



Fit and Proper Requirements in Plain  
Language for:

**KEY  
INDIVIDUALS**

A hand is shown in the lower right of the central image, holding a white puzzle piece. The background is a purple-tinted image of many white puzzle pieces scattered across a cloudy sky.

August  
2009

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## 1. INTRODUCTION

The primary focus of this plain language guide is to provide the financial services industry with a user-friendly guide to the new Fit & Proper Requirements which was published in October 2008.

There are three plain language guides available:

1. Fit and Proper Requirements in Plain Language for: Financial Services Providers / Sole Proprietors,
2. Fit and Proper Requirements in Plain Language for: Key Individuals, and
3. Fit and Proper Requirements in Plain Language for: Representatives.

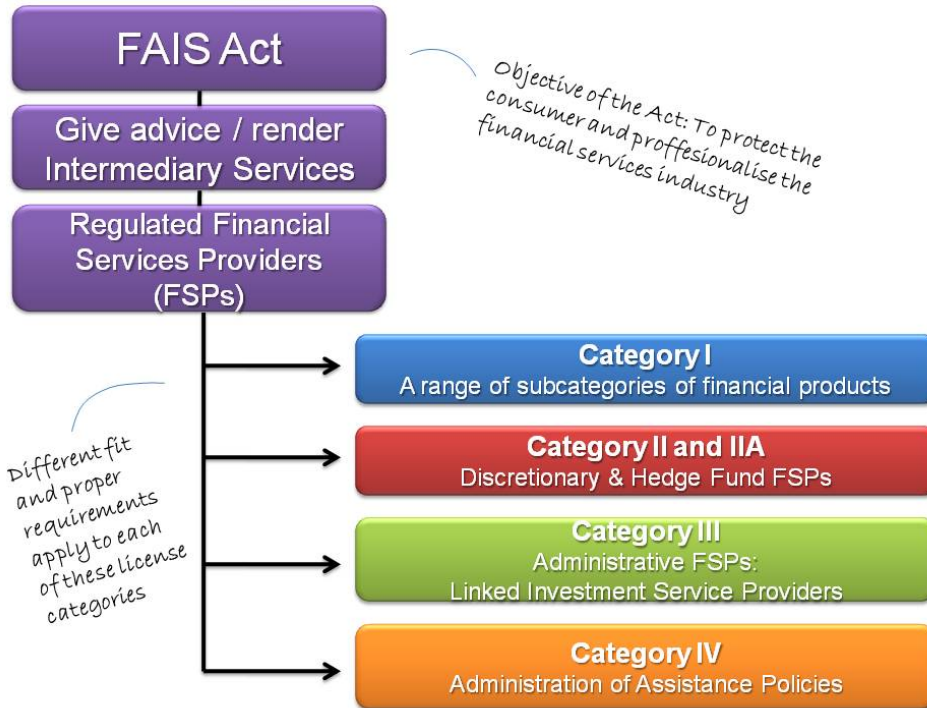
This guide will therefore summarise what it is that **Key Individuals** should know, in order to comply with the Fit and Proper Requirements, and will address questions such as:

- *How do the Fit and Proper Requirements affect me?*
- *Where do I start to check whether I am complying?*
- *What do I need to do to become compliant?*
- *By when should I be compliant?*

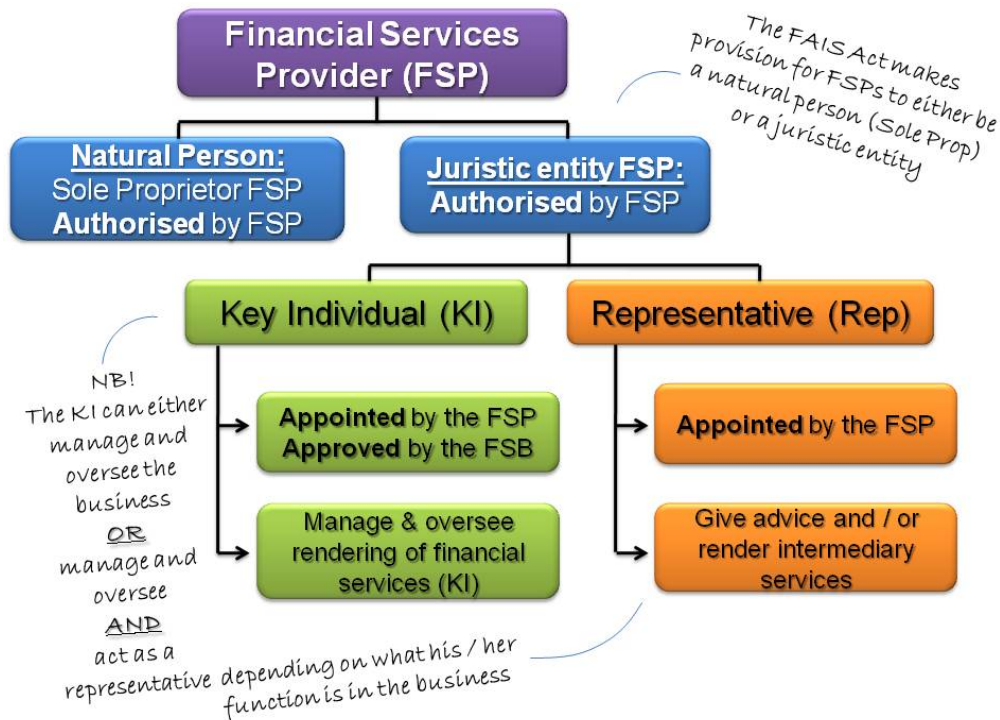
In order to fully benefit from this guide it is strongly recommended that you read the whole guide to get the complete picture. By only reading a specific section you may miss important information, or some of the information may not make 100% sense!

In addition it may also assist you to refer to the other two guides. By reading the guide for Financial Services Providers / Sole Proprietors, you will learn more about the responsibilities of the provider in terms of appointing Representatives. And by reading the guide for Representatives you will better understand the requirements for Representatives especially if you are one of those Key Individuals that will be fulfilling both the function of the Key Individual and the Representative!

But before we discuss this in detail, let's first look at where it all starts . . .



So where does the **Key Individual** fit in?



As you can see from the diagram above, the Key Individual can wear two hats – that of a Key Individual OR that of a Representative. Why was it necessary to make this differentiation?

