

# GUIDANCE NOTES ON LICENCE APPLICATION PROCEDURES (THE FAIS ACT), 2004

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I, Jeffrey van Rooyen, Registrar of Financial Services Providers, hereby issue the guidance notes, as set out in the Schedule, in connection with administrative procedures for licensing of applicants for the rendering of financial services under the Financial Advisory and Intermediary Services Act, 2002 (Act 37 of 2002).

**J VAN ROOYEN**

**Registrar of Financial Services Providers**

## SCHEDULE

### 1 Definitions

In this Schedule, '**the Act**' means the Financial Advisory and Intermediary Services Act, 2002 (Act 37 of 2002), any word or expression to which a meaning has been assigned in the Act, read with the definition of 'this Act' in section 1(1) of the Act, shall have that meaning.

### 2 Objectives

- (a) Since the first publication of the Act on 15 November 2002, the general public was so put on notice that all persons rendering services to clients corresponding to the financial services contemplated in the Act, and who wish to continue such businesses, must before the date contemplated in section 7(1) of the Act (to be determined by the Minister of Finance) apply for licences in terms of the Act and be issued therewith. The Financial Services Board, on its part, speedily took all steps necessary for the establishment of the registrar's office and other systems, mechanisms and structures (together with the appointing of required staff). The Board also recognised representative bodies to assist the Registrar with the consideration of applications for licences.

Acquiring licensed status is also of great importance for the relevant persons, due to the fact that the carrying on of unlicensed financial services business on or after the date contemplated in section 7(1), may lead to criminal prosecution for contravention of the prohibition contained therein (section 36(a) of the Act).

- (b) For persons who foresee that they may in future, but after the said section 7(1) date, commence business for the rendering of financial services, the Act contains no restriction as regards dates on which any such applications must be submitted (for guidelines, see paragraph 3(b)).
- (c) The Minister of Finance has now determined 30 September 2004 as the date contemplated in section 7(1) which means that all persons requiring licences to commence or to continue business on and after that date, and who have not yet submitted the required applications (section 8 of the Act), must now, as from the date of this Notice, do so as speedily as possible.

### 3 Guidance notes for prospective applicants

- (a) Current experience at the registrar's office indicates that, due to the many requirements with which applicants have to comply, and the many discretions granted to the registrar in the evaluation and consideration of applications (which flow from the objective of the Act to ensure in the public interest that

financial services are only rendered by fully competent persons), an average period of two months is required for completion of such evaluation and consideration, provided that applications are submitted in fully completed form and contain all required information and attachments.

- (b) In order to assist prospective applicants mentioned in paragraph 2(a) and (c) above to be licenced on 30 September 2004, the following guidelines in table format are offered as regards prospective future dates of submission, and of official completion of consideration of applications:

DATE OF SUBMISSION OF COMPLETED APPLICATION	PROSPECTIVE DATE OF OFFICIAL FINALISATION OF APPLICATION
Before or on 31 March 2004	Before or on 31 May 2004
Between 1 April and 30 April 2004	Before or on 30 June 2004
Between 1 May and 31 May 2004	Before or on 31 July 2004
Between 1 June and 30 June 2004	Before or on 31 August 2004
Between 1 July and 31 July 2004	Before or on 29 September 2004.

Note that it appears from the table that for practical purposes the last date on which licence applications must be submitted to the registrar in fully completed form by prospective applicants who wish to commence or continue business on 30 September, is 31 July 2004. The registrar will use his best endeavours to complete considerations of applications within this timeframe.

- (c) Prospective applicants referred to in paragraph 2(b), most of whom may need years to acquire the necessary qualifications and experience, may obviously choose their own application dates, but they are hereby advised (for reasons mentioned below) that the application date must be at least two months prior to the envisaged date of commencement of business, irrespective of whether such application date then falls on a date before or after 30 September 2004. But where such envisaged date of commencement of business is a date falling on a day within a period of two months after 30 September 2004, these prospective applicants are hereby advised that they are free to submit such applications on any day after the date of this Notice.
- (d) Prospective applicants must again note that the guidance offered as regards the relevant dates assumes that applications are submitted in fully completed form and accompanied by all required attachments in proper form. Any application which is in any such respect defective will inevitably cause long delays and in such cases the date of finalisation thereof may be much later than a mere two months. In the result applicants referred to in paragraph 2(a) above may not be in a licensed status on 30 September 2004 and will have to cease carrying on of their then unlicensed business to avoid prosecution under section 36(a) of the Act. The same result will ensue in the case of applications refused by the registrar due to the applicants not complying with the requirements set by the Act, whatever the date of submission thereof may have been.
- (e) Note must also be taken that in the case of any successful application by a prospective applicant before 30 September 2004 the licensee needs to comply with the subordinate legislation made in terms of the Act only with effect from 30 September 2004. The licensee must also inform the registrar immediately of any change between the date of issue of the licence and 30 September 2004, as regards any information, qualifications, personal situation of the relevant licensee or any of its key individuals or representatives, and which may affect the legitimacy of the licence as issued and may need reconsideration or amendment of the licence.

#### 4 Applicable application documentation

Prospective licence applicants are again reminded that the most important documentation published under the Act in the *Government Gazette* and which relates to licence applications and which must be consulted or complied with for purposes of submitting licence applications, are the following:

- (a) Determination of Fees payable to the Registrar of Financial Services Providers, 2003 (GN 536 in *Government Gazette* 24761 of 15 April 2003);
- (b) Notice on Qualifications and Experience of Compliance Officers in respect of Financial Services Business, 2002 (BN 83 of 2003 in *Government Gazette* 25299 of 8 August 2003);
- (c) Determination of Criteria and Guidelines for the Approval of Compliance Officers, 2002 (BN 84 of 2003 in *Government Gazette* 25299 of 8 August 2003);
- (d) Determination of Fit and Proper Requirements for Financial Services Providers, 2003 (BN 91 of 2003 in *Government Gazette* 25446 of 10 September 2003);
- (e) Exemption of Authorised Financial Services Providers as regards Representatives 1 of 2003 (BN 95 of 2003 in *Government Gazette* 25514 of 30 September 2003);
- (f) Exemption of certain Authorised Financial Services Providers from Requirements pertaining to Audited Financial Statements and Financial Soundness 1 of 2003 (BN 96 of 2003 in *Government Gazette* 25514 of 30 September 2003);
- (g) Exemption of Investment Managers from Fit and Proper Requirements 1 of 2003 (BN 97 of 2003 in *Government Gazette* 25514 of 30 September 2003);
- (h) Application by Financial Services Providers for Authorisation by the Financial Services Board (BN 98 of 2003 in *Government Gazette* 25523 of 3 October 2003);
- (i) Determination of Procedure for Approval of Key Individuals, 2003 (BN 122 of 2003 in *Government Gazette* 25628 of 24 October 2003);
- (j) Exemption of Authorised Financial Services Providers and Representatives conducting Short-term Deposit Business from certain Fit and Proper Requirements and the General code when rendering Financial Services relating to Money Market Funds, 2003 (BN 135 of 2003 in *Government Gazette* 25723 of 14 November 2003);
- (k) Notice on the Form of Licences, 2004 (BN 9 of 2004 in *Government Gazette* 25942 of 23 January 2004).

#### 5 Short title and commencement

These Guidance Notes are called the Guidance Notes on Licence Application Procedures (the FAIS Act), 2004, and come into operation on the date of first publication thereof in the *Gazette*.