

JUNE 2010

If you are reading this newsletter, please remember to pass it around your office.

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EDUCATION

Peter Veal's Article's on...

The silence is not so golden

At the end of April we were quite enthusiastic, having found that INSETA had only missed the deadline for the publication of the representative first level regulatory learning material by a couple of days.

In fact, we boiled with optimism when we published the list of deadlines for the remainder of the learning material. Sadly, INSETA and/or its partners have let the industry down and to date none of the learning material for the first level examinations for the key individual categories has appeared.

Nor have we heard any more about the examinations themselves.

It is ironic that the very regulator that demands transparency is keeping quiet about the problems that are obviously being experienced. Whilst only a rumour, we have heard that the system crashed just as the pilot project was about to begin and has only now been fixed. This may or may not be true, but we do know that the pilot project has not yet begun.

It is unlikely that we will have any sight of the examinations before late August at the earliest.

The main issue is time. The Financial Services Board lost credibility when it continually 'moved the goalposts' during the transitional phase and it desperately needs to keep to its set time-frames if it wants to regain the credibility it lost. But at this rate it will have no alternative but to extend the deadlines for completion of the first level examinations, and this will not be good for its image.

The silence is not so golden cont...

Moreover, this is already having an impact on our industry because supervisees have to work under supervision until all regulatory examinations have been passed. The unnecessary workload that has to be undertaken by management is already having an effect and it is imperative that these examinations get underway as soon as possible.

But it is not all doom and gloom. The fact that examinations have to be faced has forced practitioners to take a much greater interest in compliance.

We have already held a number of classroom workshops for key individuals and representatives and have had an excellent response. Many of our delegates have complimented us not only in the way we facilitate the programme, but also in respect of the material we hand out which has been prepared as a manual for future reference. Some have even suggested that they will re-visit their business models to find ways of acting in a more professional manner.

Our representative's workshop is held over a full day and covers every learning outcome necessary to pass the exam. In respect of key individuals the workshops are held over two days as there is considerably more learning required.

With this type of examination, we believe that the one-on-one old fashioned teaching approach is more appropriate because we can spend more time discussing the application of the compliance requirement in the workplace.

If you would like to take advantage of our workshop offerings, the price is R995 (excl VAT) for the 1-day representative training and R1990 (excl VAT) for the 2-day key individual training.

Registration forms can be accessed from James at our Johannesburg office 0114311183

FROM PRETIUM

Risk Management

As risk management continues to be a focus point for the regulators we continually highlight interesting articles on the subject. We have just had an advance copy of an article written by ART (Pty) Ltd who have an effective risk management tool to assist in developing and managing a company's risk management structure. It is a bit lengthy to reproduce here but here are some snippets from it. If you would like to see the full version, just ask and we will pass through to you along with ART's contact details.

Remember the size of your company does not affect the logic just the practical implementation.

The most important ingredients for any business, and their significance, are as follows:

- 1. A predictable, secure, spread, sustainable income; without this you have no security this as your primary business legitimacy indicator.
- 2. Risk management activities plan this is your business risk health protection indicator.
- 3. Sufficient organisational resource options, at least two of each key item (either your own or outsourced to trusted business partners) this is your structural strength indicator.
- 4. A contemporary, tested Business Continuity Plan (BCP), (sometimes called a disaster recovery plan, although this is a less positive title) this is your adaption indicator.
- 5. A strong, almost personal, spirit or culture your only true unique difference.

Here are some of the principle motivators for having a risk management plan:

- 1. Risk management is an internationally recognised best practice, for all sizes and types of business, in any location(s).
- 2. Regulators agreed and have made it a legal requirement for all businesses in many large developed economies around the world. (And FAIS has done just that)
- 3. It is a common-sense choice too as it prompts you to plan and act ahead.
- 4. The 2008 Companies Act, due to be enacted in the third quarter of 2010, holds you personally liable for the consequences of your actions or inactions in your business.

Annual FSB compliance reports

As you read this we will still be busy compiling 2010 annual reports with many of you having already received your draft reports. We urge you to prepare for the meetings we will be setting up with you to discuss both the report itself as well as the plans for the 2010/11 reporting year. This will ensure the meetings are productive and that you will be signing a report that is well understood.

You will see from the covering mail used to send out the reports there are various additional documents that we require. Whilst some are simply the latest policy schedules for your PI, FG and IGF (where applicable) there are two that are vitally important to the report process:

- 1. Any aspect of your 2009 report that was noted as being in development that still has this notation this year demands an explanation from you not us! We have created an Annexure, number 1 in the documents we will send you, and this highlights, where applicable, those aspects still in development and provides for input from you as to why this is the case and what will be done to rectify the situation.
- 2. There are also some issues that the FSB clearly take to be serious and if these areas have not been dealt with then a written explanation of the reasons and the action plan for achieving compliance have been requested as part of the report. Once again this input is needed from yourselves and not Pretium. We have provided a summary, again where applicable, with the report under the heading Annexure 5 with an explanation of what is required.

