A Financial Services Provider (FSP) must have procedures in place to ensure that it can debar any representative that no longer complies with the Fit and Proper Requirements or has contravened or failed to comply with any provision of the FAIS Act in any material way.

When a representative is debarred in terms of the FAIS Act, such person is prohibited from rendering any financial services and the FSP must withdraw all authority granted to the representative to act on its behalf.

The Financial Sector Regulation Act of 2017 substitutes section 14(1) of the FAIS Act that sets out the procedures when a debarment of a representative must take place. The new procedures below must be strictly followed.

**Debarment in terms of section 14(1):**

An authorised FSP must debar a person from rendering financial services who is or was a representative of the FSP if the financial services provider is satisfied on the basis of available facts and information that the person —

- does not meet, or no longer complies with the fit and proper requirements, or
- has contravened or failed to comply with any provision of the FAIS Act in a material manner.

The reasons for a debarment must have occurred and become known to the FSP while the person was a representative of the provider.

Before effecting a debarment, the FSP must ensure that the debarment process is lawful, reasonable and procedurally fair.

If an FSP is unable to locate a person in order to deliver a document or information, after taking all reasonable steps to do so, delivering the document or information to the person’s last known e-mail or physical business or residential address will be sufficient.

**The following process must be followed before debarment is effected:**

An FSP must, before debarring a person—

- give adequate notice in writing to the person stating its intention to debar the person, the grounds and reasons for the debarment, and any terms attached to the debarment, including, in relation to unconcluded business, any measures stipulated for the protection of the interests of clients;
● provide the person with a copy of the FSPs written policy and procedure governing the debarment process; and

● give the person a reasonable opportunity to make a submission in response;

● consider any response provided and then take a decision;

● immediately notify the person in writing of the FSPs decision.

The following process must be followed after debarment has been effected:

The FSP must—

● immediately withdraw any authority for the person to act on behalf of FSP;

● remove the name of the debarred person from the representative register;

● immediately take steps to ensure that the debarment does not prejudice the interest of clients of the debarred person, and that any unconcluded business of the debarred person is properly attended to;

● in the form and manner determined by the Authority, notify the Authority within five days of the debarment (official debarment notification form attached); and

● provide the Authority with the grounds and reasons for the debarment in the format that the Authority may require within 15 days of the debarment.

Rights of the debarred representative:

Previously, a debarred representative had no right to appeal to the FSB Appeals Board against a debarment decision. In terms of the new section 39 of the FAIS Act any person aggrieved by a decision of an FSP to debar that person in terms of section 14 may apply for the reconsideration of the decision to the Conduct Authority Tribunal.

The FSP must therefore inform the debarred person of his/her rights in terms of the Financial Sector Regulation Act, namely –

● the right in terms of section 229 to request reasons for the decision within 30 days after the person was notified of the decision. The decision-maker must, within one month after receiving a request, give the person a statement of the reasons for the decision, which must include a statement of the material facts on which the decision was based;

● the right in terms of section 230 to apply to the Tribunal for a reconsideration of the decision by the Tribunal in terms of the Tribunal rules. This constitutes an internal remedy as contemplated in the Promotion of Administrative Justice Act;

● any formal requirements in respect of application proceedings for the reconsideration of the decision by the Tribunal. The application must be made within 30 days after the statement of reasons was given to the person;

● in terms of section 232 any party may be represented by a legal representative in these proceedings.

Note: Neither an application for a reconsideration of a decision, nor the proceedings on the application, suspends the decision of the decision-maker unless the Tribunal so orders.
Apart from the above and in terms of section 235, any party to proceedings on an application for reconsideration of a decision who is dissatisfied with an order of the Tribunal may institute proceedings for a **judicial review** of the order in terms of the Promotion of Administrative Justice Act or any applicable law.

**Other considerations:**

- A debarment that is undertaken in respect of a person who no longer is a representative of the FSP must be commenced **not longer than six months** from the date that the person ceased to be a representative of the FSP.

- For the purposes of debarring a person, the FSP must have regard to information regarding the conduct of the person that is furnished by the Conduct Authority, the Ombud or any other interested person.

- The Conduct Authority may, for the purposes of record keeping, require any information to enable the Authority to maintain and continuously update a central register of all debarred persons.

**Effect of debarment:**

A debarred person may not render financial services or act as a representative of any FSP, unless the person has complied with the requirements for the reappointment of a debarred person as a representative.

**Examples where debarment must be considered:**

- Failure to complete regulatory exam/qualification by cut-off date;

- Fraud, theft and other offences involving dishonesty;

- See section 9 of the Fit and Proper Requirements for a comprehensive list of cases where a person will be deemed not to be in good standing;

- Sequestration/insolvency – a person that is an unrehabilitated insolvent may not be appointed as a representative;

- Non-compliance with CPD requirements;

- Persistent lack of adequate, appropriate and relevant skills, knowledge and expertise in respect of the financial services, financial products and functions that it performs;

- Lack of operational ability to effectively function as a representative of the FSP or perform the activities for which that person was appointed.

Debarment must always be considered with great circumspect to avoid bias. In the case of blatant wrongdoing on the part of an FSP or key individual, the FSCA may have a serious view of the FSP’s or key individual’s integrity, with possible dire consequences.

Debarment has a negative connotation attached to it. Where possible, a representative should be removed from the register, by mutual agreement, when it becomes clear that certain requirements will not or cannot be complied with. When the FSP is satisfied that those requirements are then complied with, the person can be reinstated as a
representative. FSPs and key individuals must regularly review the competency of a representative so that debarment or removal from the register can be avoided.

The mandate of the representative must specify when debarment procedures must be instituted by the FSP in order to avoid uncertainty.

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