FINANCIAL SOUNDNESS

(Chapter 6 of Board Notice 194 of 2017)

Authorised Financial Services Providers (FSP) and their juristic representatives are required to comply with financial soundness requirements applicable to their category(ies) of license and the type of financial services which they provide. FSPs that do not continuously meet these requirements face the risk of license suspension or even licence withdrawal. Some FSPs have additional reporting obligations over and above the submission of annual financial statements. There are negative consequences for FSPs that do not report to the Financial Sector Conduct Authority (Authority) as prescribed or fail to report on time.

In this article we revisit some of the financial soundness requirements and reporting obligations set out in the Fit and Proper Board Notice [1].

The Financial Soundness Requirements

General Requirements

One of the general requirements that applies to all FSPs and their juristic representatives is that they must maintain financial resources that are adequate to carry out their activities and ensure that liabilities are met as they fall due. It is also important for FSPs and their juristic representatives to carefully manage their financial obligations. If they seriously and persistently fail to do so, they may no longer continue as an FSP or juristic representative.

Requirements for specific types of FSPs

1. Category I FSPs and their juristic representatives that do not hold, control or have access to client assets or that do not collect, hold or receive premiums or other monies in respect of a financial product must at all times ensure (in addition to any general requirements) that the assets of the FSP exceed its liabilities.

The definitions of assets and liabilities which are set out in section 47 of the Board Notice do not apply to these types of FSPs. This means that as from 1 April 2018, these FSPs no longer need to exclude goodwill, intangible assets or investments in and loans to related parties, from the calculation of their assets and they are no longer allowed to deduct subordinated loans from the calculation of their liabilities. FSPs who find it difficult to comply with the requirements as a result of the changes, in particular the fact that subordinated loans can no longer be excluded from liabilities, should consider applying to the FSCA for an exemption to afford the FSP some time to rearrange its financial affairs.

2. Category I FSPs that collect premiums or hold assets as well as Cat II, IIA, III and IV FSPs and their respective juristic representatives must ensure that they meet the following requirements at all times:

Their assets (which must exclude goodwill, intangible assets and investments in and loans to related parties) must exceed their liabilities (excluding loans in favour of other creditors). In addition, the assets of Cat IIA and III FSPs must exceed their liabilities by at least R3 million which is referred to as the additional asset requirement.

The current assets of the FSP must exceed its current liabilities (working capital requirement).

The required amount of liquid assets applicable to their FSP must be maintained.

Ensure that your calculation is correct

When calculating whether you meet the financial soundness requirements, be mindful of the definitions set out in Chapter 6 of the Fit and Proper Board Notice and whether they apply to your FSP or not. It is a good idea to make sure that the FSP's accountant or other responsible person is fully aware of the requirements which apply to your FSP to ensure that the correct calculations are used.

Specific Reporting Obligations

Liquidity Calculation Declaration

Certain FSPs are required to provide a Liquidity Calculation Declaration to the FSCA at specific intervals.

Cat I FSPs that collect premiums and Cat IV FSPs must submit this Declaration to the Authority once a year together with their Annual Financial Statements.

Cat II, IIA and III FSPs must submit this Declaration bi-annually based on the FSP's financial year.

Juristic representatives of the FSPs mentioned above must submit a Liquidity Calculation Declaration to their FSPs bi-annually based on their financial year.

FSPs should diarise this requirement as the Declaration must reach the Authority within 45 days after their financial half year-end. A request for extension must be done within 15 days prior to the submission date.

Early Warning Reports

Cat I FSPs that hold assets or collect premiums, Cat II, IIA, III and IV FSPs must report to the Authority if their or their respective juristic representative's:

Assets exceed liabilities by less than 10%.

Current assets exceed current liabilities by less than 10%.

In respect of CAT IIA and CAT III FSPs and their respective juristic representatives – the additional assets requirement exceeds the minimum requirement by less than 10%.

If any of the financial soundness requirements are not met or if the FSP becomes aware of any situation that may result in any of the above.

Early Warning Reports must be certified by the CEO, controlling member, managing or general partner or trustee of the FSP.

FSPs are able to submit Early Warning Notifications using the FAIS ePortal system. The Authority recently sent an email communication to FSPs explaining how to use the FAIS ePortal system for this type of reporting. Click here to read the communication on submitting an Early Warning Notification.

In conclusion, financial soundness and the associated reporting obligations must be closely monitored by Key Individuals to ensure that the FSP and its juristic representatives remain in good standing and avoid any regulatory action.

The Financial Soundness Requirements for FSPs came into effect on 1 April 2018. However, juristic representatives are afforded some time to ‘get their house in order’ as financial soundness requirements had never previously applied to them. Juristic representatives must be fully compliant by 1 March 2019.