Both these items are needed **BEFORE** we can submit your report so we once again urge you to be prepared for this meeting by having these documents ready for us.

Sending in your signed report page will not avoid a meeting being held. We need to meet with you to highlight those issues in the report still in need of attention as well as set out those areas that will be focused on in the forthcoming reporting period. These will be a mixture of new regulations and revisiting those areas that have perhaps been dealt with in the early days of FAIS and/or in too brief a manner. With the increasing feedback coming from FSB on-site visits it is becoming clear that these areas need to be revisited.

Those issues that we will be looking at include:

- A PS Guidance Note on the new conflict of interest regulations. We will be providing
 awareness workshops during the period September to November 2010 to assist with the
 understanding of these regulations, if required, or one on one workshops where deemed
 necessary by you. Further details and costs, where applicable, will follow shortly.
- A PS Guidance Note on the Business Continuity issues that needs to be built into your overall risk management plans
- Documented procedures generally but with specific focus on:
 - Managing waiver of rights,
 - Staff recruitment procedures,
 - Staff promotion standards i.e. the move from Representative to Key Individual,
 - Staff annual appraisal standards,
 - Staff development plans.
- Use of the FAIS &FICA (where applicable) summary document to summarise control measures and responsibilities
- Advertising including web sites
- Risk management plans generally but with specific focus on:
 - Business continuance plans (in addition to physical risk management),
 - IT backups and specifically the need for ongoing testing.
 - Review of and need for the newly defined Long-term categories B1 and B2 and the need for Retail Pension category for "living annuities".

Pretium invoices

We have made a small change to the procedures we adopt for invoicing. From July the invoice will be dated for the month it relates to rather than the month it was issued as we have done until now. The invoice will continue to be issued at the end of the previous month. So your July invoice will be dated 1 July 2010 but issued and submitted to you in June 2010.

Useful market places

Another summary of the niche market places that exist out there appears in the June edition of RiskSA – pages 20 -24.

Broker & UMA binder agreements

The (now) long awaited draft regulations have still not been released despite a statement from the FSB these would be seen at the end of May.

Electronic Communication

We are increasingly asked about the issuing of policies on CD and sent by e-mails to clients rather than via the paper version that has been the norm till now. We have been asked much less about the validity of electronic signatures.

We attended a conference recently on the impact of electronic everything, signatures included and some of the most interesting aspects were:

- There are 2 types of electronic signature:
 - Advanced electronic signature coming to SA soon.
 - o Electronic signature

So what is the difference between the two??

Advanced electronic signatures mean an electronic signature which results from a process which has been accredited. Advanced electronic signatures are not available in SA as yet.

Electronic Signature mean data attached to, incorporated in, or logically associated with other data and which is intended by the user to serve as a signature (eg. Your e-mail signature).

- · Where parties have not agreed on the type of signature, it will be legally valid if;
 - o The signature identifies the person and his approval of the information communicated; and
 - o The method was appropriate and reliable
- Data messages have admissibility and evidential weight in any legal proceedings. In assessing the weight of a data message, regard must be made to –
 - The reliability of the manner in which the data message was generated, stored and communicated.
 - o The reliability of the manner in which the integrity of the data message was maintained;
 - o The manner in which its originator was identified; and
 - Any other relevant factor.

Electronic Communication CONT...

- Typical online contracts are contracts formed over the internet usually fall into 3 categories:
 - Contract for the sale of goods
 - Contract for the supply of digitised products
 - Contracts for the supply of services and facilities

For a contract of sale to be valid there must be an agreement as to the terms, object and price, consensus is vital to contract information. Signature is not a statutory requirement and is only an indication of consensus.

- The Courts cannot discriminate against an electronic document merely because it is in an electronic form.
- One does not need a digital signature (advanced) to conclude an agreement but rather only when the law specifically requires it.

Responsibility to report wrongdoers

Bruce Cameron recently wrote an article on a possible problem for Nedbank who apparently failed to debar a Rep who was caught defrauding clients and the company. The individual took up employment at Old Mutual, who apparently did check the FSB site for debarred Reps and found nothing so employed the man. The problem was he may well have carried on with his ways and defrauded some more clients – something being looked at by Old Mutual.

The issue being looked at by the FSB is whether or not Nedbank can be held liable for failing to debar a clearly unworthy staff member and so remove them from the system. We will keep you posted as things develop but this clearly illustrates that when you encounter a clearly "un" fit & proper staff member it is not enough to simply rid yourself of the problem, you need to act responsibly and follow through on the processes that are there to protect everyone in the system; who knows you could even employ them next!

Retraction

In March we published an article that dealt with the procedures around an FSB on-site visit. The FSB felt some of our commentary could have been misleading, specifically the comments on outstanding reports. Our comment in that article should not be taken as a commentary on the issuing of reports by the FSB in any way.

FROM THE FSB

Applications for part recognition of qualification

The FSB have advised that they are still accepting applications. No doubt some pressure has been put on the FSB to give the 2008/9 people the same opportunity as the 2004/7 group with regards part qualifications. So if you need credits and have a partially complete qualification that you are actively involved in you may well qualify for this option.

