



New Fit & Proper Requirements

Quick Tip! (7 of 2009) – REGULATORY EXAMS (PART 1)

Introduction

REGULATORY EXAMINATIONS

The 'new' Determination of Fit and Proper requirements published in 2008, have introduced the industry to a new concept, namely Regulatory Examinations. There is little doubt that these Regulatory Examinations will make an important impact on the financial services industry. An impressive amount of planning has taken place in respect of these exams including numerous workshops with a wide range of task teams working on the preparation and content of the Regulatory Examination regulations.

There will be **two levels of Regulatory Examinations. FIRST Level** Regulatory Exams which **will be compulsory for ALL key individuals AND Representatives** (with the exception of representatives licensed for Long Term Insurance Category A products (1.1) and Friendly Society Benefits (1.19) products), and **SECOND Level** Regulatory Exams which will not be covered in detail in this Quick Tip because they must only be written after the first level regulatory exam have been completed. There may be some instances when a key individual or a representative may be granted exemption from a second level Regulatory Examination, **BUT this is NOT the case for FIRST Level Regulatory Exams!!**

The Regulatory Exam concept is important and ALL key individuals and representatives must familiarise themselves with their obligations in terms of these Regulatory Examinations.

WHAT WILL BE THE FOCUS OF THESE EXAMS?

- ✚ The **FIRST Level Regulatory Exams** which could be referred to as a CORE exam will **focus** on the FAIS Act and subordinate legislation such as the General Code of Conduct, disclosures and other requirements of the FAIS legislation. In addition the FIRST Level Regulatory Exam will also include the FICA Act and other relevant anti-money laundering legislation.
- ✚ The **regulatory examinations will aim** in particular on testing the application of factual knowledge in relation to;
 - The rendering of financial services applicable to specific categories and subcategories of clients;
 - The relevant legal provisions, particularly the rights and duties which they vest in providers and clients, their appreciation of the legal meaning, the implications of these provisions, and testing the competence of candidates to apply these provisions correctly.
- ✚ The regulatory examinations will be multiple choice questions, mostly based on case study type assessments that are practical and relevant to the industry.

- ✚ The FSB has confirmed that the content of the questions will be based on the current General Code of Conduct, the FAIS Act and FICA. You will not be required to remember sections of the Act – this will be provided where necessary. The Regulatory Exams will however test how you understand the applications of the Act. All questions will be based on the qualifying criteria found in Annexure 1 of Board Notice 105 of 2008. No other criteria will be tested.

KEY PRINCIPLES UNDERLYING THE REGULATORY EXAMINATIONS

- ✚ The **qualifying criteria** for the FIRST Level Regulatory Exam determine the scope and content of the regulatory examinations (published in BN 105).
- ✚ A key individual and a representative must take and **successfully pass** any such regulatory examinations set by the Registrar.
- ✚ There will be **no limit on the number of attempts** a key individual makes to pass these exams.
- ✚ The **Registrar must approve Examination Bodies** who will conduct the exams on behalf of the FSB.
- ✚ The Registrar will publish in the Gazette practical matters related to the management and control of the Regulatory examinations.
- ✚ Allowance will be made for learners with special needs.

WHAT IS AN EXAMINATION BODY?

The Registrar began a process in 2009 which led to the appointment of Moonstone; the Fpi; Leselo/IOB – the Institute of Bankers; and the SAIFM as Examination Bodies. There will only be a limited number of Examination Bodies, in some respects they will be similar to Recognised Bodies. The Registrar published a Board Notice Number 154 of 2008 on 29 December 2008 which determines the criteria for the approval of an Examination Body.

- ✚ Examination Bodies will set, conduct, manage and record the results of Regulatory examinations.
- ✚ Regulatory examinations will be available from 2010. Probably from April 2010.
- ✚ Accredited training providers were not invited to apply for recognition as an Examination Body; Examination Bodies may **NOT** provide training and/or study material for the Regulatory Exams.
- ✚ They are under the direct control of the Registrar,
- ✚ The pass mark will be 70%
- ✚ There will be no limit to the number of attempts to pass, however, if you re-write a Regulatory Exam you must re-write to complete Regulatory Exam, not just a specific section of the Regulatory Exam.

- ✚ Examination Bodies have discretionary powers to offer a choice of completing ONE examination that addresses the qualifying criteria for two different exams; for example a Category I key individual acting as a representative may be given the option by an Examination Body to write the FIRST Level Regulatory Exam for Category I key individuals plus the First Level Regulatory Exam for representatives in one combined exam.

THE FIRST LEVEL REGULATORY EXAMINATION REQUIREMENTS

- ✚ Key individuals and representatives appointed between 2004 and 31 December 2009 must have completed their relevant FIRST level Regulatory Exam by 31 December 2011.
- ✚ Key Individuals who are also deemed to be **“acting as representatives”** must also complete the FIRST Level Regulatory Exam for representatives.
- ✚ There are **different FIRST Level Regulatory Exams for key individuals appointed in Cat I; II/IIA; III and IV.** If you are a key individual appointed in any two such Categories then you must write BOTH of the relevant Regulatory Exams.

