



Chapter 4

LEGISLATION ACTS

Overview

Financial Services Intermediaries now operate in a more regulated industry after anti-money laundering legislation, and an act governing the advisory industry's professionalism were passed by parliament in 2002/2003. The Financial Advisory and Intermediary Services Act (FAIS) was passed by Parliament in 2002. For financial advisers and intermediaries, this promises the fostering of good business ethics. The client's relationship with a broker will also be affected by the Financial Intelligence Centre Act (FICA), a legislation established to combat money laundering. It requires all advisers and bank employees to " know their clients " and keep records of all their business dealings.

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4.1 Financial Advisory and Intermediary Services Act (FAIS)

Learning outcomes

By the end of this section, the learner must be able to: -

- Explain the purpose of the Financial Advisory and Intermediary Services (FAIS) legislation.
- Explain what is regarded as advice and what is not advice under this act.
- Describe a financial services provider
- Explain the term *fit and proper*

Assessment criteria

The learner will be assessed on the following criteria: -

- The need of the FAIS legislation is explained with reference to the history of the legislation.
- Practical examples are used to underpin what FAIS regards as "advice" and "not advice".
- The concept of a financial services provider is explained in own words in at least two different ways.



Overview

FAIS is an acronym for Financial Advisory and Intermediary Services Act. This is new legislation that impacts on the financial services industry and aims to regulate the giving of advice and rendering of intermediary services to clients, as well as certain other issues. FAIS can be regarded as putting on record the principles on which good business with consumers, should be based. The advantages that can be offered to consumers by the new Act are often emphasised, but financial intermediaries will benefit from it as well - particularly as the giving of financial advice will now enjoy greater prestige.

Purpose

The Act has as its main objective, that of investor protection. Clearly the intention is not only to benefit the interests of clients, but also that of the financial services industry as a whole. A provider has the general duty to, at all times, render financial service honestly, fairly, with due skill, care and diligence and in the interest of clients.

Financial Service Provider

The Act seeks to regulate the provision of financial service, which could be provided in the form of advice and/or intermediary service. Both advice and intermediary service needs to be in relation to a financial product, for it to be regulated under the Act. If someone, as a regular feature of the business, performs the function of providing financial service to clients, that institution or person will need to be licensed under the Act. A clear understanding of the definition of both actions that constitute financial service, are critical to ensure full compliance to the Act.

Financial Services Provider

Prospective financial services providers, having staff that need to operate only within the definition of intermediary service and not provide advice, will need to have clear business rules and guidelines in place to ensure that their staff do not transgress into the arena of providing advice. Similarly, also those individuals or institutions keen to position themselves outside the scope of the Act and its regulations, will need to ensure that their staff are fully aware and understand the boundaries of the definition of financial service.



Advice In this Act *advice* means any recommendation, guidance or proposal of a financial nature furnished, by any means or medium, to any client or group of clients-

- In respect of the purchase of any financial product
- In respect of the investment in any financial product
- On the variation of any term or condition applying to a financial product, on the replacement of any such product, or on the termination of any purchase of or investment in any such product.

Who may give advice The act is very specific about who may give advice and who may not. This is aimed at the protection of the client. A client will now be able to insist to view the licence of the intermediary before doing business with him. All licensed Sanlam advisors have proof of their status and can present this to the client. The licence indicates which products the advisor may sell.

Advice may only be given by:

- A licensed FSP.
- Duly authorised representatives of an FSP
- Other employees of an FSP who, as part of their conditions of employment, render financial services to clients - e.g. Sanlam's legal consultants.

What is not advice?

- Describing a financial product to a client.
- Answering questions on administrative procedures of the business.
- Presenting information on a specific financial product without any recommendations.
- Promotions or marketing material should contain a health warning, which will disclose that the information is based on current economic trends that can change from time to time. It should also disclose that unit trusts are generally medium to long term investments.



Fit and Proper The term *fit and proper* is a collective term for all the personal characteristics, academic qualifications, experience and the operational ability that all FSP's, representatives and key individuals must possess to be able to render financial services. The requirements for *fit and proper* include:

- **Honesty and integrity:** A FSP and any representative needs to be a person of honesty and integrity. Indications to the contrary, include civil or criminal judgements, adverse findings, penalties or disqualification by recognised industry or regulatory bodies. In most cases the Registrar will consider the last 5 years.
- **Competence** (experience and qualifications): FAIS has set minimum experience and qualifications for the *fit and proper* competence requirements.
- **Operational ability:** FSP's and representatives must, have a fixed business address, access to communication facilities, record retention facilities and appropriate money laundering controls.