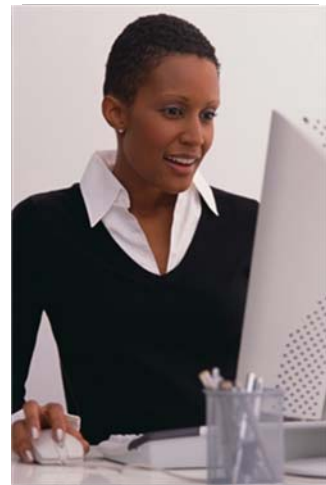
Let's look at the following examples:



*John is an executive manager at ABC Financial Services. He manages and oversees the day to day running of the business on a more strategic level. He does not directly oversee the Representatives in the business, and he also does not provide any financial advice to their clients. Therefore John's function is purely to manage and oversee the rendering of financial services from a strategic perspective.*

*John only fulfils the role of a KI, and would therefore only comply with the KI fit and proper requirements.*

*Thabile is an area sales manager in a bank. She is responsible for the management and oversight of the financial services being rendered for her specific area. Thabile has 6 representatives in her area that report to her directly. She also has her own portfolio of clients.*



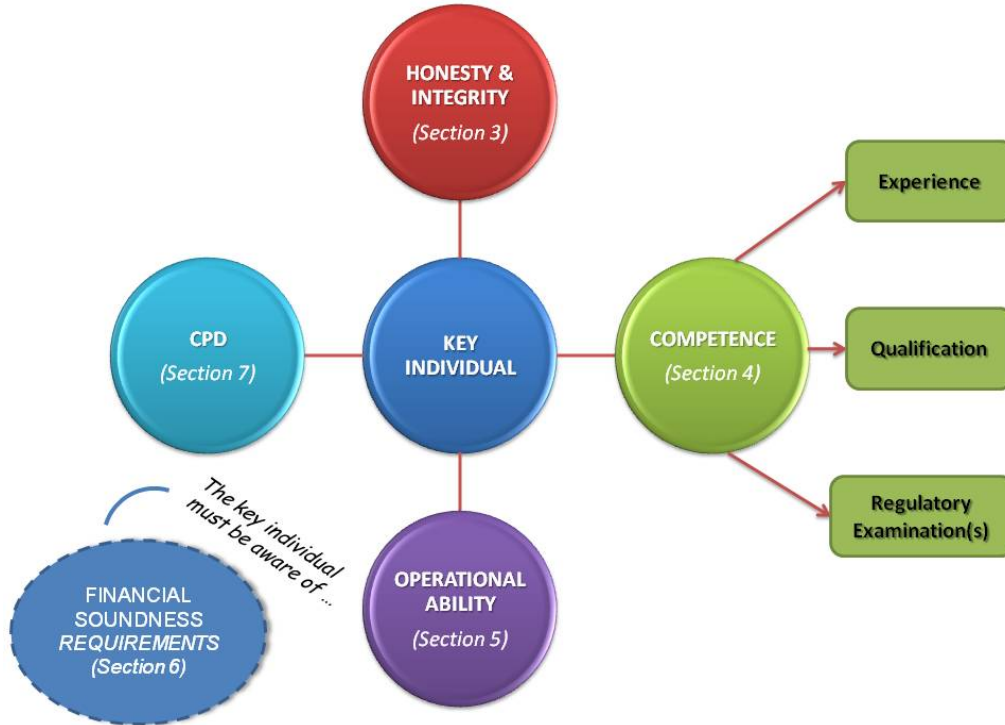
*Thabile fulfils the function of a key individual and a representative. Therefore, Thabile would need to meet the fit and proper requirements of the key individual as well as the representative.*

From these examples it is clear that a Key Individual can fulfil more than one regulatory role. And where this is the case, the Key Individual would have to meet the fit and proper requirements for both roles.

Just a reminder, that to understand the fit and proper requirements for the Representative you would have to refer to the guide for Representatives as only the Key Individual requirements will be covered in this particular guide.

## 2. OVERVIEW

The requirements that a Key Individual must meet can be summarised as follows:



The following determinations make provision for the requirements illustrated above:

Board Notice	Description	Contains the relevant info about:
Determination of Fit and Proper Requirements for Financial Services Providers	This Board Notice (106 of 2008) deals with the new Determination of Fit & Proper requirements for FSPs (Sole Proprietors), Key Individuals and Representatives. In addition this Board Notice includes the relevant “Transitional arrangements” that apply to all parties encompassed by the FAIS Act who were authorised between the 30 <sup>th</sup> of September 2004 and 31 December 2009.	<ul style="list-style-type: none"> <li>Honesty and integrity</li> <li>Competence</li> <li>Operational Ability</li> <li>Financial Soundness</li> </ul>
Determination of Qualifying Criteria and Qualifications	This Board Notice (105 of 2008) deals with the setting of Qualifying Criteria which are used to evaluate qualifications, and set the regulatory	<ul style="list-style-type: none"> <li>Competence (Specifically qualifications and</li> </ul>

Board Notice	Description	Contains the relevant info about:
for Financial Services Providers	examinations. This Board notice also contains the list of “FSB recognised” qualifications. It is an important Board Notice as it contains most of the criteria relating to competency.	regulatory examinations)
Exemption in respect of services under supervision in terms of requirements and conditions for Financial Services Providers	This Board Notice (104 of 2008) covers the rules relating to the appointment of Representatives that do not meet certain competency requirements and as a result must render “Services under Supervision”.  The concept of services under supervision has undergone significant change which has greatly expanded the supervision requirement. These changes are important and ALL involved in the supervision process must take the time to study this important document.	<ul style="list-style-type: none"> <li>Competence Specifically in terms of how experience can be gained under supervision.</li> </ul>
Determination of Continuous Professional Development Requirements for Financial Services Providers	The concept of Continuous Professional Development (CPD) is for the first time introduced into the FAIS environment. In a relatively straightforward manner the Board Notice (103 of 2008) outlines how CPD will roll out in the sector.	<ul style="list-style-type: none"> <li>Continuous Professional Development</li> </ul>

These determinations are all very closely interlinked, and this is why it is important to be aware of all of them.

Each of the requirements stipulated in these determinations will be discussed in detail on the following pages in order to provide you with an understanding how these requirements affect the role of the Key Individual.

### 3. HONESTY & INTEGRITY

The first requirement is honesty and integrity. Put simply, a Key Individual must be a person who is truthful, sincere and acts honourably. These personal characteristics of Key Individuals are very important when one considers the key management and oversight role of the Key Individual. A Key Individual must at ALL times be candid and accurate and disclose all relevant facts or information which may be required when applying to the Registrar for approval as Key Individual.

The approval of a Key Individual is at the discretion of the Registrar who may refer to any information in possession of the Registrar or that was brought to the attention of the Registrar. The Registrar will then consider the approval of a Key Individual by taking the following factors relating to the Key Individual into consideration:

- Whether the person was **found guilty within a period of 5 years preceding the application of criminal proceedings** or liability in civil proceedings by a court of law of fraud, dishonesty, unprofessional or dishonourable activity or breach of fiduciary duty,
- **Has been found guilty by a statutory or professional or voluntary body** of negligence, incompetence, mismanagement of sufficient importance,
- Has not have been **denied membership** of a statutory professional or voluntary body,
- Has **not been found guilty by any regulatory or supervisory body**, inside or outside the country,
- Has not had **authorisation to carry on business** refused, suspended or withdrawn by any such body,
- **Must not have had any license granted to the FSP by any regulatory or supervisory body withdrawn.**
- **Must not have been disqualified from taking part in the management of any company**, regardless of whether the disqualification has since been lifted or not.



Honesty and integrity do not refer to a once-off declaration or test. It is an ongoing process, where the Key Individual must declare, on a regular basis, to the FSP, whether anything has happened to adversely affect this status. The FSP must also conduct checks in this regard on an ongoing basis. If anything occurred to adversely affect the honesty and integrity of a Key Individual, the FSP must inform the Registrar thereof. The FSP must also indicate to the Registrar what action they had taken in this regard.

