

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..

RE exams – still no news

The trials started last week, and if all goes well it means that the pilots will be run during August. This could mean that the exams will be rolled out in September, but we're not holding our breath!

We have decided to suspend our RE workshops until we know when the exams will be held.

We'll keep you posted but in the meantime some detail about how it will be working – all being well – once it starts as supplied by Moonstone, one of the examining bodies;

Venues

Moonstone will have 4 permanent venues where examinations can be taken on a daily basis. These venues are situated in Cape Town, Durban, Johannesburg and Pretoria.

There will be an additional 40 satellite venues country wide, within an approximate 200km Radius of each other spread across the 9 provinces.

These will include cities and towns like Stellenbosch, Bloemfontein, Kimberley, Mafikeng, Nelspruit, Polokwane and Port Elizabeth.

This means that the venues are within easy reach of anyone. Exams at these venues can be scheduled according to demand. The venues will be similar to those that Universities and other Higher Educational bodies. Such as UNISA use, as well as schools and churches.

Moonstone will also provide examinations at corporate and other venues for a minimum of 20 examinees, subject to the facilities being in accordance with Moonstone's criteria.

These include:

1. Adequate parking facilities
2. The venue must be reasonably accessible to public transport
3. All examinees with disabilities should be able to use the venues, e.g. wheelchair access
4. Additional facilities for people with hearing or speech impairments that need to take down specialised examinations – read to them or written for them with a specialist invigilator
5. Adequate toilet facilities – also for the physically disabled
6. Adequate lighting
7. The venue must have good airflow, and/or equipped with an air conditioner
8. Seating: Must be preferably equipped with examination type tables and suitable chair for a single person
9. An average of 1.5m² must be allocated to each table/ chair unit
10. Venue size: minimum 30 examinees per session
11. The venue must comply with safety regulations. Moonstone requires a copy of the venue's Occupational Health & Safety Policy statement in compliance with the Occupational Health and Safety Act no 181 of 1993 and its associated regulations.

Exam Registration

Examinees will have a choice of 4 registration options: on-line, or via telephone, fax, or bulk import.

Exam Format

You will be given a choice as to how you wish to write:

- Electronically (Main Centres: Cape Town, Durban, Johannesburg and Pretoria)
- Paper based (All)
- Special arrangements for special needs e.g. visual or hearing impaired

Our mission is to make the registration process as well as the actual writing of the exams as painless as possible.

Qualifications for Key Individuals in the Short Term Sector

Key Individuals appointed after 1 January 2010 have to be fully qualified **BEFORE** they are authorised by the Financial Services Board. In principle this is acceptable but what will the Financial Services Board recognize as a suitable qualification? Board Notice 44 of 2010 lists suitable qualifications for key individuals in the short term general insurance sector, but the only qualification acceptable at NQF 4 is FETC: Long Term Insurance.

This means that those representatives that are singled out for promotion and who have a short term qualification at NQF 4 cannot be promoted until they have passed additional examinations. And if they wish to study at the NQF 4 level, they will have to take a life insurance qualification.

At NQF 5, the only short term insurance qualification acceptable is the Higher Certificate: Short Term Insurance, provided by UNISA. The strange thing is that this was replaced some years ago by the IISA Programme in Insurance which is notably absent from the list of acceptable qualifications.

Even the IISA Associateship and Fellowship qualifications are absent from the list. The IISA say that this is a mistake and it will be rectified, but when? The Financial Services Board is unlikely to publish a qualification update before November.

Moreover, once rectified a NQF 5 qualification will still take a candidate at least 24 months to complete. Does this mean that a representative cannot be promoted for 2 years? How will the FSP cope? Hopefully the Financial Services Board will see fit to make appropriate changes.

Qualifications for Representatives in the Short Term Sector

Qualifications have been divided into categories, these being category S, category SP, and category G with the definition of each Category being provided in the Board Notice 105 of 2008, Part V1 sub-paragraphs 3, 4 and 5.

Category S relates solely to the transitional arrangements which came to an end in December last year so cannot apply in respect of any person registering as a representative from 1 January this year. In looking at the list of published qualifications for new entrants, the only one acceptable for practitioners in both personal and commercial lines short term insurance is FETC: Retail Insurance, yet this was specifically designed for those industries whose primary income is generated from the sale of non-insurance products.

The qualifications specifically designed for the general short term insurance industry such as FETC: Short Term Insurance and FETC: Short Term Risk Management has been rejected. Part 111 sub-para 8 of Board Notice 105 of 2008 states that where the qualification contains a fundamental, core and elective component, those components must correspond fully with the qualifying criteria for the specific category and/or subcategory as determined by the Financial Services Board.