HOW WILL THE REGULATORY EXAMINATIONS BE MANAGED, CONTROLLED AND QUALITY ASSURED?

The Registrar will publish in the Gazette practical matters related to the Regulatory Exams such as;

- ✚ The setting and taking of the exams
- ✚ The curricula
- ✚ The drafting of the exam papers
- ✚ The criteria for determining a successful pass mark/level
- ✚ The examiners (if any)
- ✚ The time, place and date of such exams
- ✚ The supervision of the exams
- ✚ The evaluation and marking of the exams
- ✚ The moderation of the exams and
- ✚ The communication to the examinees of the results of the exams.

VERSION CONTROL OF REGULATORY EXAMINATIONS

- ✚ There will be only one national version of any regulatory examination for any category or subcategory
- ✚ **ALL Regulatory Exams 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.
- ✚ There will be no fluctuation in standard or quality across Examination Bodies, Provinces, etc.
- ✚ **ALL regulatory examinations MUST be:**
 - **Valid** – they test what they intended to test, i.e. the qualifying criteria;

- **Reliable** – the standard of the examinations is the same across different demographical areas and examinations bodies;
 - **Fair** – all candidates that are tested in the same category/subcategory should receive questions that cover the same competence outcome, are of the same standard or level of complexity and the same style;
 - **Consistent** – two candidates with the same knowledge and skill should obtain the same results.
- ✚ To ensure validity Regulatory Examination questions will be tested and moderated;
 - ✚ The Registrar may subject regulatory examinations to an external moderation prior to their use.

QUALIFYING CRITERIA AND THE REGULATORY EXAMS

The purpose of the qualifying criteria is to provide the criteria against which the regulatory examinations will be set. In order to establish credible qualifying criteria which could be used for this task the Registrar established various task teams to determine the qualifying criteria which would be used by the Registrar. An enormous amount of work was done by these task teams and the outcome is a highly authentic and credible framework and structure that can be used as the basis for the required Regulatory Examinations.

QUALIFYING CRITERIA – TASKS, KNOWLEDGE CRITERIA AND SKILLS CRITERIA

Each section in Board Notice 105 of 2008 describes various **TASKS** to be performed **with associated KNOWLEDGE CRITERIA** (the knowledge that you require) **and SKILLS CRITERIA** (the skills that you require) **that you will need to perform the task.**

FIRST LEVEL REGULATORY EXAMS – EXAMPLES WITH EXTRACTS OF THE QUALIFYING CRITERIA FOR KEY INDIVIDUALS

The qualifying criteria (tasks, knowledge and skills) applicable for the First Level Regulatory Examinations for key individuals are described in Annexure 1 of Board Notice 105, (pages 2 to 23). There is a lot of information describing the qualifying criteria and **the following is an “extract” from some of the First Level Regulatory Exams to illustrate what is involved.** Key individuals **MUST** study their applicable qualifying criteria to assist them to prepare for the exams

FIRST LEVEL REGULATORY EXAMS FOR KEY INDIVIDUALS IN CATEGORY I, II, IIA, III & IV

Note: There are 16 TASKS in Section 1 – the following is one of the tasks to serve as an example

Task 1

	Task to be performed	Knowledge Criteria (the knowledge required)	Skill Criteria (the skills required)
1.	Describe the role of the key individual in terms of	Describe the roles & responsibilities of the KI	
		Explain the requirements for licensing by the FSB for the	

the FAIS Act.	role of the KI	
	Describe the KIs management responsibilities	Perform the necessary management & oversight functions
	Describe the honesty & Integrity requirements for a KI	Check whether a potential/current KI meets the requirements of honesty & Integrity
	Explain the implications for a KI if he/she is no longer Fit & Proper (Honesty & Integrity)	take appropriate action where a potential/current KI does not meet the requirements regarding honesty & integrity
	Explain the implications for an FSP if a KIs is no longer Fit & Proper (Honesty & Integrity)	
	Explain the competence/qualification requirements of a KI	Check, where applicable, whether a potential/current KI meets the competence requirements
	Explain the experience requirements of a KI	Check, where applicable, whether a potential/current KI meets the experience requirements
	Explain what management responsibilities should be carried out by a KI	Oversee the implementation of processes and controls to ensure sufficient management & oversight
	Explain when an individual can commence acting as a KI	

FIRST LEVEL REGULATORY EXAMS FOR KEY INDIVIDUALS IN CATEGORY II AND/OR IIA

Note: There are 11 TASKS in Section 2 for key individuals approved in Category II and/or IIA. Key individuals appointed in Category I and II/IIA must complete the First Level Regulatory Exams for the 16 tasks applicable to Category I key individuals as well as the 11 tasks in Section 2 for Category II/IIA key individuals i.e. 27 TASKS in all. The following is one of the tasks in Section 2 to serve as an example of a Category II/IIA task (Task 1)

