims to regulate the rendering of certain financial advisory and intermediary services to clients by FSPs.

In terms of Section 14(1) of FAIS an **FSP must remove** a Representative or a Key Individual of such a Representative if:

- such a person no longer complies with the Fit & Proper Requirements as outlined in Section 13(2)(a), or
- the Representative or a Key Individual contravenes or fails to comply with any provision of the FAIS Act in a material manner.

The primary objective of the debarment policy, supported by the SPB Debarment, is to prevent the continuation of financial services rendered by a Representative or a Key Individual of such a Representative, who is no longer Fit and Proper or has failed to comply with a provision of FAIS, in a material manner. Debarment therefore prohibits a person from functioning as a Representative or Key Individual for any provider, and not only for the provider who initiated the debarment.

2 REGULATORY FRAMEWORK

- Financial Advisory and Intermediary Services Act (“FAIS”);
- Board Notice 194 Of 2017 – Determination of Fit and Proper Requirements for Financial Services Providers, 2017;
- FSCA FAIS Notice 17 of 2018 – Form and Manner of Section 14 Notifications;
- Guidance Note 1 of 2019 (FAIS) – Guidance Note on the Debarment Process in terms of Section 14 of the Financial Advisory and Intermediary Services Act;
- Financial Sector Regulation Act, 9 of 2017 (“FSRA”).

3 DEFINITIONS

3.1 FAIS Act (“FAIS”)

FAIS Act (“FAIS”) includes any regulation, rule or code of conduct, and any notice given, approval or exemption granted, determination made, requirement or condition determined or imposed, or any other decision referred to in Section 3(1).

3.2 Financial Services Provider (“FSP”)

Financial Services Provider (“FSP”) means any person, other than a Representative, who as a regular feature of the business of such person:

- Furnishes advice; or
- Furnishes advice and renders any intermediary service; or
- Renders an intermediary service.

3.3 Key Individual (“KI”)

In relation to an authorised financial services provider, or a representative, carrying on business as -

- 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
- A corporate body or trust consisting of only one natural person as member, director, shareholder or trustee, means any such natural person.

3.4 Representative

Representative means any person, including a person employed or mandated by such first-mentioned person, who renders a financial service to a client for or on behalf of a financial services provider, in terms of conditions of employment or any other mandate, but excludes a person rendering clerical, technical, administrative, legal, accounting or other service in a subsidiary or subordinate capacity, which service -

- does not require judgment on the part of the latter person; or
- does not lead a client to any specific transaction in respect of a financial product in response to general enquiries.

3.5 Regulatory Authority

The Regulatory Authority refers to the independent institution that regulates the South African financial services industry.

3.6 In writing

Includes communication by electronic mail or handwritten letter that is accurately and readily reducible to writing.

3.7 Fit and Proper Requirements

Fit and Proper requirements refer to the requirements published under Section 6A of FAIS.

4 POLICY PURPOSE

The purpose of this policy is to protect the organisation and its clients from the compliance risks associated with the debarment of a Representative or KI, which includes:

- Reputational damage. For instance, to prevent the continuation of financial services rendered by a Representative who is incompetent and dishonest, which in turn might cause the public and / or clients to view the organisation as incompetent and / or dishonest;
- Risk of litigation. For instance, the organisation could suffer loss in revenue where dissatisfied clients of a Representative institutes various claims against the FSP via the office of the Ombud;
- To create awareness amongst KIs and Representatives of the FSP regarding the debarment procedure, due to the fact that the debarment of a Representative is considered to be a very serious matter;
- To ensure that the KIs and Representatives of the FSP know and understand the debarment requirements and the relevant procedure that must be implemented when the decision to debar a Representative is made; and
- To promote compliance with this policy document.

This policy demonstrates the organisation's commitment to protecting the rights of this organisation's clients in the following manner:

- Through stating desired behaviour and directing compliance with the provisions of FAIS and the Fit and Proper requirements;
- By cultivating an organisational culture that recognises the importance of honesty, integrity and good standing;
- By developing and implementing internal controls for the purpose of managing the compliance risk associated with the debarment of a Representative;
- By creating business practices that will provide reasonable assurance that the rights of this organisation's clients are protected and balanced with the legitimate needs of the organisation;
- By raising awareness through training and providing guidance to Representatives and KIs so that they can act honestly and with integrity; and

- By assigning specific duties and responsibilities to control owners.

5 POLICY APPLICATION

This policy and its guiding principles apply to:

- the organisation's governing body;
- all natural and juristic Representatives;
- all Key Individuals.

This policy's guiding principles find application in all situations relating to debarment, and must be read in conjunction with FAIS, as well as Board Notice 194 of 2017, which sets out the determination of Fit and Proper Requirements for Financial Services.

The legal duty of an authorised FSP to comply with the debarment SPB is applicable in any situation where:

- a Representative of the FSP -
- or a Key Individual of such Representative -
 - does not meet, or no longer complies with the **requirements as referred to in Section 13(2)(a)**; or –
 - has contravened or failed to comply with any **provision of FAIS** in a **material** manner.