Financial Services Provider A FSP means any person, other than a representative, who furnishes advice and/or renders an intermediary service. Examples are institutions such as Sanlam and individuals such as independent brokers

Client A specific person or group of persons, excluding the general public, who is or may become the subject to whom a financial service is rendered intentionally.

Compliance officer Is a natural person employed by a FSP, with the responsibility of:

- Development and maintenance of procedures by the FSP to ensure compliance with FAIS.





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- Monitoring of continued compliance
 - Submitting compliance reports as prescribed by the Registrar.
 - Be responsible for liaison with the Registrar.

A Financial Service Provider with only one individual involved, need not appoint a compliance officer, but will have to personally accept the responsibilities normally performed by a compliance officer.



As a financial services provider Sanlam must also comply with the FAIS legislation.

(an extract from the Sanlam website)

FAIS  

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Sanlam's FAIS status

Sanlam is a **licensed** financial service provider (FSP) in terms of FAIS.

In fact, Sanlam was one of the first major players in the industry to be awarded the license under the new FAIS legislation. The Financial Services Board issues the licences.

New FAIS processes and structures

Sanlam is well on its way to implement the new prescribed processes and structures during the next few months. This will allow us to become fully acquainted with the new procedures introduced by FAIS. It is also the ideal opportunity to identify and correct potential problem areas.

Training our people

Being licensed implies, *inter alia*, that Sanlam will be responsible for the actions of its representatives, who in turn are monitored by key individuals. The training of key individuals, representatives and other staff members therefore forms a very important part of complying with the FAIS legislation. Since June 2004 various training divisions within Sanlam have been presenting a series of training courses for all staff members.



ACTIVITY SHEET 12



1. Explain the purpose of FAIS legislation.

2. Explain in your own words the concept of a financial services provider.

3. What impact will the FAIS legislation have on Sanlam's clients? (use the Sanlam website as research for your answer)



4. Choose from the sentences below to fit in the "not advice" column.

"These are the options"

"You can choose between these products"

"Sanlam have these products available"

"These are the attributes"

"This is product A and these are its benefits"

Advice	Not advice
"If I were you"	"This is product A and these are its benefits"
"What I would have done"	"Sanlam have these products available"
"This will be the best option for you"	"These are the options"
"Choose this product"	"You can choose between these products"
"Consider this product"	"These are the attributes"



4.2 Financial Intelligence Centre Act

Learning outcomes

By the end of this section, the learner must be able to: -

- Explain the purpose of the Financial Intelligence Centre Act.
- Explain the requirements of the Act in terms of knowing the client.
- Explain the concept of money laundering.
- Explain the concept of an accountable institution.

Assessment criteria

The learner will be assessed on the following criteria: -

- The purpose of the Act is explained and an indication is given as to why the Act is necessary.
- The requirements of the Act in terms of knowing the client are explained with reference to specific FICA documentation with regards to individuals and institutions.
- The concept of money-laundering is explained with examples.
- The concept of an accountable institution is explained, with examples relevant to a specific organisation.



4.2 Financial Intelligence Centre Act

Overview The Financial Intelligence Centre Act was signed in December 2002. The reporting of unusual or suspicious transactions to the Centre is in operation from 03 February 2003. The identification and verification of clients (excluding the transactions of clients that are exempted) came into operation on 30 June 2003.

FICA: Objective The objective of FICA is to complement POCA (Prevention of Organised Crime Act), by introducing mechanisms and measures aimed at preventing and combating money-laundering activities. It sets up an anti-money laundering regulatory regime, which encourages compliance and self-regulation by institutions, which may be exploited for money laundering purposes.

Financial Intelligence Centre (FIC) The Act establishes a Financial Intelligence Centre. The centre will not be an investigative body, but will co-ordinate policy and efforts to counter money-laundering activities and it will act as a centralized repository of relevant information for the investigating bodies. The Centre's functions are to:

- a. Collect, process, analyse and interpret information obtained by it.
- b. Inform, advise and co-operate with investigating authorities.
- c. Supervise compliance with the Act, and give guidance to institutions to combat money-laundering activities.



**Money
laundering**

Money laundering, which includes not only money, but all proceeds of crime, was declared a criminal offence in South Africa in terms of the Prevention of Organised Crime Act 121 of 1998 ("POCA"). Money-laundering differs from fraud. Fraudulent activities aim at putting Charter Life at a disadvantage financially, whereas money-laundering is a process that obscures the illicit nature or existence of the proceeds of crime. The aim of FICA, therefore, is to make or follow trails of organised crime proceeds.

