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THIS MONTH'S TOPICS

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EDUCATION

Peter Veal's Article's on..

RE exams update

We seem to be repeating the same sentence every month - 'the silence is deafening'.

Rumour has it that in excess of 90% of participants failed the pilots but as the FSB has not released the actual results to any individual we do not know if this is true. If it is true, what happens from here?

There are a number of possibilities, including the reducing of the pass mark or simplifying the questions. Whatever is decided, we cannot see how the FSB can retain the December 2011 deadline. There are approximately 140,000 representatives and key individuals that have to sit the first level examination and assuming that 50% fail and have to rewrite, there will be more than 200,000 papers to mark before the end of November next year if the deadline of 31 December is to be met (the papers have to be moderated and verified before results can be published). With no start date on the horizon, is it possible to accomplish this? We think not, but time will tell.

While we wait, we have to assume that there will be no change in the level of difficulty or the deadline. A few weeks ago, Joe Kotze, head of compliance at the Financial Intermediaries Association of Southern Africa published an article from which we quote –

"If there is one warning that must be heeded in the meantime, it is to believe that it will not be necessary to study the FAIS Act, its regulations, determinations and codes of conduct. People who will rely only on study material and training being offered may be unpleasantly surprised when they do not pass the exams first time. We have no doubt that such offerings can be of great value in preparing for the exams, but recommend that a thorough study of the applicable legislation itself be done beforehand."

RE exams update cont...

The majority of practitioners will rely on the study material provided by INSETA, so we read their offering regarding Key Individuals Category 1 and noticed a number of errors which are noted hereunder:

Chapter 1

- 1 Page 9. Heading. The FAIS Act became effective in 2004, not 2002. It was signed in 2002.
- 2 Page 11. Description of Cat 1V states that it applies to all persons that require licenses as Assistance Business FSP's. This is incorrect and only applies to FSP's that administer that type of business. FSP's that do not administer such business fall under Category 1.1
- 3 Page 13. In discussing Section 16 of the FAIS Act, only part 1 is mentioned. Part 2 should also be mentioned.

Chapter 2

- 1 Page 33 Second last paragraph. This paragraph is incorrect. There may be two types of Key Individuals, but both types must have management experience.
- 2 Page 35, last paragraph. There is no reference in the FAIS legislation to an "all-in-one" key individual. Presumably this refers to sole traders and key individuals that also require to be registered as representatives.
- 3 Page 37 First three paragraphs. The content is correct except that Section 2008 sub-par 6 of Board Notice 106 in respect of key individuals and sole proprietors appointed during 2010, where the RE exams do not have to be passed prior to approval, should be mentioned.
- 4 Page 37 Fourth paragraph. Not correct. The key individuals between them must have the appropriate experience and qualifications to cover all license categories and sub-categories.
- 5 Page 37 Fifth paragraph. Not correct. A juristic rep may decide to have restricted license categories and therefore does not necessarily need to have the same experience as the key individuals of the FSP.
- 6 Page 47. The last paragraph incorrectly defines a "generic" qualification. A "generic qualification" means a qualification that addresses knowledge, skills and competence that are broadly applicable to the financial services industry, without addressing any specific type of narrow specialisation relating to a specific subcategory.
- 7 Page 48. The text states that if you start with an "S" rated qualification in 2010, you will be exempted from the RE level 2 exams. This is not true. "S" rated qualifications are not considered appropriate after the transitional period in their current form and become "G" in the post-transitional period. Only an "SP" qualification will provide an exemption for RE2 in the post-transitional period.
- 8 Page 48. The Registrar does not publish an updated list of qualifications quarterly. They are periodical. The last one published was in March, Board Notice 44 of 2010, and this is the only one published so far in 2010. The next one is unlikely to be published before November.
- 9 Page 55. The regulatory examination may be completed AFTER approval if appointed during 2010 (see 3 above)

Chapter 3

- 1 Page 68 Second last paragraph. An FSP does not have to update the register every 15 days. The FSP has to advise the FSB within 15 days of a change, otherwise no updating is necessary.
- 2 Page 78 Fourth paragraph. Reps appointed in 2009 do not need to obtain a full qualification. They also have the choice of obtaining a specified number of credits prior to December 2011.

Chapter 4

- 1 Page 100 Summary 2. Cat 1V FSP's may also employ representatives under supervision.

