
FIT AND PROPER STATUS OF ALL OWNERS

ONGOING COMPLIANCE

Required: Where a provider is a corporate or unincorporated body, a trust or a partnership, the provider must employ procedures that ensure that at all times every director, member, trustee or partner of the provider, who is not a key individual in the provider's business, complies with the requirements in respect of personal character qualities of honesty and integrity

Section (10)(a)(i) of the Act provides that where a provider is a corporate or unincorporated body, a trust or a partnership, the provider must at all times be satisfied that every director, member, trustee or partner of the provider, who is not a key individual in the provider's business, complies with the requirements in respect of personal character qualities of honesty and integrity.



Section 36 of the Act provides that any person who contravenes or fails to comply with these requirements (Section 8(10) of the Act) is guilty of an offence and is on conviction liable to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.



In terms of Section 8(10)(b), if the registrar is satisfied that a director, member, trustee or partner does not comply with these requirements, the registrar may suspend or withdraw the licence of the provider.

NEW APPOINTMENTS

Required: Where a provider is a corporate or unincorporated body, a trust or a partnership, the provider must have procedures that ensure that within 15 days of the appointment of a new director, member, trustee or partner, the provider informs the registrar of the appointment and furnishes the registrar with such information on the matter as the registrar may reasonably require

In terms of section 8(10)(a)(ii) where a provider is a corporate or unincorporated body, a trust or a partnership, the provider must within 15 days of the appointment of a new director, member, trustee or partner, inform the registrar of the appointment and furnish the registrar with such information on the matter as the registrar may reasonably require.



Section 36 of the Act provides that any person who contravenes or fails to comply with these requirements (Section 8(10) of the Act) is guilty of an offence and is on conviction liable to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.





In terms of Section 8(10)(b), if the registrar is satisfied that a director, member, trustee or partner does not comply with these requirements, the registrar may suspend or withdraw the licence of the provider.

KEY INDIVIDUALS

Required: The provider must have procedures in place to ensure that if any change occurs in the personal circumstances of a key individual that affects the Fit and Proper Requirements, the person will be removed as a key individual and that the Registrar is informed.

Any removal of a key individual in terms of this provision could present legal problems between employer and employee and so it is suggested that ideally, the Contract of Employment between the provider and any key individual be amended to include a clause that entitles the employer to take the appropriate action should an employee who fulfils the role of key individual fail to fulfil the fit and proper requirements.

In addition, the provider should enquire on a regular basis (e.g. quarterly or bi-annually) from the key individual as to whether or not any significant changes have occurred. This enquiry should be in writing and, together with the replies thereto, should be kept on file.

The provider must have procedures as suggested that enable the provider to be advised at all times of the fit and proper status of the key individual. These procedures must include procedures for informing the Registrar immediately such changes occur.

One of the most important considerations of current concern is the qualifications of key individuals. If a key individual who was appointed between September 2004 and December 2007 fails to achieve the minimum qualifications - and, if achieved, fails to notify the registrar in good time – such a key individual will be deemed to no longer be fit and proper and will automatically be removed as a key individual by the registrar.

Such a person will not be allowed to provide any form of financial service until he or she has achieved a full qualification and has on application, once again been approved by the registrar.