The Financial Services Board has made it quite clear that those qualifications as they stand at present are inadequate and will only be accepted if they are supplemented by the incorporation of further Unit Standards that provide the 'top-up' requirement.

We have been told that the FSB is presently assessing replacement qualifications. Unfortunately we do not know if any of these qualifications apply to the short term industry, or when they will become available.

In the meantime, as usual, we wait.

FROM PRETIUM

Here is a list of study material currently available from the INSETA website

- FSB Regulatory Examination Preparation: FSPs and Key Individuals in Categories I, II, IIA, III & IV
- RE 6: FSB Regulatory Examination Preparation: Short- and Long-term Deposits.
- RE 4: Representatives. (PDF 937 KB)
- RE 5: Second Level Regulatory Examination: Long-term Insurance Category A and Category IV.
- RE 14: Second Level Regulatory Examination: Long-term Insurance Category A: FAB.

How to register with the Financial Intelligence Centre

All Accountable and / or Reporting Institutions are now required to register themselves with the Financial Intelligence Centre. You will receive log in details and will be able to report Suspicious and Unusual transactions directly by following a few easy steps.

Please note that only Accountable institutions need to register!! Even if your product lines are for example funeral – you will still need to register as they will fall within many of the exemptions that are applicable to them.

We at Pretium Services will be able to process this registration for you and will thereafter maintain the details. In order to do this, there will be a once off fee of R1000 plus VAT and an annual fee of R500 plus VAT thereafter for an annual review/updates.

To register yourself, go to www.fic.gov.za

Profile Changes

It has been brought to our attention of late that the FSB are not allowing Pretium to resolve queries for profile changes submitted.

The reason for this is simple: We are not the contact person for all of our FSPs.

We've had a number of cases in the last week whereby we responded to a query made by the FSB only to be told that it has to come from the contact person and not us.

We are in the processing of amending the contact persons of the FSP to ourselves. We have responded to the FSB requesting advice on the management of this and await their response.

We will let you know as soon as we hear something from the Financial Services Board.

FROM THE FSB

Levies

Some confusion has been caused by the initial letter to FSP's on the subject of levies and the "reminder" sent just a few weeks later. The intention was remind you to ensure that your register of representatives is up to date so that your invoice issued in September/October is accurate and no queries arise when it comes to payments as has happened in the past. We will be reviewing all registers during August in an attempt to ensure our records and those of the FSB are accurate but we can only check what we know and would ask as the FSB have that you provide us with details of all changes; specifically representatives leaving, so we can ensure your levy invoices are accurate.

Licence suspensions

The FSB have recently had a purge on all licences that had failed to pay fees and/or submit annual financial statements. Proposed suspension letters were submitted and it seems the FSB are less likely to listen to excuses and are pushing ahead with the need to pay the penalties. Be warned - ensure your levies are paid and communicate with us if financial statements will not be ready in time – we need to attempt to get you an extension for submission and this we need to do AT LEAST 15 days before the expiry of your deadline, requests afterwards will not be granted.

We have seen a hard stance on requests for extensions for the submission of financial statements where the previous year's statements are still outstanding and in each and every case these requests have been declined – so technically every day beyond the submission deadline can attract a fine of at least R 100 per day.

If you choose to deliver your financials yourself please remember to give us a copy – we need to ensure that we test your solvency and be proactive in managing any shortfalls in that area.

In addition the FSB have advised that with effect from 31 July 2010 we will no longer be able to submit financial statements via e-mail but will either have to deliver hard copies or submit via the FSB reporting tool.

The reporting of irregularities – Various recent formal interactions with the FSB have made it very clear to Compliance Officers that the need to report breaches of the FAIS Act and other regulatory requirements is not something that happens annually when the annual compliance report is issued but something that must happen as and when such breaches occur. The question for a Compliance Officer when is a breach a reportable breach? At the most recent meeting of the CISA FAIS Forum committee the members attempted to reach consensus on this question. This also dealt with the issue of ongoing disagreements between the FSP and the Compliance Officer.

The minutes of that meeting, circulated to the FSB, stated:

The consensus at that time was that the overriding principal was that if the irregularity had the potential to affect a client/s in any way then the matter should be reported. If the issues had no immediate danger to a client and agreement was reached with the FSP to rectify the shortcoming then reporting was not really required.