FSB Bulletin

First Quarter 2010 – this deals with a few interesting issues from a FAIS perspective, such as:

- The treating customers fairly initiative. We also have copies of the discussion paper on this subject if anyone is interested in getting involved and more importantly seeing where the regulations are going.
- Suitability issues when it comes to health care insurance. We often find this area, especially when
 dealt with by a "general" broker, is often overlooked. These brokers tend to deal with one product
 provider and seldom analyse the actual needs of the client and tend to treat the cover as a
 commodity rather than a financial product. The article gives some good insights. If you would like a
 copy just contact Pranisha at our offices.
- There is also an article on Consumer Rights Month. Did you know 15th March was World Consumer Rights Day? And in RSA March is dubbed Consumer Rights Month. With all this legislation it seems the Consumer is close to everyday being Consumer day – a bit like why there is no national holiday for men as every day is men's day!

FAIS Circular 6/2010

The FSB recently released FAIS Circular 6/2010. This was a reminder to all FSPs that they need to ensure they are up to date with all aspects of their returns to the FSB. These include:

- Annual compliance reports If we're your Compliance Officer we manage this and will ensure you are up to date or at the very least are aware of gaps in your returns.
- Annual financial statements once again we TRY and manage the submission of these and our records are such that we are aware of your status in this regard.
- Annual levies payment thereof this we do not track, nor have records. We make sure you are aware of the general levy amounts, when they are to be issued and the deadline for payments. Where the invoices are sent to us we pass them on but then it is your credit control matter. We often get asked to verify a client's status in this regard but are unable to do so. If you are unsure if your levies are up to date you can contact the FSB directly. The contact details are:

Salome Mouton (012) 428 8000 salomem@fsb.co.za

Levies

On the subject of levies the FSB have recently announced the 2010 levy details which are as follows. So you don't have to do the maths this is an overall increase of 16.5% on last year's figures:

The 2010/2011 levy consists of three components:

- 1. The funding of the FSB's administrative costs in terms of the FAIS Act,
- 2. In respect of the operational costs of the Office of the FAIS Ombud,
- 3 Thirdly, in respect of short-term insurance intermediaries regulated in terms of Section 45 of the Shortterm Insurance Act.

1. Levy for the office of the FSB

including Long-term A only FSPs	R 2,550
(ii) Additional amount per KI / Rep(iii) Long-term A only FSPs havea lower cost per Rep	R 400 R 200

2. Levy for office of FAIS Ombud

(i)	Base levy for all FSPs	R 581
(ii)	Amount per KI / Rep	R 218
in s	summary you have for Cat & IV	

So in summary you have for Cat & IV

A total base fee of: R 3,131 An additional fee for each KI and Rep: R 618

For Cat I Long term A only:

A total base fee of: R 3,131 An additional fee for each KI and Rep: R 418

And for sole proprietors

A total fee of: R 3,749

NB: the KI fee only applies if they are not a Rep – there is no duplication where a person acts as a KI

NB: We have restricted the detail to Category I & IV and Sole proprietors.

3. Levy for Short-term Intermediaries with an IGF

The percentage increase for this levy is 9.5%

The levy of **0.0143%** of the total gross premiums as reported by the auditor or accounting officer. The levy is based on the total gross premiums on 31 August of each levy year as provided by SAIA.

The levy is subject to a minimum of R105 and a maximum amount of R 28,105.

This charge will be reflected on the annual FAIS levy invoice as a separate line item sent to the FSP.

NB: Remember there is no VAT element to these figures.

FROM THE FAIS OMBUD

Whilst we have no clients into the property syndication business the latest ruling by the FAIS Ombud where she has ordered an investment company, Lifesure Financial Services CC represented by Nigel Segers to repay Bernard Dudley, a 70 year-old retired Western Cape man, R 495 000 with interest @ 15,5% from November 2008.

We won't provide all the detail (if you would like to see it just get in touch and we will send you a summary).

She made some very specific statements in the ruling:

- "Any financial services provider who intends to recommend an investment in a property syndication to a client must first obtain all the available information about the promoters as well as the financial viability of the underlying investment before the product can be presented to a client."
- "(the broker) carried out no independent verification of what was presented in the prospectus. It was open to him to seek this information. A glance at the prospectus indicates that the promoters deliberately intended to be economical with information relating to the financial details of the company.
- "The information provided in the prospectus in relation to financial standing of the company is so inadequate that no reasonable provider acting in the interests of his or her client could have recommended the investment,"
- "Any financial services provider who intends to recommend an investment in a property syndication to a client must first obtain all the available information about the promoters before the financial product can be presented to a client. The FSP is expected to first satisfy himself that the investment is sound,"
- "In addition, embarking on an exercise of advising a client to invest in a product which the provider has not the slightest idea of how it works and no appreciation of the risks borders on criminal conduct."

Whilst these comments were relevant to this ruling the general theme of the thinking will easily be applied to other investment cases – so take care.

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