

OCTOBER 2011

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

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FROM PRETIUM

The greater PS family has now grown a little larger. Anke has just gone on maternity leave and Duncan made his arrival on Saturday weighing in at 3.4 kg's. Mom and baby are doing great.

We offered to have the birth filmed and put on the website as part of our new draft admin manual which we planned to have a "How to handle maternity leave for representatives" as a new section within the HR section – but Anke, being the quite, shy type politely declined the offer.

She is due back in February next year. In the meantime everyone works just that little bit harder.

Fee increases and the new Service Level Agreement:

You will all have had the new SLA and details of your fees for the next 12 months by now. Firstly apologies for the stress caused to those of you who received the "net of VAT" version and had a less than positive reaction to the apparent increase. Whilst the new fee detailed in that version would have been nice it was an error – our apologies.

The signed SLA's will be collected over the next quarter as we see you all.

Probably the most important aspect of the SLA is the inclusion of Annexure B that details the Material Breach Reporting Standards soon to be incorporated into the Code of Conduct of the Compliance Institute (CISA) – our professional body. This document sets out the categories of breach of the FAIS legislation that we, as compliance officers, are likely to come across. It then categorises these into those that demand an immediate report the FSB and those that allow us to work with the FSP to correct the breach. Whilst this is not a legislative requirement it will form part of the upgraded code of conduct with CISA and we have been part of the committee that worked on its development we have committed ourselves to following these standards. As such we felt it was only correct to ensure that you are aware of the standards – you need to know where the line is drawn and what better way of formalising this than in the new SLA.

We welcome any input on the SLA and breach reporting standards.

BBBEE scorecards

With the rules on verification having been amended from the 1st October we thought this article from the Contemporary Gazette may be relevant to some of you;

A BBBEE scorecard's is required if you are:

A major public entity, national public entity, provincial public entity, national government business enterprise or provincial government business enterprise;

An enterprise that undertakes any business with any organ of state or public entity; or

An enterprise that undertakes any direct or indirect business with an item 2 entity.

These scorecards are only valid if verified, with verification certificates issued for the scorecards. You may need to recheck your existing certificates as, from 1 October 2011; such certificates will only be valid if issued by:

Verification Agencies accredited by the South African National Accreditation System; or

Registered Auditors approved by the Independent Regulatory Board of Auditors in accordance with the approval granted by the Department of Trade and Industry.

You may also need to check regularly that the verification agency responsible for your certificate is still accredited or approved.

Exempted micro-enterprise

The above limitation does not apply to exempted micro-enterprises (any enterprise with an annual total revenue of R5m or less). They are deemed to have BBBEE level 4 status (BBBEE procurement recognition of 100%); and can get a level 3 status (recognition of 110%) if more than 50% owned by black people and require an auditor's certificate (or similar certificate by an accounting officer or verification agency) as evidence of their status.

Requirements for certificates

An issued verification certificate is valid for one year and must record the points for each element (ownership etc.) and the total points as per the applicable general codes and/or sector codes; and an approved identification reference as required by the approved regulatory body or accreditation body.

The approved regulatory body or accreditation body must require its auditors or agencies to keep records, as are necessary to identify the individual member or auditor that signed the certificates; Maintain such documents and records as may be necessary to support the accuracy and reliability of the rating given to all Scorecard categories, and the BEE level shown on the certificates; and

Upload the relevant information relating to the certificate on the dti BEE IT portal containing the information underlying each certificate, within 30 days of issuance of the certificate.

The Verification Manual is a minimum guideline and failure to apply this guideline in determining the B-BBEE rating will result in the certificate being deemed null and void (of no effect).

Promotion of Access to Information Act (PAIA)

In recent monitoring visits we have been raising the awareness of PAIA given the deadline for completion of 31/12/2011. We have been attempting to build up a relationship with the SA Human Rights Commission to get clarity on some aspects. Below is a detailed mail we received followed by some commentary from ourselves.

