



IBG Underwriting Managers

FSP: 36515

IBG Underwriting Managers is an authorised Financial Services Provider with FSP number 365151 Underwriting on behalf of Renasa Insurance Company Limited, a licensed non-life insurer and FSP.

POLICY AND PROCEDURES FOR DEBARMENT OF A REPRESENTATIVE

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 as may be applicable in terms of Board Notice 194 of 2017, 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):

The authorised FSP, IBG Underwriting Managers Pty Ltd, **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 referred to in section 13(2) of the FAIS Act, 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 IBG Underwriting Managers Pty Ltd **while** the person was a representative of the provider.

IBG Underwriting Managers (Pty)

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Before effecting a debarment, IBG Underwriting Managers Pty Ltd, must ensure that the debarment process is lawful, reasonable and procedurally fair.

A debarment that is undertaken in respect of a person who no longer is a representative of the

IBG Underwriting Managers Pty Ltd, 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, IBG Underwriting Managers Pty Ltd 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.

It is the duty of IBG Underwriting Managers Pty Ltd to ensure that representatives are fit and proper. Failing which, the regulator may take action against IBG Underwriting Managers Pty Ltd or key individual for non-compliance in terms of the FAIS Act.

Procedures *before* debarment is effected:

IBG Underwriting Managers Pty Ltd 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 IBG Underwriting Managers Pty Ltd 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 IBG Underwriting Managers Pty Ltd decision.

Note: If IBG Underwriting Managers Pty Ltd 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 persons last known e-mail or physical business or residential address will be sufficient.

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Procedures *after* debarment has been affected:

IBG Underwriting Managers Pty Ltd must –

- immediately withdraw any authority for the person to act on behalf of IBG Underwriting Managers Pty Ltd;
- 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 un-concluded 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 - see FSCA FAIS Notice 17 of 2018 for the official section 14 notification form; 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, including –
 - documentary evidence and supporting information for the debarment;
 - a copy of the employment contract or mandate between the FSP and the representative;
 - a copy of the transcript/minutes of the hearing;
 - forensic/investigation report and any other relevant documents.

Rights of the debarred representative:

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.

IBG Underwriting Managers Pty Ltd 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;

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- 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.

Examples where debarment must be considered:

- Failure to complete regulatory exam/qualification by cut-off date;
- Fraud, theft and other offences involving dishonesty;
- 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 IBG Underwriting Managers Pty Ltd or perform the activities for which that person was appointed.

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.

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Reappointment of a debarred representative:

On 18 December 2017 the FSB issued a guidance note on the reappointment of a debarred representative. The purpose of this note is to -

- clarify the role of the regulator in the reappointment of a representative that was debarred in terms of section 14(1) of the FAIS Act;
- clarify the responsibilities of the FSP that reappoints a debarred representative in terms of section 13(1)(b)(ii) of the FAIS Act, read together with Board Notice 82 of 2003; and
- list the information an FSP must submit to the regulator after reappointment of a debarred representative.

An FSP that debars a representative should explain the provisions for reappointment as a representative to such person.

The guidance note on reappointment of a debarred representative forms part of this debarment policy and procedures manual.

Full Name of representative: _____

Signature of representative: _____

Date: _____

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