Let's look at an example that illustrates the importance of honesty and integrity:



*A woman who applied for a licence as a financial services provider (FSP) using a false matric certificate, has been convicted in the Pretoria Specialised Commercial Crime Court on a charge of fraud.*

*In January 2008, she fraudulently misrepresented that she had a matric certificate when she applied for a FSP licence in terms of the Financial Advisory and Intermediary Services Act (FAIS)..*

*In terms of FAIS, FSP applicants must provide proof of their academic qualifications. The woman applied for a licence to market short-term insurance, but had only completed standard seven (grade 9).*

*The court found that she never matriculated and that the Matric certificate she had attached to her application belonged to another person. She pleaded guilty in the Pretoria High Court to charges of fraud. She was **sentenced** to two years correctional supervision for forging a **Matric** certificate.*

*A consequence of her conviction of fraud is that if she, within 5 years from date of her conviction, applies for a new licence under FAIS, her conviction would be regarded as prima facie evidence that she does not comply with the requirement of honesty and integrity. She will have to adduce compelling evidence to counter the prima facie evidence against her.*

*It further does not mean that if she lodges an application, after the 5 year period has elapsed, that her application will be successful. She will have to adduce evidence and establish on a balance of probabilities that-*

- a) she has, inter alia, undergone a genuine, complete and permanent reform;*
- b) the defect of character that led to her being convicted no longer exists; and*
- c) if authorised, she will in future conduct herself honourably and will be someone who can be trusted to carry out the duties of a FSP in a satisfactory manner as far as clients and members of the public are concerned.*

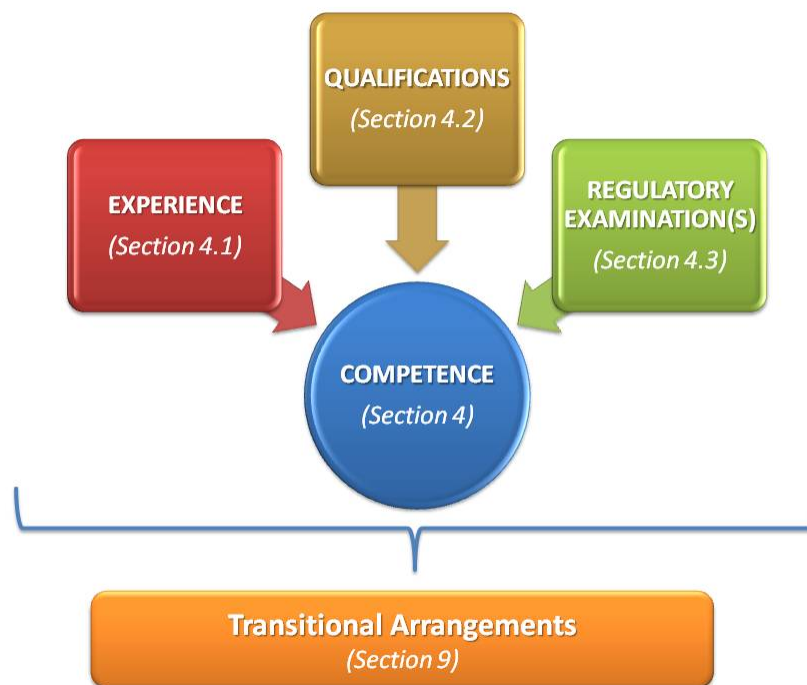
*The Registrar will consider all the information at his disposal, and make a decision based on the information whether to grant or decline an application for a licence or approve or reject an application for approval as a Key Individual. .*

## 4. Competence

A Key Individual must satisfy specific competence requirements before appointment. The fit and proper competence requirements described in the Determination of Fit and Proper Requirements are:

1. Certain minimum **EXPERIENCE** requirements;
2. Relevant **QUALIFICATION(S)** requirements;
3. The completion of appropriate **REGULATORY EXAMINATIONS**.

The relevant **TRANSITIONAL ARRANGEMENTS** applicable to Key Individuals approved between 2004 and 2009 must also be taken into account.



### 4.1 Experience Requirements

#### ***What is acceptable experience?***

- The experience must be practical experience (in other words “hands-on” experience) that you have gained specifically in terms of the management and oversight of an FSP or a similar business entity.
- When submitting your evidence of the experience you have gained to the Registrar, the period of the relevant experience must be clearly specified – dates from and to must be provided.
- You may also submit a confirmation letter on an official letterhead of the previous employer and/or business.

The following applies to **ALL** Key Individuals responsible for the management and oversight of the financial services rendered by the Financial Services Provider:

- ❑ Their experience could have been gained inside or outside of South Africa,
- ❑ Their experience could have been gained in intermittent periods, not more than 5 years prior to the application, and includes experience gained prior to the implementation of the FAIS Act.
- ❑ Their experience may have been gained in the management and oversight of services similar to or corresponding to the services rendered by the FSP.

**In ALL instances an applicant seeking approval as a KEY INDIVIDUAL must provide evidence of management and oversight experience.**

#### *4.1.1 Specific experience requirements for the different Categories.*

##### **CATEGORY I and IV**

A **Key Individual** must, on the date of approval, have **at least one year's practical experience in management and oversight** activities. The one year experience can only be recognised if it was gained within the last 5 years. Look at the following example of how this principle is applied:



*Kelly spent 4 years from January 1998 to the end of December 2001 working as a Branch Manager of an insurance company in the financial sector in the United Kingdom. She chose to return to South Africa in 2002 where she got married and had two children. In November 2008 she applied for a position at a small brokerage that wanted to appoint her as a Key Individual. Her application was rejected by the Registrar because her management experience was gained more than 5 years prior to her application.*

## **CATEGORY II and IIA**

A **Key Individual** must, on the date of approval, have **at least one year's practical experience in the management and oversight** of services similar to or corresponding to the financial services rendered by the provider and must have actually provided the financial services in relation to the subcategories or part thereof on the date of approval.

*Jason has many years experience as a member of the management team of a bank. Most recently, namely during the past 10 years, he headed up the bank's investment division in a branch in Gauteng. He is being head hunted by a prominent Investment Company in Cape Town. Part of the job requirements are that he be appointed as a Key Individual in the company in a management and oversight role. The Registrar will accept his management experience as being similar to the management experience required by the Cape Town based Investment Company because he has management experience and has also gained experience in rendering discretionary investment management services.*



## **CATEGORY III**

A **Key Individual** must, on the date of approval, have **at least three year's practical experience gained in the rendering of financial services of an "administrative FSP"** and must have **at least one year's practical experience in the management and oversight** of services similar to or corresponding to the financial services rendered by the provider. This practical experience:

- Must have involved the active and ongoing gaining of knowledge, skills and expertise in terms of the Act;
- Must have been obtained through the active involvement in the rendering of relevant product specific financial services,
- Could be have been gained inside or outside South Africa;
- Could have been gained in intermittent periods, not more than 5 years prior to the application, and includes experience gained prior to the implementation of the FAIS Act;
- Could have been gained simultaneously in multiple subcategories, provided proof of such experience can be provided.

## 4.2 Qualifications

In the new Fit and Proper requirements, **QUALIFYING CRITERIA** provide principles and standards against which qualifications are evaluated and considered for recognition by the Registrar.

### ***What is qualifying criteria?***

Qualifying Criteria is the criteria that were developed in consultation with the financial services industry, and these criteria stipulates what the minimum knowledge and skills of an individual should be that deals with any specific financial product and fulfils a regulatory role (such as a Key Individual or a Representative). The qualifying criteria describe what a person must know (knowledge) and what a person must be able to do (skill) in order to complete a specific task (as it relates to giving advice and/or rendering intermediary services) successfully.