*Important: The decision by an FSP to debar a Representative can only be for reasons relating to the rendering of financial services. Therefore, any decision taken by an FSP to debar a Representative for reasons other than the rendering of financial services is invalid.

6 CREATING AWARENESS

In light of the fact that the debarment of a Representative is considered to be a serious matter, the organisation must ensure that all representatives are aware and understand the debarment policy and procedure, as well as the implications thereof.

In order to render financial services or act as a Representative or KI of a representative of any FSP, the debarred person must comply with the requirements referred to in section 13(1)(b)(ii) of FAIS for the reappointment of a debarred person as a Representative or KI of a representative.

It is for the abovementioned reason that all Representatives must read and make sure that they understand the debarment policy and the relevant SPB document which gives effect to this policy.

7 THE DEBARMENT OF A REPRESENTATIVE

7.1 FAIS REQUIREMENTS

- In terms of Section 14(1) of the Financial Advisory and Intermediary Services Act 37 of 2002 ("FAIS") an authorised Financial Service Provider ("FSP") must ensure that any Representative of the Provider or any Key Individual of such Representative who:
 - does not meet, or no longer complies with the requirements as referred to in Section 13(2)(a); or
 - has contravened or failed to comply with any provision of FAIS in a material manner,

must be debarred.

- Such a debarred person will:
 - be prohibited by such provider from rendering any financial services; and
 - immediately have its authority withdrawn to act as a representative or key individual on behalf on the provider; and

- where applicable, have his/her name removed from the register referred to in section 13(3) of FAIS.

The provider must immediately take steps to ensure that the debarment does not prejudice the interests of clients of the Representative, and that any unconcluded business of the Representative is properly concluded.

7.2 FIT AND PROPER REQUIREMENTS

Section 13(2)(a) of FAIS makes reference to the Fit and Proper requirements, which can be specified as follows:

- Personal character qualities of Honesty and Integrity;
- Good Standing;
- Continuous Professional Development;
- Class of Business Training;
- Product Specific Training;
- Financial Product Experience;
- Regulatory Examination(s); and
- Qualification requirements.

8 GROUNDS FOR DEBARMENT

- The debarment of a Representative is limited to the Fit and Proper requirements as outlined in Section 13(2)(a) of FAIS, as well as any material contravention or failure by the Representative to adhere to any provisions of FAIS, which include any subordinate legislation thereto.
- FSP's should note that the grounds for debarment must specifically relate to the aspects mentioned above. Thus, any other aspect not related to financial services shall not be considered as grounds for debarment.
- For example: If there is no evidence or indication that the Representative no longer complies with the Fit and Proper requirements, and FSP may not debar a Representative merely because such a person resigned or has terminated his / her mandate or employment with the FSP.
- The reason for debarment, whether it relates to the non-meeting of the Fit and Proper requirements, or to non-compliance with a material provision of FAIS, must have occurred and become known to the FSP while the person was a Representative.
- The FSP must also commence with debarment proceedings no later than six (6) months from the last date on which the person ceased acting as a Representative. It however is not a requirement that the proceedings be completed within the 6 (six) month period.

9 OBLIGATIONS ON FSP

- In terms of Section 14(3) of FAIS, the FSP must ensure, before effecting a debarment as specified above, that the debarment process is lawful, reasonable and procedurally fair.
- It is required that adequate notice be given to a representative when debarment is intended by a Provide, and that such a representative should be provided with a reasonable opportunity to make submissions to the FSP as to why debarment should not be affected.
- Where a Debarment Official has made a finding after a debarment hearing, the FSP will be required to take certain steps, which includes:
 - Withdrawing authority which may still exist, where a decision to debar was made;
 - Where applicable, removal of the debarred person's name from the register of representative;
 - Taking steps to ensure client interests is protected;
 - Notification of the representative of the decision made at the debarment hearing, including the reasons upon which the decision is based; and

- Notification to the Authorities of an effected debarment, along with the grounds and reasons for such a debarment.
- Non-compliance with the obligations placed on the FSB in terms of legislation, which is set out in this policy, together with the supporting debarment SPB, may result in regulatory action against the FSP.

10 THE ROLE OF THE AUTHORITIES WHEN RECEIVING A NOTICE OF DEBARMENT

- Upon receipt of a Notification of Debarment of a representative, the Authority will record such a debarment in the register of debarred representatives and publish same as provided for in section 14(7) of FAIS. It can be noted that there is no obligation on an FSP to contact the debarred person to ascertain as to why the debarment should not be recorded and publicised.
- This recording and publication by the Authority will not amount to a review, approval or confirmation of a decision to debar, but will merely enable the Authority to -
 - consider a possible referral for criminal investigation or enforcement action, as provided for in terms of Section 167 of FSRA;
 - have adequate information available when a possible application is brought for a re-appointment of a representative, and to ensure compliance with all reappointment requirements;
 - to confirm that due process was followed by the FSP during the debarment process and that the grounds for debarment comply with Section 14(1) of FAIS.

11 CONCLUSION

It is common cause that the debarment of a Representative has serious implications for both the Representative and the FSP concerned. Utilising and implementing a debarment policy and process will ensure that a fair and diligent procedure is followed, and will also eliminate any other concerns that the FSP may have regarding the debarment process.