Chapter 8

Page 147. There is no mention that an FSP working in the short term insurance sector does not have to open a separate bank account for the holding of premium if that FSP works in accordance with the regulations to Section 45 of the Short Term Insurance Act, and holds an IGF.

FROM PRETIUM

Conflict of Interest – the new regulations

We have updated our initial Guidance Note and will be distributing this as part of the follow ups on upcoming audit visits however with the second of the three implementation dates of 19 October looming you may well want to get your hands on this sooner – if so just ask us.

We will be holding a series of workshops on the regulations to help you better understand the work involved and practical implications. Those of you in Cape Town will already be aware of and attended these. Those of you in Gauteng will have received a specific notice of the planned dates for this region. Durban and Bloemfontein will follow next and specific details on these will be notified shortly. The Gauteng date and venue details are as follows:

Dates: 15 / 29 October 2010 or 19 November 2010 or 3 December 2011

Time: 9:30am

Venue:
ICE Training Rooms
1st Floor, Office 6
Warranty House
185 Smit Street
Cnr 5th Avenue
Fairlands

Human Resource Pack - A FAIS perspective and PS Guidance Note

We have completed a Guidance Note on this subject and will be distributing this to you shortly, although again if you want to have a look sooner just ask.

The note is written in two parts, one from the perspective of the employer and one from that of the employee.

The employer version helps guide them around the minefield of FAIS recruitment and management whilst the employee version is structured in such a way as to be used as a “pack” of information to be supplied to a new employee to explain the basics of FAIS and their own position within the FAIS hierarchy. Whilst not a requirement per se we have often seen that employees are not as understanding of the regulations as they should be and this version of the Guidance Note is one method of filling this gap. HOWEVER this cannot be used as is and will need to be personalised to your own company.

Flowing from this new Guidance Note will be the awareness training for new KIs and Reps. We plan to start these early in 2011 and once we have some specific dates we will provide you with details.

FICA registration process

NOTE : The FIC Registration deadline for acquiring login details is looming as the 4th October draws near. If you would still like us to register you on FIC at a price of R1000 (Plus VAT), please contact Pranisha by Monday, 04 October 2010.

PI & FG insurances – don't forget the deadline that has now come and gone to have the minimum covers in place. Still no clarity for the insurers so if they have chosen not to take covers they will technically be in breach of the act.

Council for Medical Schemes

The annual report for 2009/10 has been released and can be accessed on www.medicalschemes.com

Interesting articles we have read

Businesses need more time to prepare for the soon-to-be-implemented Consumer Protection Act (CPA), a lawyer warns.

The headline in an article in the times (see www.timeslive.co.za) for the full article. Whilst there has been no announcement on the expected delay in the implementation date, set for the 24 October, those of you involved in non insurance products, and there are many e.g. provision of car hire and maintenance plans, need to be taking steps now to ensure compliance with these regulations, which in many respects are far more onerous than FAIS.

Confusion still exists over the exemption for financial services within the CPA. At a recent meeting with an industry body working with the direct marketers the opinion was that even financial services sold within the tele-centre environment are fully governed by the CPA, which if this were to be correct, with less than a month to go is a very scary situation indeed.

The Department of Trade and Industry have released a general notice whereby they state that the new deadline date for the CPA is 31 March 2010.

FROM THE FSB

Two big events

Two big events in the past few weeks that will impact on many:

- 1) New Compliance Officer regulations – these were Gazetted on 9 September and will impact both the Compliance Officer and their FSPs.

From the FSP's perspective the key issues are:

- The need to have regular visits to the branches of the provider. The intervals of such visits may not be less than once a quarter and in respect of representatives of the provider, twice a year. So where you have actual branch structures these will need to be included in your monitoring regime if this is not already the case. Where you have distinct business units e.g. life and short term, we will have to ensure that each is included in the monitoring for each quarter. All Representatives and this will include Juristic Representatives; will need to be "visited" at least twice a year. This effectively means that we have to ensure all Reps are included in your monitoring program so those with large numbers of Reps will be most affected by this.

What do these requirements mean in practice? Well if we are to spend more time "on site" to ensure compliance with this regime then there will inevitably be a higher cost requirement. We will be reviewing all client profiles in the coming weeks and discussing any likely changes with those of you affected.