Licence suspensions ... cont

The question was asked how to manage a situation where there was an ongoing disagreement around interpretation of the regulations between an FSP and their compliance officer. The FSB representatives felt that such issues could not be allowed to “fester” and should be referred to the FSB for opinion.

The Compliance Officer would clearly be in breach of their obligations if they failed to act in accordance with this standard. FSPs must also understand that whilst they have appointed an internal or external compliance officer both are bound to adhere to the same standards. Both are meant to be acting independently and are not there to take sides – the payment of a monthly fee or salary does not override this responsibility.

On this theme:

A few months ago we had the unfortunate task of reporting a (then) client to the FSB for blatantly lying in a submission to the FAIS Ombud's office. We had to resubmit the complaint to the Ombud's office due to an apparent lack of reaction to this submission. We subsequently notified the FSB of this matter as we felt strongly that this was a serious breach of the Fit & Proper standing of the FSP. Some months later and following our resignation and formal exit report submission the FSB asked for a response from the FSP on the allegations that were duly supplied which included a scathing attack on ourselves for the action we had taken. There was no further input requested from ourselves on the matter and we understand, from the newly appointed Compliance Officer, that the FSB issued a warning to the FSP that further transgressions would be viewed in a serious light.

Whilst we did not want or expect the withdrawal of the FSPs licence as a result of this matter we wonder if such a light slap on the wrist is sufficient? With no publicity on the matter, other than this article, how will the FSPs out there be aware of what is and is not acceptable and what action is likely.

Too little, too late and much too quiet in our opinion!

Complaints: real cases

Some incidents that we have been involved in over recent weeks. They may not have gone to the Ombud's office or blame proven by the complainant but we mention so that you can see the type of scenarios that generate complaints:

- A policy moved from one insurer to another, twice, and the client alleges that they were unaware of the vehicle security requirements. No specific replacement product advice process can be proven although policy schedules had been provided. Vehicle stolen – R 95,000.
- Restriction on a motor policy for under 25 drivers. Vehicle loaned to a “friend in need”, accident happened, no cover and client states that this restriction was not explained. No record of advice available to provide proof although schedules had been supplied.
- Change of address. Client provided a questionnaire that stated there would be no alarm, policy had an alarm warranty, and a burglary took place and claim repudiated. No proof that the broker acted upon the supplied information or followed up with client on the restricted cover – R 45,000.

and your PI excess is?

Potential complaint to the FSB

A broker had a book of business with an insurer via an administrator. They chose to move the book on masse to another insurer (via their own administrator company), gave less than 30 days notice and no option for the client to say "No".

They justified the suitability of the move based on poor service from the existing administrator but provided no real details of the cover differences (replacement product advice). Breaches of FAIS all over and the existing administrator crying foul over the statements made to clients about their poor service and their name being "dragged through the mud".

The administrator wishes to lodge a complaint about the way the business was moved, which they are entitled to do and the comments made, which they are entitled to do provided the broker cannot substantiate their comments. This is a work in progress as at the time of publication but interesting that FAIS is being used in such circumstances.

The moral of the story – move books of business with great care, within the regulatory requirements, keep to the facts and of course be very, very aware of perceived conflicts of interest – is the policy being moved for the clients' benefit or the broker's?

FROM THE FAIS OMBUD

A complaint arising from poor intermediary services rather than advice. The following article is courtesy of *FANews* and has been reproduced in full as we believe it illustrates the way the Ombud looks at situations where a broker tries to justify their actions in a defensive situation. The moral is that your procedures need to manage all aspects of the work you do for a client to ensure that such tight reporting requirements are both understood and managed.

An insurance broker has been ordered by the FAIS Ombud to compensate a transport operator R171875, 56 after an insurance claim was repudiated due to late notification by the broker.

Templeton Zama of Vereeniging-based Zama Transport CC complained to Noluntu Bam, the Ombud for Financial Services Providers, that Acsenna Brokers CC, represented by Annette Janse van Rensburg, had failed to lodge the claim with the insurer, Senate, within the stipulated period of seven days.

The complainant requested the Ombud to compel the respondent to make good the damage it suffered due to the insurers rejecting its claim in the amount of R229 167.42.

In July 2008 complainant's truck was hijacked on the Meyerton/Vereeniging highway while transporting a load of steel coils. The driver and the truck were taken to Katlehong where the truck was abandoned and the driver was left stranded. The hijackers absconded with the trailer and the cargo valued at R229 167.42.