"With regard to your request please note in general that the PAI legislation creates the framework to the right to access information enshrined in section 32 of the Constitution of the Republic of South Africa, Act 108 of 1996. The purpose of this legislation is to promote a culture of transparency, accountability and good governance both in the private and public sectors. Therefore, the Act places specific compliance requirements on both state institutions and private sector actors.

PAIA gives a requester the right to lodge a request from the information officer (head) of a private body. A private body as defined in the Act includes juristic bodies. The Act further defines the head of a private body as "the chief executive officer or equivalent officer of the juristic person or any person duly authorized by that office...."

In terms of s51 of PAIA, the head of a private body must:

- 1. compile a s51 manual which is a roadmap of the company
- 2. submit the manual to the South African Human Rights Commission once
- 3. effect material changes if any each time these occur and resubmit to the SAHRC
- 4. electronic submissions to the Commission are accepted if followed thereafter by hard copy originals;
- 5. manuals must be submitted to SAHRC head office at the address listed below
- 6. update the any material changes on the manual on a regular basis;
- 7. make the manual available as prescribed by the Act at the company offices and on their website;
- 8. must annex a request form to the manual and also make request form available on the website and at the company premises access points;
- 9. There are penalties for noncompliance please see section 90 of PAIA, the Commission has not imposed fines for noncompliance to date but reserves the right to do.

The manual must among others contain the following information:

- a) details of the company's postal, email and street address, fax and phone of the company,
- b) The description of available records generated by the company stating those which are automatically available and those that are available on request.
- c) outline the request procedure in terms of PAIA;
- d) state who the head of the company is (CEO is usually the Information Officer in terms of PAIA)
- e) stipulate the fees applicable as legislated by the Act which are chargeable to requesters
- f) remedies available to requesters if their request for information has been refused
- g) Details facilitating request for access to a record etc."

The address for submission of manuals is.

Access to Information (PAIA)
The South African Human Rights Commission
33 Hoofd Street
Braampark; Forum 3
Braamfontein; Gauteng

- 1) It was confirmed that any manual records submitted prior to circa 2009 have been destroyed. It is not too clear whether a specific date before which manuals were to be destroyed was set. This, we assume, relates to Private Bodies as there was no exemption for Public Bodies.
- 2) SAHRC apparently have only now installed electronic data storage facilities. Historically they apparently stored hard copies of the manuals and one gets the impression that they had some difficulty finding manuals. (Charitable comment!)

Promotion of Access to Information Act (PAIA) cont...

- 3) Although the legislation relevant to Private Bodies (Sect.51(2)) refers only to "regular updating" of the manuals as confirmed in Chantal's e-mail below, Chantal has intimated verbally that annual updates are expected but in her opinion this is too onerous and in her opinion 5 years or whenever any change in relevant information occurs, would be more appropriate. We assume that the assumption of the 12 monthly update is a hangover from the rules relating to Public Bodies (Sect 14(2)). Thus the law requires "regular updates".
- 4) The exemption for the deadline for submission by private bodies expires on 31.12.2011, via Govt. Notice No. 865 but in discussion with SAHRC we got the impression that this may well be adjusted, although she could not confirm that. I would imagine that if all companies complied and submitted hard copies in the normal fashion, i.e. at the last minute, there would be chaos at the SAHRC.
- 5) Whilst it was confirmed that a hard copy should be submitted, they have verbally intimated that a signed electronic copy of the manual in PDF format would be acceptable. We are not too sure how far down the chain of command this relaxation has been passed, but we would suggest that the manual be submitted electronically and a hard copy be sent only on demand. We suspect that the hard copy requirement is a relic of the past when there was no electronic storage facility. This makes sense anyway as they appear to check each manual and sometimes come back with suggestions for amendment, thus it makes sense to await that input before submitting the final corrected copy, whether it be electronic or whether a hard copy is requested.
- 6) From a recent submission it was confirmed that the "Request Form" and the "Approved Fee" listing should form part of the manual.
- 7) At this stage, our suggestion is that all companies submit a new, even if they have submitted manuals previously and have record of it, so as to ensure that updated information is submitted. Currently there is no charge for submission, originally there was.