First Level Regulatory Exams for key individuals in Category II and/or IIA

	Task to be performed	Knowledge Criteria (the knowledge required)	Skill Criteria (the skills required)
1.	Apply the Category 11 and/or 11A FSP business model	Describe the characteristics of a Cat 11 and/or Cat 11A FSP and how that differentiates it from other FSPs in Cat 1 and/or Cat 111	Take the difference between Cat 11 and/or 11A FSPs and other FSPs into account when making business related decisions
		Describe the separation of client assets from cat 11 and/or Cat 11A assets	Perform the fiduciary duty of the Cat 11 and/or Cat 11A FSP.
			Identify which asset belong to the client & which to the Cat 11 and/or Cat 11A FSP
			Interpret basic financial systems Implement systems and processes to separate client & Cat 11 and/or

			Cat 11A assets
		<p>Explain the roles and responsibilities of the different parties involved, including but not limited to:</p> <ul style="list-style-type: none"> ▪ Different parties/legal entities involved, ▪ Nominee, ▪ MANCO, ▪ Insurers, ▪ Pension funds, ▪ 3rd party FSPs, ▪ Financial Advisors, ▪ Brokers, ▪ clients 	
		Describe the need for relevant contractual agreements to be in place with the relevant other party	Verify that the relevant contractual agreements are in place with the other party
			Business is conducted in accordance with the contractual agreements

FIRST LEVEL REGULATORY EXAMS FOR REPRESENTATIVES IN CATEGORY I, II, IIA, III

Note: There are 8 TASKS in Section 4 – the following is one of the tasks to serve as an example (Task 3)

	Task to be performed	Knowledge Criteria (the knowledge required)	Skill Criteria (the skills required)
3.	Adhere to the specific obligations in terms of the relevant Code of Conduct and other subordinate legislation	Explain the obligations & requirements when client funds or premiums are collected	Adhere to the requirements of the Code when depositing client's money
		Explain the importance of disclosures	Use disclosures that are adequate to enable client's to make an informed decision
		Discuss the impact & requirements regarding the disclosure rules on the FSP	Apply disclosure requirements in terms of financial products
		Discuss the effect of disclosure requirements when commission is explained	
		Discuss the disclosure requirements regarding the FSP, product suppliers, product suppliers acting as FSPs & financial services	
		Discuss how to ensure transparency & manage conflicts of interest	
		Distinguish between actions	

		regarded as advice & intermediary services	
		Describe the concept of ethical conduct in the financial services environment	Behave ethically when providing financial services
		Discuss your role in terms of ethical conduct in the financial services	Provide an example of ethical vs. unethical conduct in the financial services environment
		Explain the manner in which complaints are to be handled	Follow the complaints procedures and processes that are in place
		Explain the steps that must be taken by an FSP/rep when providing advice	
		Explain the provisions in the General Code relating to; <ul style="list-style-type: none"> • custody, • complaints, • risk management, • insurance, • advertising and • termination 	

SOME PRACTICAL EXAMPLES TAKEN FROM THE PLAIN LANGUAGE GUIDES TO ILLUSTRATE HOW THESE REGULATORY EXAMS WILL WORK

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 regulatory 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 complete the FIRST Level regulatory examination for Category I key individuals plus the FIRST Level Regulatory Exam that applies to 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 FIRST Level regulatory examination for key individuals that include the qualifying criteria for all key individuals in all the various Categories.*
- *Thandi will also have to complete the FIRST Level regulatory examination for representatives.*
- *In addition, Thandi will have to complete the SECOND Level regulatory examination 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.*

Let's look at some examples that apply to representatives;



*Petra is a **representative** who is ONLY appointed for the Health Care Benefits subcategory. She will be required to write two regulatory examinations:*

- *FIRST Level Regulatory examination for Representatives, and*
- *SECOND Level Regulatory examination for Health Care*

Benefits.

*Joel is a **representative** for a Category I Financial Services Provider, and who gives advice on the following subcategories:*

- *Long Term Insurance: category C*
- *Retail Pension Funds*
- *Collective Investment Schemes and*
- *Pension Fund Benefits*



He will have to write the following regulatory examinations:

- *FIRST Level Regulatory examination for representatives;*
- *SECOND Level Regulatory Exams for Long Term Insurance: category C and Retail Pension Funds*
- *SECOND Level Regulatory Exams for Collective Investment Schemes and*
- *SECOND Level Regulatory Exams for Pension Fund Benefits*

The regulatory examinations for Long-term Insurance: category C and Retail Pension Benefits are grouped together in one examination. In total, Joe would thus be required to complete four regulatory examinations.

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