The complainant notified the respondent of the loss on the same day, and all documentation pertaining to the claim was completed by the complainant on 30 July 2008.

Respondent received a letter from the insurer dated 8th August 200, rejecting the claim on the basis of late submission. This was, however, not forwarded on to complainant.

Instead a subsequent letter sent to respondent containing an additional basis of rejection namely that the complainant had contravened sub clause 20(i) of the terms and conditions of the policy, was forwarded to respondent. The clause warrants that no cover is provided whilst vehicle is stopped, unless it is contained within a security compound and the driver crew/security guard is present at all times.

The complainant declared that at the time of the hijacking, the vehicle had been stationary on the side of the Meyerton/Vereeniging Highway to enable the driver to fasten the chains holding the steel coils. The chains had loosened during the trip and the driver's actions were precautionary.

In response to a letter sent by the Office of the FAIS Ombud, the respondent admitted that the claim was initially rejected due to late notification. The respondent, however, pointed out that the late notification was as a result of a misunderstanding by their representative, one Francois Mulder.

The respondent said that Francois understood the Senate wording as follows: "The claim documentation must be in position of the broker within 7 days after the event. We can send it through Senate as soon as we have all the outstanding information."

"Senate repudiated the claim the first time due to late notification. We requested that they reconsider the claim. They reconsidered the claim and came to the conclusion to reject the claim due to the fact that the client: stopped at an authorised point witch (sic) were unguarded."

In a further letter, the respondent re-iterated that even if the claim was lodged timeously, the probability is that the claim would have been rejected by the insurer due to the complainant's clear breach of sub-clause 20 (1) of the policy.

The Ombud wrote to the insurer seeking clarity on the matter. The insurer confirmed that the claim was rejected due to late notification.

Clint Janssen, the managing director of Senate said the claim was first reported on 7 August 2008, a full 12 days after the loss occurred on 25 July 2008. The policy carries a strict seven-day claim notification for hijacking losses, he added.

Janssen noted the reason for the strict seven-day claim notification period is as follows:

"Being the largest market in South Africa for this type of insurance cover (we cover in excess of 3 000 transport companies) over the last 12 years, we have needed to develop a network of hijacking investigators and informants focused on recovery of hijacked loads."

"However this is only effective if we are alerted within a reasonable time of the incident. As such we have needed to encourage prompt notification, by way of the maximum seven-day notification period as a condition of cover, which is emphasised in large bold font in the policy document so as to specifically draw the reader's attention.

“I add that this has become the industry norm and the same such criteria exist in all such commercial trucking transit insurance policies.”

The respondent was invited to comment in the light of Janssen’s letter, with specific reference to his confirmation that the late notification was the primary reason for the rejection of the claim. The respondent again denied its actions were the cause of the complainant’s loss and remained adamant that sub clause 20(i) would have in any event resulted in the claim being rejected.

In her ruling, Ms Bam commented on the “opportunistic” nature of the respondent’s conduct.

“When it received the letter of 8 August 2008 which rejected the claim for late submission, it never sent the letter to the complainant.

“When Senate responded on 20 August 2008, the respondents had no problem sending that letter to complainant because they saw the mention of sub clause 20 (i) as justification of their delay in submitting the claim.

“This type of conduct is unfortunate and is inconsistent with the duty to act in the client’s interest in terms of the Code of Conduct.”

Ms Bam said in all the letters sent by the respondent to the Office of the FAIS Ombud, it had consistently raised the defence that the claim would not have succeeded due to complainant’s alleged violation of the conditions of the policy.

However, Janssen had made it clear in his letter that the “reason for the declinature of the claim remains due to the late submission”.

“The claim was rejected on the basis of late submission which the respondent is refusing to take responsibility for. In the circumstances, this defence will not avail the respondent.”

“On respondent’s own version, they admit to notifying the insurer 12 days later and their reason for such late notification is that they misunderstood the requirements of the contract. On their own version, respondents were negligent.”

“The respondent’s conduct violated the provisions of the FAIS Act whilst rendering financial services to complainant.”

Ms Bam said that in so far as the defence raised by respondents that the claim would have been rejected anyway due to the violation of sub clause 20 (i), the defence has to fail for the following reasons:

“It is an undisputed fact that the claim was rejected by Senate only due to late notification.”