The following is an example of the qualifying criteria for a Key Individual:

<u>Task</u>	<u>Knowledge</u>	<u>Skill</u>
<b>Oversee and manage the compliance functions as required by the FAIS Act.</b>	Explain the requirements for approval of a compliance officer by the Registrar.	Check that the compliance officer is approved by the Registrar.
	Describe the role and function of a compliance officer.	Replace the intended compliance officer if he/she does not have the required approval of the Registrar. Confirm that the compliance officer has sufficient resources to provide a proper compliance service, where an outsourced compliance officer is used.

All the qualifying criteria can be found in the Determination of Qualifying Criteria and Qualifications, 2008.

**What do I need to know regarding qualifications?**



The 'new' Fit and Proper requirements have ushered in qualification requirements which are significantly different from the original "30/60 credit" requirements as were found in Column 4 of the Fit and Proper Determination of 2006.

Qualifications satisfying these qualifying criteria are published in a **list of recognised qualifications**. This is an important step in the evolution of Fit and Proper requirements for the industry – one which will ultimately

play an important role in promoting the professional development of the financial services industry.

Remember that these qualifying criteria are used to provide criteria against which BOTH appropriate qualifications are evaluated, as well as being used as the basis for setting the regulatory examinations.

## QUALIFICATIONS

*..is used to evaluate the content of qualifications to confirm that the qualification is appropriate and can therefore be recognised and included on the list of recognised qualifications.*

## QUALIFYING CRITERIA

We will discuss regulatory examinations in much more detail later in this guide.

*..is used to set the standards for the regulatory examinations. All questions included in the examinations will be based on the qualifying criteria.*

## REGULATORY EXAMINATIONS

**What is meant by “recognised qualifications”?**

Qualifications are formally recognised by the Registrar if the content of the qualification is deemed to be appropriate to the Category or subcategory (financial product) that the Key Individuals or Representatives will be approved or appointed for. This essentially means that if the content of a qualification matches the qualifying criteria, then the qualification is deemed to be appropriate.

**Why is the recognition given to qualifications not all the same?**

As you might imagine, it's not always possible to find qualifications that match all of the qualifying criteria 100%. So in order to make the recognition of qualifications practical and manageable, the following approach was implemented:

<u>“Generic - G”</u> <i>(Indicated with a “G” on the list of recognised qualifications)</i>	<u>“Specific - S”</u> <i>(Recognition up unto Dec 2009 – indicated with a “S” on the list of recognised qualifications)</i>	<u>“Specific - SP”</u> <i>(Recognition from 2010 onwards – indicated with a “SP” on the list of recognised qualifications)</i>
<p>The qualifications that match the qualifying criteria only partially in terms of their content are recognised as generic, and as a result a Representative that has obtained this type of qualification will have to also complete the product specific regulatory examinations.</p>	<p>The qualifications that match the qualifying criteria 80% in terms of their content is recognised as specific, and as a result all Representatives that have obtained these type of qualifications up unto the end of 2009 will be exempted from writing the product specific regulatory examinations.</p> <p>Please note however that this type of recognition only applies to the transitional period, and from January 2010 persons entering into the industry will not be able to use the “S” recognition as it will fall away.</p>	<p>The qualifications that match the qualifying criteria 100% in terms of their content will be recognised as “SP” and this would mean that Representatives that obtain these qualifications will be exempted from writing the product specific regulatory examination.</p> <p>This recognition does <i>not</i> only apply to the transitional period, and will apply from 2010 onwards.</p>

**Please note:** The list of recognised qualifications also include qualifications that are specifically recognised for Key Individuals.



Let's take a look....

In the example below we are looking at a qualification that is both recognised as generic and specific depending on the subcategory / product category. Remember that it is the content of the qualification that must match the qualifying criteria for the specific subcategory / product category, and based on this the type of recognition is awarded.

Qualification title	ID No.	Level	Credits	Category I																				
				1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	KI	
National Diploma: Financial Markets	23653	6	240	G	G	G	G	G	G	G	S	S	S	S	S	S	G	G	G	G	G	G	G	G

The National Diploma: Financial Markets is recognised as a **generic** qualification for Long-term Insurance subcategory C.

This means that the content of the qualification does not match the qualifying criteria for Long-term Insurance subcategory C with at least 80 %, but it is still recognised as appropriate for this subcategory provided that the individual that has obtained this qualification must also complete the product specific regulatory examination for Long-term Insurance subcategory C.

The National Diploma: Financial Markets is however, recognised as **specific** to Securities and Instruments: Shares.

This means that the content of the qualification matches the qualifying criteria for Securities and Instruments: Shares with at least 80 %, and is therefore recognised as appropriate for this subcategory and will exempt a person approved / appointed during the transitional period that has obtained this qualification from completing the specific regulatory examination for Securities and Instruments: Shares.

Also note that a separate column caters specifically for key individuals to provide key individuals with clarity as to which qualifications are deemed to be appropriate for their role.

**What do I do if my qualification is not on the list?**

You may apply to include your qualification on the list of recognised qualifications. The application form can be downloaded from the FSB website or you can complete the form online.

**How often will the list be updated?**

The list will be updated at least once every quarter.

**What qualification must I have if I am already an approved Key Individual?**

- If you have been approved as a Key Individual during the transitional period (2004 to 2009), then you need to refer to the "Transitional Requirements" section of this guide for step by step information regarding the qualification you require by 31 December 2009.

**What qualification must I have if I am planning on applying to become a Key Individual in 2010 or later?**

You would need to obtain a qualification from the list of recognised qualifications, and you must have completed this qualification at the time that you apply for approval as a Key Individual.

- **Key Individual (manage and oversee the business only):**

If you are appointed as a Key Individual that only manage and oversee the business from 2010, then you need to have obtained a qualification relevant to Key Individuals (last column indicated above) prior to being appointed and approved as a Key Individual.

- **Key Individual AND Representative:**

If you are appointed as both a Key Individual (manage and oversee the business) and a Representative (also gives advice and/or render intermediary services) then you must have obtained a relevant qualification recognised for the financial product(s) you are responsible for as a Representative. In this case it is not compulsory to have two qualifications i.e. one qualification as a Key Individual and one qualification as a Representative. However, your qualification must be relevant to the subcategories (financial products) you are responsible for.

### **IMPORTANT NOTICE**

Due to the number of questions and queries received from industry and training providers, the following must be clarified:

- The FSB (Registrar of Financial Services Providers) does **NOT** quality assure nor conduct programme approval of qualifications – that is the responsibility of SAQA usually through the SETAs and Higher Education Institutions.
- The FSB does **NOT** accredit training providers. This is the role of the SETAs and Higher Education Institutions.
- The FSB has determined qualifying criteria which are deemed appropriate for Fit and Proper purposes only.
- The FSB compares the qualification (which has already been approved and/or accredited by a SETA and SAQA) to the qualifying criteria to determine if the qualification is appropriate for **Fit and Proper purposes**.
- If the qualification is deemed to be appropriate then it is recognised by the FSB and placed on the list of recognised qualifications which was published in the Determination of Qualifying Criteria and



Qualifications, 2008.