From our perspective the key issue is:

- The fact that only registered Compliance Officers can be involved in the monitoring process. These people, if new to the FAIS compliance industry, will need to be qualified at least to NQF 6 level i.e. a degree.

This will have a number of practical issues for us and will discuss these with affected clients shortly.

Both these standards become effective from 9 December 2010.

Going forward recruitment into a Compliance Practice will need to be at graduate level, which we feel will put further pressure on the costs of any practice, which will inevitably be passed down to their customer and in turn to the end consumer.

As an as aside: the cost of consumerism is ultimately borne by the consumer. We wonder if this was taken into consideration when signing off the regulations.

Two big events cont...

We attended a video conference hosted by the FSB aimed specifically at the Compliance Officer and of course these new regulations were at the centre of the discussion. Some key issues highlighted by the FSB were:

- Directors/members of companies acting as Compliance Officers also have to meet the fit & proper requirements, other than qualifications, in a similar manner to those of an FSP.
- Compliance Officers acting as KIs of FSPs is seen as a conflict of interest by the FSB.
- No examining body has yet been appointed for the Compliance Officer Regulatory exams.
- The need for full compliance to regulations by external Compliance Officers, and their clients, was stressed and that breaches will be dealt with by licence removal.
- The annual report for 2011 will have far more detailed questions on how the frequency of monitoring was complied with.
- Conflict of interest issues between a Compliance Officer/Practice and its clients were discussed and that there is an expectation that these be understood and managed.
- Monitoring of business activity i.e. the files for quotes, new business and the like, there is an expectation from the FSB that there must always be a reasonable number reviewed in monitoring visits. Obviously this number will vary from client to client.

2) Binder regulations for the short and long term industries:

These long awaited regulations are out in draft format and invite comment from the industry by no later than 31 October 2010. Any changes that are brought about by these regulations have a proposed lead time of 12 months so assuming this stays the same there is no need to rush into any changes, but changes there will be for many.

So what is being brought into the legislation?

The explanatory note provided with the draft expands the draft regulations definition and states: "Binder functions are the collective term used for those functions that a binder holder performs as the agent of the insurer. The binder holder acts on behalf of the insurer, as if the binder holder is the insurer, when interacting with potential policy holders and policy holders"

So based on that the issue of managing the obvious Conflict of Interest issues will be of the utmost importance. In fact there are many links between the Conflict of Interest regulations and these draft binder ones and plans on the conflict management policy needs to take into account these likely regulations as we do not see any major changes taking place given the length of time they have taken to draft in the first place.

Whilst there is lots of detail, some of the key issues within the short term version are:

- A specific definition of an underwriting manager, who holds a binder agreement, will now exist. It will allow the payment of profit share income but will not allow direct business (as at present) and will not allow the outsourcing of functions contained within the binder to anyone else i.e. a UMA cannot allow a broker to do work on its behalf.
- Specific regulations for a broker (non mandated intermediary) with a binder agreement that allows for the payment of a fee for services rendered over and above commission, however these must be reasonably commensurate with the costs involved, although a reasonable rate of return is allowed i.e. profit. These fees cannot be based on savings made on claims payments. However such an intermediary may not be remunerated twice for the same or similar service and any fees must be reasonable and commensurate with the actual cost of the service rendered. The FSB will be releasing a proposal to clarify the issue of fees and under what circumstances they will be payable.

Two big events cont...

- Introduce the concept of a “mandated intermediary.” These intermediaries would have a mandate from their clients to act on their behalf without the need for specific instructions from a client. This type of broker would not be allowed to have a binder agreement. Any associate of a mandated intermediary cannot be a binder holder. We have concerns on how this would fit into the FAIS framework.
- A non mandated intermediary cannot move a book of business without the prior written consent of each client.
- Agreements on hold covered arrangements are also provided for.
- Those entities that are commonly referred to as “administrators” may well be those affected the most. The Schedule B that forms part of the draft and adds explanation to most of the draft makes the following statement:
 - Implications to other parties – administrators. The choice of such an entity is not as simple as outlined. With an administrator acting for many product providers - often with policy issuing and premium collection capabilities only, which are not included in the definition of binder agreements as a matter of interest, choosing to be a non mandated intermediary with a binder would be a massive change in business model as they would only have such a binder with one product provider (depending upon the meaning of “type” referred to above) This could be further complicated by the issue of fees and how these will be handled in the promised review of fees
 - It must be remembered that this segment does fulfill a useful role in allowing small brokers to access market places not readily available to them due to a lack of premium income. Whilst there is a need to regulate this sector as abuse and lack of skills are common it may be better achieved by recognising the administrator as a specific sector with its own applicable regulations.