“In my view it would be speculative to venture into an exercise to establish whether complainant’s reason for stopping the truck on the highway would have caused its claim to fail”

“In any event, it can equally be argued that the in the circumstances, the complainant was not in breach of the sub clause. Upon a proper interpretation of the contract, it cannot be said that any

From the FAIS Ombud ... cont

stopping anywhere will amount to loss of indemnity. On the facts of this case, the complainant's driver made a necessary stop during the course of transporting goods. The vehicle was not parked as contemplated in clause 20 (i)."

Ms Bam said the insurer Senate had made it clear that the rejection of the claim was based on the late submission. This made the respondent's conduct the cause of the damage.

In upholding the complaint, Ms Bam ordered the respondent to pay the complainant the sum of R171875, 56 plus interest, the amount claimed having been adjusted in line with the policy terms and conditions.

GENERAL

Are you RICA Compliant yet?

All existing users of telecommunication services (ECNS) including but not limited to: Internet access such as ADSL & dialup, e-mail, online fax, domains, 3G/HSDPA, iBurst, VoIP, cellular voice, fixed line voice, iBurst & Neotel need to complete their registration before 31/12/2010

A good example of procedures to ensure compliance with all other applicable legislation within your overall risk management plans.

Consumers to benefit as FIA take tough stance against unethical intermediaries

Source: FIA-Financial Intermediaries Association of Southern Africa (FIA)

South Africans who engage with financial intermediaries are set to benefit from the Financial Intermediaries Association of Southern Africa's (FIA) acceptance of a new Code of Conduct* and its decision to focus on identifying unscrupulous service providers and their products.

Seamus Casserly, President of the FIA, says the FAIS Act, which is regulated by the Financial Services Board (FSB) and has been in place since 2004, is unfortunately being repeatedly breached by unethical financial service providers who in some cases, are unfortunately registered as Financial Service Providers (FSP's).

"Our members, who comprise nearly 3000 individual and company financial services providers, including most of the major and professional individual financial intermediaries, witness regular misconduct of product providers and advisors," says Casserly. "More often than not, these transgressors do not belong to professional bodies like the FIA. Their actions tarnish the industry that we are so proud being a part of. This is what we take exception to and will act against."

He says the FIA will promote whistle-blowing amongst its members and where clients are being blatantly misled in advertisements or with poor advice, will act by making use of the various financial services watchdog mechanisms. "The executive of the FIA have been tasked to work closely with the FSB, devising a program whereby we can effectively cleanse the industry of the bad apples."

Consumers to benefit as FIA take tough stance against unethical intermediaries .. cont

Casserly says the introduction of the new FIA Code of Conduct will assist the FIA in its bid to raise standards in the industry and protect consumers. "One of the key objectives of the code is to consistently promote the improvement and standard of financial products, financial advice and intermediary services provided within the industry."

In terms of the new code, some of the key requirements for members of the FIA are:

To conduct their business activities in the utmost of good faith, honesty, integrity and transparency and consistently uphold the interests and needs of their clients before any other consideration. To ensure that any information acquired by a member from a client will not be used or disclosed unless the written consent of the client has been obtained to do so, except in the course of negotiating, maintaining, renewing or servicing the client's financial needs or where required by law. To obtain all material information from the client that is reasonably available and communicate this to the underwriter where business entails the assessment of acceptance of any risk by an underwriter.

At all times to comply with legislation relating to the financial services industry. In particular, they will only offer advice and render intermediary services in respect of financial products for which they are authorised or mandated in terms of the Financial Advisory and Intermediary Services Act, 2002. They will ensure that their employees fully understand the member's obligations under the Code and any other guidelines that may be issued.

Casserly says that to further support the delivery of a professional service by intermediaries, the FSB has introduced the RE1 and RE2 - a series of mandatory qualifications for all representatives of FSPs who interact with clients. RE1 will ensure that all practitioners have a working knowledge of the various Acts that are relevant to the services sectors that they operate in, while RE2 will test their product knowledge. "This will serve to give the client peace of mind that they are dealing with knowledgeable people and will also alleviate a good deal of the incorrect advice being handed out."

To view the full FIA Code of Conduct, please visit <http://www.fia.org.za>

Risk Management

The early effective date of the new Companies Act comes into being next week and this requires all of us to have a Risk Management Plan in place.

We are currently still in the process of testing of ART's Risk Management Plan and will keep you posted on the results.

As per last month's newsletter, should you require ART's contact details, just ask and we will pass it on.

Pretium Services make every effort to ensure the soundness and accuracy of the contents of this Newsletter. However, we cannot take any responsibility for the consequences of any actions based on information or recommendations contained herein. You are advised to consult us for any specific assistance you or your staff may need before basing a decision on any information in this publication.

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