Example of money laundering:

Person commits a crime and invests the ill-gotten gains in a lump sum investment with SCI. After a period of time, a request is made for the repurchase of the investment. "Clean funds" are then obtained from the Manager. These proceeds can then be used to purchase assets etc. In this way, the proceeds of crime would have been laundered or washed through SCI, thereby effectively hiding the source of the funds.

**Money
Laundering
Advisory
Council
(MLAC)**

FICA also established the Money Laundering Advisory Council, which is the advisory body for the Minister of Finance. In addition it will act as a forum in which the Centre, accountable institutions and supervisory bodies can consult on anti-money laundering policies and measures. The Council is a practical expression of the notion of a partnership between Government and the private sector.

**Accountable
Institutions**

FICA contains a list of Accountable Institutions, which in the ordinary course of business may be exploited by organized crime eg.

- Insurance companies
- Brokerages
- Banks



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- Obligations** There are a number of obligations placed on Accountable Institutions, some of which are:
- Duty to Identify and Verify new and existing Clients
 - Duty to keep records
 - Duty to Report

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- Reporting Obligations, include:** FICA imposes various types of reporting obligations on accountable institutions, which include:
- Cash threshold reporting (i.e. R50 000<)
 - Suspicious and unusual transaction reporting
 - Threshold reporting for conveyance of cash to and from the republic
 - Threshold reporting for electronic transfers to and from the republic

Suspicious transactions

What is a suspicious transaction?

Where a person who carries on the business, manages the business or is employed by the business, suspects that the business is about to receive unlawful proceeds or the business is going to be used for money-laundering purposes, he or she must then within 15 days after he or she has acquired such a suspicion, report the matter to the Centre.

There are two possible transactions, namely:

- Transactions already completed
- Transactions, which have not yet been concluded



**Examples of
Suspicious
Clients**

- A client who provides vague or contradictory information or references.
- A client who has no record of past or present employment or involvement in a business, but engages frequently in large transactions.
- A client whose business or sources of funds are ill-defined, or who is reluctant to provide details about his business or source of funds.
- A client who is reluctant to disclose other bank or business relationships.
- A client who operates different accounts at different branches of the same financial institution.
- Clients who enter into transactions that do not appear to have a legitimate business purpose or that are out of the ordinary, given the client's profile.
- A client who makes large or frequent deposits of cash or payments in cash, which do not seem appropriate, given the client's profile.
- A corporate client who makes deposits or withdrawals in cash.
- A client who makes several deposits on the same day at different branches of the same financial institution.
- A client who is a known economic criminal or gangster.



ACTIVITY SHEET 13



1. Explain both the purpose and necessity of FICA.

2. What does money-laundering mean? Supply examples of money-laundering.

3. How can a company comply with the FICA legislation?



ACTIVITY SHEET 13



(Use the Old Mutual and/or Sanlam website to answer the questions below.)

4. What types of forms do Sanlam Collective Investments use for her clients to comply with the FICA legislation for?

5. What documentation is required from trusts, companies and closed corporations?



FICA and FAIS

Solve the Word Search puzzle below



E U D C F H T X L I A A V A W
R A N R E C M A B L D P U D N
H E A L E N I H A X V E U V U
I U M T A C T U C T I C V I H
D N O U N W N R Y E S I A C N
A R T A S D F M E N O V C E O
P C N E E N U U M R R R C D I
Q I O R R D O G L W Y E O J T
F K I P G M W C O L N S U D C
J N M I N T E L L I G E N C E
G Y E N O M I D R T O A T Y T
S E C I V R E S I C Y Z A F O
T H R E S H O L D A Q I B S R
S U O I C I P S U S R A L N P
R C L I E N T S T V S Y E V M



The words are:

ACCOUNTABLE

ADVISORY

CLIENTS

FRAUD

LAUNDERING

PROTECT

SERVICES

UNLAWFULL

ACT

AND

CONSUMER

INTELLIGENCE

MONEY

PROTECTION

SUSPICIOUS

ADVICE

CENTRE

FINANCIAL

INTERMEDIARY

POCA

SERVICE

THRESHOLD



CRITICAL CROSS FIELD AND DEVELOPMENTAL OUTCOMES

1. **Identify and solve problems** - in which the learner must show which type of legislation is applicable to the corresponding transaction type.
2. **Demonstrate an understanding of the world as a set of related systems by recognising that problem-solving contexts do not exist in isolation** - in which the learner must know his or her responsibilities and actions especially with the "giving" or "not giving" of advice with respect to the FAIS legislation; as well as the impact of making the wrong decisions could have on the business.