This is far too simplistic an approach in our view and this has been voiced by us in our overall commentary supplied.

Schedule B also advises that there will be further input from the FSB on:

Video Conference

At the FSB video conference referred to above other issues were also raised by the FSB. One was their feedback from onsite visits they conduct at FSPs. Their feedback included

- Completion of reports by the current Compliance Officer for past periods, seen a lot recently due to the suspension process is not acceptable and such reports will be rejected.
- Annual reports are being used for highlighting material breaches that took place during the year rather than when they occur. It is clear that we, the Compliance Officers, will be expected to ensure reports for material breaches are more effectively reported. Issues such as no KI/register abuses (manipulation to reduce fees)/MSC accreditation lapses/client fund handling if not meant to be taking place/ all need reporting. The Compliance Institute, in conjunction with the FSB, will be doing a Guidance Note for members later in year on these issues.
- Little or no sampling seen in monitoring reports.
- Not all Representatives' work is being checked.

Video Conference cont...

- Sections 8/9 of the General Code of Conduct (suitability/needs analysis and records of advice) standards are poor, especially when advice offered is not taken. We have pushed these aspects long and hard and will continue to do so and the Representative training being offered will hopefully assist in getting the message across at all levels.
- Standard documents supplied by the Compliance Officer to achieve compliance are frowned upon by the FSB more so because there is often little understanding of why used or how to use them by Representatives and not adapted to the business of the FSP. We will not stop supplying documents as a guide to assist you but we have to ensure they “work for you” and are fully understood. More training will be offered to help achieve the required objectives.
- Sec 19 of the Act, which deals with financials, the Compliance Officers are not checking this area, especially on monthly accounting records, as required by the Act and General Code of Conduct. As a result you will find more emphasis in this area.
- Backups not being stored off site. There will be more focus on many of the operational ability requirements, IT being one, going forward.
- 31 December 2010 solvency requirement. The FSB will monitor at 2011 financial submissions and a lack of will the required solvency will result in action by FSB, which is likely to be licence suspension. We have red flagged all clients currently operating in a technically insolvent position and will be working with them to ensure that plans are in place to ensure solvency will be achieved. If you are one of these clients and have not got a structured plan to achieve solvency then you need to be doing so.
- FICA – The FSB believe that the Compliance Officer has to ensure adequate understanding by the person nominated as the money laundering control officer with regard to their role and responsibilities. We will be adding more focus on this for those of you who are accountable institutions.

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They also detailed the focus areas for the 2011 reporting period:

- High risk areas – special mention made of call centres and any FSP business that does not fit the typical broker type profile.
- Conflict of interest. The 2011 annual report will be the first opportunity for the FSB to assess how effectively the new standards have been implemented.
- Suitability (needs) analysis.
- General non compliance issues. This will involve taking action as the regulator and no more simply attempting to educate an FSP where breaches are seen i.e. most of you have had enough time to comply and failure to do so will now have consequences.
- 2009 fit & proper shortfalls – all such KIs and Reps still in the system will be removed.
- Section 7 (3) standards – these require that relationships between FSPs put an onus on each to ensure the other is compliant and agreements are in place. This has been highlighted with all of our clients for a number of months now and has particular relevance to the insurer/UMA/administrator market.
- Solvency – as detailed above.

As for new things that may well take place or at least take more shape are:

- FAIS amendment bill likely. No details given as to what will be included but probably more focused on tidying up current structures and correcting any misunderstandings arising from current wordings
- Treating customers fairly (TCF). Not specifically a FAIS division project but one that when implemented will have a practical impact on the FAIS standards.

Annual Levies

The annual levy invoices have now been issued by the FSB and should be making its way to your inbox within the next few days.

The deadline for payment is 31 October 2010.

If you do not receive an invoice by 15th October 2010, please let us know and we will ask the FSB for these.

We will be following up on payment at our next audit meeting with your FSP.

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