- The list of recognised qualifications is updated on a regular basis – updates being published by the FSB.
- If a qualification is not deemed to be appropriate and therefore is **NOT** recognised by the FSB that does **not imply the qualification is of poor quality**, it simply means that the qualification content does not match the qualifying criteria set out by the FSB.
- The roles and responsibilities of the two Regulators (i.e. SAQA and the FSB) do **NOT** overlap – put simply SAQA accredits and registers qualifications and learner results according to SAQA approved standards. The FSB does something quite different.
- **The FSB verifies whether a SAQA accredited qualification is appropriate for Fit & Proper purposes only** by comparing the qualification with its predetermined qualifying criteria. If the qualification is deemed to satisfy the qualifying criteria **then the qualification is placed on the list of FSB recognised qualifications.**

### 4.3 Regulatory Examinations

The 'new' Fit and Proper requirements published in 2008 have introduced the industry to a new concept, namely Regulatory Examinations. These Regulatory Examinations will have an important impact on the financial services industry.

**The concept is important and ALL Key Individuals must familiarise themselves with their obligations in terms of these Regulatory Examinations.**

There are two levels of regulatory examinations:

#### **Regulatory examination Level 1:**

This regulatory examination deals with the regulatory framework and is compulsory to all individuals in the financial services sector. The content of this examination focus on the regulatory framework, i.e. FAIS, FICA, Code of Conduct, etc.

There will be different variations of this examination depending on whether you are working in a Category I, II, IIA, III or IV environment, and whether you are a Key Individual or a Representative.

#### **Regulatory examination Level 2:**

The Level 2 regulatory examination only applies to Representatives, so if you fulfil the role of a Representative as well, then these examinations will also apply to you. The level 2 regulatory examinations are the "product specific" examinations and therefore cover the knowledge and skill

required for a Representative giving advice and/or rendering intermediary services on a specific financial product.

**How do the regulatory examinations affect the Key Individual?**

# REGULATORY EXAMINATIONS



REGULATORY ROLE: **KEY INDIVIDUAL ONLY**

## LEVEL 1: Regulatory Requirements



The level 1 exam focuses on the regulatory requirement such as the Code of Conduct, disclosures, etc.

The level 1 examination for key individuals will also focus on the role and responsibilities of the key individual.

*Only the Level 1 Regulatory examination relevant to the key individual must be completed if you fulfill the role of only a key individual.*



Qualifying Criteria

# REGULATORY EXAMINATIONS



REGULATORY ROLE: **KEY INDIVIDUAL & REPRESENTATIVE**

## LEVEL 1: Regulatory Requirements



The level 1 exam focuses on the regulatory requirement such as the Code of Conduct, disclosures, etc.  
The level 1 examination for **key individuals** will also focus on the role and responsibilities of the key individual.  
The level 1 examination for **representatives** will focus on the role and responsibilities of the representative.

## LEVEL 2: Product Specific



The level 2 exam focuses on the product specific knowledge and skills a **representative** needs in terms of a specific financial product in order to give advice / render an intermediary service.

*The regulatory examinations for both the key individual and the representative must be completed where you fulfill both roles.*



Qualifying Criteria



All Key Individuals will be required to complete the regulatory examination level 1. This regulatory examination focuses on your role and responsibilities as a Key Individual, and what you need to know about the FAIS Act in order to ensure compliance within your organisation.

In order to see what will be covered in this examination, you can refer to the Determination of Qualifying Criteria and Qualifications Annexure 1. You will find the qualifying criteria for the following regulatory examinations:

- First level regulatory examination for applicants and / or Key Individuals in Category I, II, IIA, III and IV;
- First level regulatory examination for applicants and / or Key Individuals in Category II and IIA;
- First level regulatory examination for applicants and / or Key Individuals in Category III.

The reason why there are more than one set of qualifying criteria for Key Individuals is because there are criteria applicable to all Key Individuals in all the various Categories, and then there are additional criteria that applies only to Key Individuals in a specific Category. The qualifying criteria will be combined into one examination depending on which Category applies to you as a Key Individual.

***How do the regulatory examinations affect Key Individuals that are also Representatives?***

Where Key Individuals are also Representatives, they will be required to complete the regulatory examination level 1 examination for Key Individuals and for Representatives because the qualifying criteria for the two examinations differ. To learn more about the regulatory examination level 1 for Representatives, please refer to the Plain Language Guide for Representatives.

Key Individuals that are also Representatives will have to also complete the regularity examination level 2 examinations for the specific products that they are appointed for as Representatives. For example:



*James is a Key Individual for a Category II Financial Services Provider, and he only manages and oversees the activities of the business. He does not provide any kind of advice or render any intermediary service to their clients.*

*James will therefore be required to only complete the regulatory examination level 1 for Key Individuals that include the qualifying criteria for all Key Individuals in all the various Categories, in combination with the qualifying criteria that applies only the Key Individuals in Category II and IIA.*

*Thandi is a Key Individual for a Category I Financial Services Provider, and she also gives advice on the following subcategories:*

- *Short-term Insurance Personal Lines*
- *Short-term Insurance Commercial Lines*
- *Pension Fund Benefits*
- *Thandi will be required to complete the regulatory examination level 1 for Key Individuals that include the qualifying criteria for all Key Individuals in all the various Categories.*
- *Thandi will also have to complete the regulatory examination level 1 for Representatives.*
- *In addition, Thandi will have to complete the regulatory examination level 2 for the three subcategories indicated above. She will therefore complete more than one examination because she will not only be required to write the regulatory examination that applies to the Key Individuals, but also complete the regulatory examination(s) as it applies to the Representatives.*



**How do the regulatory examinations affect Key Individuals that are already approved prior to 2009?**

These Key Individuals fall into the transitional period and therefore the transitional arrangements will apply to them. Please refer to the “Transitional Arrangements” section of this guide for more detailed information in this regard.

**When must the regulatory examinations be completed?**

Key Individuals that apply for approval from 2011 onwards must have completed the regulatory examinations by the time that they apply for approval. Key Individuals that are already approved prior to 2011 must complete the regulatory examination level 1 by 31 December 2011.

## 4.4 Examination Bodies

The Registrar has delegated the development and delivery of the regulatory examinations to **Examination Bodies**. A professional body or industry body may apply for recognition as an Examination Body, and must comply with the requirements as set out in the Determination of Examination Body Requirements in order to fulfil the function of an Examination Body.



- There will be only one national version of any regulatory examination for any category or subcategory.
- All regulatory examinations will be hosted and distributed by the Registrar.
- Examination Bodies will have access to the regulatory examinations based on their application criteria and area of expertise.
- The intention is to ensure that the content, quality and standard of each regulatory examination is the same nationally.

The Examination Body infrastructure should be set up by the end of 2009, and as more information becomes available on enrolment procedures, roll-out dates, and all the related activities of the Examination Bodies, these will be communicated via newsletter, circulars, FSB website and other available media to the financial services industry.

## 4.5 Competence Requirements for Key Individuals beyond 2010

Key Individuals approved from 2010 onwards would thus have to meet the following competence requirements at the time that he/she applies for approval:

	EXPERIENCE	QUALIFICATION	REGULATORY EXAMINATION
<i>Key Individual (Only manages and over sees the</i>	<ul style="list-style-type: none"><li>• 1 year practical experience in the management and</li></ul>	<ul style="list-style-type: none"><li>• A completed qualification from the list of recognised qualifications</li></ul>	<ul style="list-style-type: none"><li>• Regulatory examination level 1 for Key Individuals.</li></ul>

	EXPERIENCE	QUALIFICATION	REGULATORY EXAMINATION
<i>business)</i>	<p>oversight of a business.</p> <ul style="list-style-type: none"> <li>This experience <b>may not</b> be gained under supervision. The individual must have gained the required experience prior to approval.</li> </ul>	<p>appropriate to a Key Individual. (<i>The Determination of Qualifying Criteria and qualifications, 2008, Annexure 2</i>).</p> <ul style="list-style-type: none"> <li>The qualification cannot be obtained under supervision and must have been obtained prior to approval.</li> </ul>	<ul style="list-style-type: none"> <li>The regulatory examination must have been successfully completed prior to any 2011 approvals.</li> </ul>
<i>Key Individual <b>and</b> Representative (Manage and oversee the business and gives advice and/or render intermediary services in terms of a subcategory / subcategories)</i>	<ul style="list-style-type: none"> <li>1 year practical experience in the management and oversight of a business.</li> <li>The management experience <b>may not</b> be gained under supervision. The individual must have gained the required experience prior to approval.</li> <li>Must also have <b>product specific experience</b> as it relates to the subcategories that the Key Individual is responsible for.</li> <li>The product specific experience can be gained under supervision.</li> <li>The experience required depends on the product subcategory that the Key Individual is responsible for – please</li> </ul>	<ul style="list-style-type: none"> <li>A completed qualification from the list of recognised qualifications appropriate to a Key Individual, or any of the product subcategories that the Key Individual is responsible for. (<i>The Determination of Qualifying Criteria and qualifications, 2008, Annexure 2</i>).</li> <li>The qualification cannot be obtained under supervision and must have been obtained prior to approval.</li> </ul>	<ul style="list-style-type: none"> <li>Regulatory examination level 1 for Key Individuals.</li> <li>The regulatory examination must have been successfully completed prior to any 2011 approvals.</li> <li>Regulatory examination level 2 for each of the product subcategories that the Key Individual is responsible for. The level 2 regulatory examination(s) may be completed under supervision.</li> </ul>

	EXPERIENCE	QUALIFICATION	REGULATORY EXAMINATION
	refer to the Plain Language Guide for Representatives for the specific experience requirements.		

## 5. Operational Ability

Operational ability requirements mostly apply to the FSP, and will therefore be covered in detail in the Plain Language Guide for FSPs and Sole Proprietors. It is the Key Individual's responsibility in terms of the Act to understand the operational ability requirements as they are responsible for ensuring alone or together with other co-appointees that the FSP comply with these requirements.



However, there is one requirement that affects the Key Individual directly.

A Key Individual in respect of an FSP, must be able to maintain the operational ability to fulfil the responsibilities imposed by the Act on FSPs, including the oversight of the financial services (regarding the giving of advice and rendering of intermediary services) provided by the Representatives of the FSP.

What this essentially means is that if you, as the Key Individual, is managing and overseeing 250 Representatives distributed across all the provinces, then you probably do not have the operational ability to really manage and oversee the activities of all 250 Representatives effectively. You would therefore have to ensure that your organisational structures allow you to manage and oversee the Representatives effectively, and that the number of Representatives that you have to manage and over see is manageable.

The new operational ability requirements come into operation on **1 January 2010**.

## 6. Financial Soundness

The financial soundness requirements are applicable to the FSP and not the Key Individual. Therefore you may refer to the Plain Language Guide for FSPs and Sole Proprietors for more detailed information in terms of the financial soundness requirements. The new financial soundness requirements must be met by **31 December 2011**.



## *7. Continuous Professional Development (CPD)*

Within the context of Fit and Proper the objectives of CPD are to ensure the following happens and/or to assist Key Individuals to:

- Develop and maintain professional competence in order to provide financial services of a high quality in the public interest that will support the professionalism of the financial services industry;
- Understand that the primary responsibility of competence vests in the individual, and that they have an obligation to develop and maintain their professional competence;
- Render financial services with due care, competence and diligence with an ongoing duty to maintain knowledge and skill at a level required to ensure that the client receives competent professional service based on up-to-date developments in legislation and the financial services industry.



### ***What type of programme / activity will be recognised as relevant for CPD purposes?***

Examples of verifiable CPD programmes and/or activities include, but are not limited to:

- Courses, conferences or seminars;
- Studies leading to formal assessments such as additional qualifications;
- Workshops
- Structured self-study programmes including web-based, computer-based or paper-based delivery that assess knowledge.

### ***How do I know if a programme / activity is recognised by the Registrar?***

In order for a programme and/or activity to be approved by the Registrar the following institutions may apply to the Registrar for recognition of their offering of CPD programmes and/or activities:

- Industry associations;
- Statutory or voluntary professional bodies;
- Employers;
- Individuals or experts;
- Institutions of higher education & accredited training providers.

You would therefore have to ensure, and obtain confirmation from the relevant institution, that the programme / activity that you enrol for has been approved by the Registrar as a CPD programme / activity.

***When does CPD begin?***

CPD applies only once the competence requirements are met. Therefore, as soon as the Key Individual meets all the competence requirements (i.e. experience, qualification and regulatory examination(s)), CPD will come into effect.

For example, a Key Individual that has obtained his experience and qualification prior to approval in 2008 will be required to complete the regulatory examination Level 1 by 31 December 2011. CPD will therefore apply from 2012.



***What are CPD hours?***

The concept of hours involves time spent on updating your existing knowledge and skills and maintaining your level of competence.

***How many hours of CPD will I need to do?***

The hours of CPD required for a Key Individual depends on the specific regulatory role that he/ she fulfils:

- If the Key Individual fulfils the role of only a Key Individual (management and oversight only), then the CPD hours is as follows:
  - ~ Category I: 30 hours over a three year cycle
  - ~ Category II, IIA and III: 60 hours over a three year cycle
  - ~ Category IV: 30 hours over a three year cycle
- If the Key Individual fulfils the role of a Key Individual and a Representative (management and oversight and giving advice and/or rendering intermediary services), then the CPD hours that applies to Representatives will apply to the Key Individual. Please refer to the table below for the specific CPD hour requirements per Category and subcategory.

<b>TABLE D: CONTINUOUS PROFESSIONAL DEVELOPMENT REQUIREMENTS</b>		
	<b><u>COLUMN ONE</u></b>	<b><u>COLUMN TWO</u></b>
	<b>CATEGORY</b>	<b>HOURS: THREE YEAR CYCLE</b>

<b>TABLE D: CONTINUOUS PROFESSIONAL DEVELOPMENT REQUIREMENTS</b>		
	<b><u>COLUMN ONE</u></b>	<b><u>COLUMN TWO</u></b>
	<b>CATEGORY</b>	<b>HOURS: THREE YEAR CYCLE</b>
	<b><u>Category I</u></b>	
1.1	Long-term Insurance Category A	15
1.2	Short-term Insurance Personal Lines	30
1.3	Long-term Insurance Category B	60
1.4	Long-term Insurance Category C	60
1.5	Retail Pension Benefits	60
1.6	Short-term Insurance Commercial Lines	45
1.7	Pension Fund Benefits	60
1.8	Securities and Instruments: Shares	60
1.9	Securities and Instruments: Money market instruments	60
1.10	Securities and Instruments: Debentures and securitised debt	60
1.11	Securities and Instruments: Warrants, certificates and other instruments acknowledging debt	60
1.12	Securities and Instruments: Bonds	60
1.13	Securities and Instruments: Derivative instruments, excluding warrants	60
1.14	Participatory Interests in one or more collective Investment schemes	60
1.15	Forex Investment Business	60
1.16	Health Service Benefits	45
1.17	Long-term Deposits	15
1.18	Short-term Deposits	15
1.19	Friendly Society Benefits	15
	Key Individual	30
	<b><u>Category II, IIA and III</u></b>	60

<b>TABLE D: CONTINUOUS PROFESSIONAL DEVELOPMENT REQUIREMENTS</b>		
	<b><u>COLUMN ONE</u></b>	<b><u>COLUMN TWO</u></b>
	<b>CATEGORY</b>	<b>HOURS: THREE YEAR CYCLE</b>
	Key Individual	60
	<b><u>Category IV</u></b>	15
	Key Individual	15

***What happens if I change my license conditions?***

If a Key Individual already complies with the qualification and regulatory requirements and you amend your license to include additional categories or subcategories, your CPD requirements will not be affected.

***What about multiple subcategories?***

If a Key Individual is acting as a Representative and approved in multiple Categories or subcategories, the highest requirement in terms of notional hours will apply.

***Will there be any exemptions?***

The registrar may exempt any group of persons from CPD requirements if they hold membership in a statutory or voluntary professional body that must comply with similar CPD requirements. The professional body must record the CPD requirements and provide the Registrar with the details of the CPD hours and information.

***What is the application process for recognition of CPD programmes?***

- Accredited training providers, institutions of higher education, professional bodies, employers, individuals and industry associations may apply to the Registrar for the recognition of a programme for CPD purposes;
- Application can be made to add a programme and/or activity to the CPD list of approved programmes;
- Application can also be made to apply for a programme to be removed;
- Persons applying for recognition of CPD programmes must use the CPD application form which is contained in the Annexure to Board Notice 103 of 2008;
- The application form together with any other required documents must be submitted directly to the Registrar in hard copy format, OR it can be submitted on the FSB's website;

- The application requires:
  - ~ Business information about the applicant;
  - ~ CPD programme/activity details
  - ~ CPD programme applicability;
  - ~ CPD programme content.
- The Registrar will approve such applications based on the programme application and its suitability for CPD purposes; and
- The result of the application will be communicated to the applicant within a period of 4 to 6 months;
- A CPD reference list of approved programmes will be developed and made available to make it easier to identify which programmes are relevant for CPD;
- The list of approved programmes will be updated and/or amended regularly.

## *8. Services under Supervision*

In the new Fit & Proper requirements, the conditions on the rendering of services under supervision have been expanded significantly. The main difference being that supervision now covers BOTH experience and qualification requirements within the Fit and Proper regulations. Key Individuals will have to familiarise themselves with this aspect of Fit and Proper so as to ensure that they manage and oversee the supervision process effectively. Supervision also now extends to Category II, Category IIA and Category III.

Key Individuals must become familiar with and involved in the supervision element of Fit and Proper for the following reasons:

1. The Act places the function of “management and oversight” of the FSP as a key function of the Key Individual. Supervision of a Representative now covers both the experience and the qualification requirements of a Representative and this process of supervision can now last up to six years while a Representative is completing the required experience and qualification. Clients must be informed of the status of Representatives as they render advice and/or intermediary services on behalf of the FSP. The regulated requirements of this process make it clear that Key Individuals must manage the process professionally and authentically.



2. The second key element of supervision is that Key Individuals can now also perform the function of a Representative when they themselves dispense advice and/or render intermediary services. Key Individual who do NOT have the necessary product experience at the time that they are appointed as a Representative to give advice and/or render intermediary services, may be permitted to obtain this product specific experience under supervision, just like a Representative would have been allowed to do.

Therefore, a Key Individual that fulfils the role of a Key Individual and a Representative, must have the practical management and oversight experience at the time of approval as a Key Individual, but may gain his/her product specific experience as a Representative under supervision.

Key Individuals who want to act as Representatives in product subcategories where they lack the required product experience must ensure that they work under supervision for the required experience period.

As part of their management and oversight role, Key Individuals must ensure that supervision is implemented effectively within the scope of the Fit and Proper regulations within the FSP.

## *9. Transitional Arrangements*

The development of the suite of Fit and Proper requirements has sensibly evolved in distinct stages. This has required **TRANSITIONAL ARRANGEMENTS** to enable Key Individuals in the system when the FAIS Act was enacted, to move seamlessly toward the goal of the Fit and Proper requirements published in 2008.

The transitional arrangements apply to all Key Individuals who were approved by the Registrar during the period September 2004 to 31 December 2009.

Before discussing the transitional arrangements in more detail, the following must be clarified:

### **Date of first appointment / approval**

The concept of “Date of First Appointment in an authorised FSP” is absolutely critical – it matters (in terms of deadlines) whether you are approved as a Key Individual in 2004 or 2008, for example.



This concept is NOT new and is very definitely interpreted to be what it says: the date of 1<sup>st</sup> appointment! So if you were 1<sup>st</sup> appointed in 2005 in an authorised FSP and then you join another authorised FSP in 2008, you CARRY your 1<sup>st</sup> appointment date (2005) with you with respect to the different deadlines.

All individuals appointed or approved between September 2004 and December 2009 will be grouped into the following groupings:

<b>Group 1:</b>	Date of 1 <sup>st</sup> Appointment / Approval between September 2004 and December 2007
<b>Group 2:</b>	Date of 1 <sup>st</sup> Appointment / Approval between January 2008 and December 2009

It is important to know which group applies to you in order to identify the competence requirements and the deadlines that apply to you correctly.

The table below sets out the competence requirements for each of these two groups:

TRANSITIONAL ARRANGEMENTS FOR KEY INDIVIDUALS				
	EXPERIENCE	QUALIFICATION	REGULATORY EXAMINATIONS	CPD
<p><b>Group 1:</b> <b><u>Key Individual Only</u></b> <b>(2004 – 2007)</b></p>	<ul style="list-style-type: none"> <li>• <b>Already approved</b> as Key Individual and therefore already meets the <b>1 year practical management experience</b>.</li> </ul>	<ul style="list-style-type: none"> <li>• Complete the relevant <b>qualification requirement as per Table E</b> of the Determination of Fit and Proper Requirements, 2008 by <b>31 December 2009</b>. <i>(Note: Table E refers to the 30/60 credit requirement.)</i></li> </ul>	<ul style="list-style-type: none"> <li>• Complete the <b>regulatory examination level 1</b> by <b>31 December 2011</b>.</li> </ul>	<ul style="list-style-type: none"> <li>• CPD applies <b>as soon as the regulatory examination has been completed</b>.</li> </ul>
<p><b>Group 1:</b> <b><u>Key Individual AND Representative</u></b> <b>(2004 – 2007)</b></p>	<ul style="list-style-type: none"> <li>• <b>Already approved</b> as Key Individual and therefore already meets the <b>1 year practical management experience, AND</b></li> <li>• <b>Product experience</b> as per <b>Table A</b> of the Determination of Fit and Proper Requirements, 2008. <i>(Note: Can be gained under supervision).</i></li> </ul>	<ul style="list-style-type: none"> <li>• Complete the relevant <b>qualification requirement as per Table E</b> of the Determination of Fit and Proper Requirements, 2008 by <b>31 December 2009</b>. <i>(Note: Table E refers to the 30/60 credit requirement.)</i></li> </ul>	<ul style="list-style-type: none"> <li>• Complete the <b>regulatory examination level 1</b> by <b>31 December 2011</b>.</li> <li>• Complete the relevant <b>regulatory examination(s) level 2</b> by <b>31 December 2013</b>.</li> </ul>	<ul style="list-style-type: none"> <li>• CPD applies <b>as soon as the regulatory examination has been completed</b>.</li> </ul>

TRANSITIONAL ARRANGEMENTS FOR KEY INDIVIDUALS				
	EXPERIENCE	QUALIFICATION	REGULATORY EXAMINATIONS	CPD
<p><b>Group 2:</b> <b><u>Key Individual Only</u></b> <b>(2008 – 2009)</b></p>	<ul style="list-style-type: none"> <li>1 year practical management experience at the time of approval.</li> </ul>	<ul style="list-style-type: none"> <li>Complete the relevant <b>qualification requirement as per Table E</b> of the Determination of Fit and Proper Requirements, 2008 by <b>31 December 2011</b>. <i>(Note: Table E refers to the 30/60 credit requirement),</i> <b>OR</b></li> <li>Complete a <b>full qualification</b> from the <b>list of recognised qualifications</b>, by <b>31 December 2013</b>.</li> </ul>	<ul style="list-style-type: none"> <li>Complete the <b>regulatory examination level 1</b> by <b>31 December 2011</b>.</li> </ul>	<ul style="list-style-type: none"> <li>CPD applies <b>as soon as the regulatory examinations have been completed</b>.</li> </ul>
<p><b>Group 2:</b> <b><u>Key Individual AND Representative</u></b> <b>(2008 – 2009)</b></p>	<ul style="list-style-type: none"> <li>1 year practical management experience at the time of approval, <b><u>AND</u></b></li> <li><b>Product experience</b> as per <b>Table A</b> of the Determination of Fit and Proper Requirements, 2008. <i>(Note: Can be gained</i></li> </ul>	<ul style="list-style-type: none"> <li>Complete the relevant <b>qualification requirement as per Table E</b> of the Determination of Fit and Proper Requirements, 2008 by <b>31 December 2011</b>. <i>(Note: Table E refers to the 30/60 credit requirement)</i></li> </ul>	<ul style="list-style-type: none"> <li>Complete the <b>regulatory examination level 1</b> by <b>31 December 2011</b>.</li> <li>Complete the relevant <b>regulatory examination(s) level 2</b> by <b>31 December 2013</b>.</li> </ul>	<p>CPD applies <b>as soon as the regulatory examinations have been completed</b>.</p>

TRANSITIONAL ARRANGEMENTS FOR KEY INDIVIDUALS				
	EXPERIENCE	QUALIFICATION	REGULATORY EXAMINATIONS	CPD
<b>Group 2:</b> <b><u>Key Individual AND</u></b> <b><u>Representative</u></b> <b>(2008 – 2009)</b>				
	<i>under supervision).</i>	<b>OR</b> Complete a <b>full qualification</b> from the <b>list of recognised qualifications</b> , by <b>31 December 2013</b> .		

**PLEASE NOTE:**

Sometimes Key Individuals may find themselves in a situation where, as a Key Individual, they meet all the competence requirements, but in their role as a Representative they do not meet all the competence requirements. They may thus have to work under supervision as a Representative, to gain the necessary experience, and if required, also complete the relevant qualification and/or regulatory examinations.

**Where do I start to check my Fit and proper status?**

<b>STEP</b>	<b>ACTION</b>
1. Check date of first appointment.	<ul style="list-style-type: none"> <li>▪ You can do this by checking how the FSB recorded your date of first appointment (obtain this information from the FSB website).</li> </ul>
2. Establish the FAIS deadline that applies to you.	<ul style="list-style-type: none"> <li>▪ Do you fall into Group 1 or Group 2?</li> <li>▪ By identifying which transitional Group you fall into, you will be able to identify the dates that apply to you specifically.</li> </ul>
3. Establish what qualification requirements apply to you.	<ul style="list-style-type: none"> <li>▪ Establish from the Determination for Fit and Proper Requirements if you meet the qualification requirements in terms of Table E (i.e. 30/60 credits on a specific NQF level).</li> <li>▪ If you do not meet the requirements, establish exactly what you should do to obtain to obtain the relevant qualification requirements for the most 'onerous' subcategory or category for which you are approved.</li> <li>▪ Note: If you fall into Group 2 and you have chosen to complete a full qualification from the list of recognised qualifications, then you need to ensure that your enrolment for this qualification is completed and that you will be able to complete the full qualification by 31 December 2013.</li> </ul>
4. Review your current academic status.	<ul style="list-style-type: none"> <li>▪ Begin with your current academic status i.e. Matric; plus any other credit bearing studies; e.g. a Diploma or Certificate or a Degree such as a B.Com. Degree or the UNISA/INSETA once-off assessments done in 2004 or an ICiBS or a CoP; or MultiMark 111 etc.</li> </ul>
5. Check that your skills programme / qualification is appropriate.	<ul style="list-style-type: none"> <li>▪ To do this look at the unit standards included in the skills programme – the unit standards must be relevant and must not consist of fundamental unit standards.</li> <li>▪ The subjects of a qualification must also be appropriate. For guidance, look at the Determination of Qualifying Criteria and Qualifications, 2008. It contains a list of appropriate subjects, and a qualification must at least contain three of these subjects in order to be deemed</li> </ul>

	<p>appropriate.</p> <ul style="list-style-type: none"><li>▪ Be careful of duplication!! (You can't get credits twice!)</li></ul>
6. You identify that you <b><i>do not</i></b> meet the qualification requirements.	<ul style="list-style-type: none"><li>▪ If the above process identifies that you have a FAIS credit/qualification shortfall <b><i>take immediate steps</i></b> to enrol with an accredited training provider to obtain the necessary credits.</li></ul>
7. You have identified that you meet the qualification requirements.	<ul style="list-style-type: none"><li>▪ If you meet the qualification requirements then you need to monitor the FSB website for enrolment information regarding the regulatory examinations. These examinations will be available from the 1<sup>st</sup> quarter of 2010.</li><li>▪ To meet the examination deadlines try and enrol as early and possible to ensure that you will be able to complete the necessary regulatory examinations in time for the due dates. It is expected that most people will wait until the last minute to write the examination, and then not all the people will be accommodated due to a limited number of seats being available. Rather ensure that you enrol earlier to ensure that you can complete the examination in time.</li></ul>

## 10. Closing

We trust that this guide assisted you to better understand the Fit and Proper requirements that apply specifically to the Key Individual. This guide does not replace any of the relevant Board Notices, and does not have any impact or bearing on the content of the Board Notices. The only purpose of this guide is to provide additional support and clarity for Key Individuals in terms of the Fit and Proper requirements.

Also note that there are an additional two guides available:

- Fit and Proper Requirements in Plain Language for Representatives, and
- Fit and Proper Requirements in Plain Language for FSPs and Sole Proprietors.

We wish you well in your studies and your career in the financial services industry!

## 11. References

- Board Notice 103 of 2008
- Board Notice 104 of 2008
- Board Notice 105 of 2008
- Board Notice 106 of 2008
- Board Notice 151 of 2008
- Board Notice 154 of 2008
- Board Notice 64 of 2009
- Board Notice 95 of 2009
- Financial Advisory and Intermediary Services Act 37 of 2002