Non cancel-ability of a short term policy

One of our clients recently hit a snag when attempting to cancel a PI policy. The UMA involved highlighted that their policy could not be cancelled midterm. A fact not known by the broker and obviously was now affecting the advice they had provided to their client. Our initial response to the broker was that there is no legislation that we are aware of, dictating that an insurance policy must have a cancellation condition, although it is generally accepted as being the norm, and thus must surely be disclosed at Advice stage, when the FSP is quoting to their clients.

We took the matter up with the UMA concerned and pointed out to them that perhaps this was a factor that they should take into account in future, when "training" their brokers, given the impact of the "Treat your Clients Fairly" legislation which is currently being formulated, when it comes into force.

e-learning at the Institute of Directors

The Institute of Directors now offers courses that can be studied online. These courses are available to both members and non members.

They currently have two Programmes of offer via e-learning:

- Companies Act 2008 series
- Insights to King III series

For more information, log onto www.iodsa.co.za

FROM THE FINANCIAL INTELLIGENCE CENTRE

There has been some on-going discussion with the FIC on the Accountable Institution (AI) status of FSP's only licenced for FAIS licence categories Long term A and B1. This was on the basis that the actual products sold are such that money laundering is no practical risk, evidenced by the fact that the FICA rules themselves exclude these products from the day to day requirements. However the FIC have confirmed that these FSP's are to remain as AI's and must comply with the rules, in so far as they are applicable.

Over the last 12 months at least 105.8 billion Rands in reported cash transactions has been reported to the Financial Intelligence Centre (FIC).

This figure was derived after summing the total number of cash threshold reports received by the FIC over the last 12 months. By end of business yesterday, 3 October 2011, the FIC had received 4 227 253 reports.

They have also seen a 25 percent rise over last year in suspicious transaction reports (STRs) submitted .The FIC said a total of 36,990 STR reports were submitted to the FIC between April 1 last year and March 31 this year. For the corresponding period in 2009/10, 29,411 STRs were received.

The FIC has created a distinction between Category 8 and Category 12.

Category 8 pertains to suppliers. Those governed by the Long Term insurance Act will fall into this category.

Category 12 pertains to all FSPs other than Short term and Health Care. Funeral Society will also fall into category 12.

FROM SAUMA

The following is an extract from a recent SAUMA circular that deals with the apparent overlap between the National Consumer Commission and the Ombud schemes.

We have been informed by the SAIA that they have been receiving ongoing reports from their Member Companies that they have been forwarded insurance complaints from the National Consumer Commission ("NCC") that fall within the jurisdiction of Ombud Schemes and specifically within the jurisdiction of the Ombudsman for Short-term Insurance ("OSTI").

The SAIA had requested the National Treasury and the Financial Services Board ("FSB") to urgently address this issue as these complaints fall within the jurisdiction of a financial services Ombud scheme recognized in terms of the Financial Services Ombud Schemes ("FSOS") Act and are to be adjudicated according to the FSOS Act and not by the NCC in terms of the Consumer Protection Act ("CPA").

The FSOS Council is currently engaging with the NCC on the jurisdictional questions. In the interim the SAIA members have been advised by the National Treasury that all insurance complaints received from the NCC should be referred to and dealt by the relevant Ombud Scheme and specifically to the OSTI for adjudication. The OSTI is aware of the situation and subsequent arrangement.

FROM THE FSB

In the past month we have attended more of the FSB satellite conferences. The first on the 5th October dealt with:

- Section 9 Fit and Proper requirements will be amended within the next few weeks.
- The definition of a "product supplier" is to be revised.
- Fit and Proper conditions are going to be updated.
- Amendments have been made to the FAIS Act and is currently sitting with Parliment for approval.

The 2nd was on the 19th when subject matter was an "Update from the Financial Intelligence Centre"

The Financial Intelligence Centre laid out steps to follow regarding the registration with the FIC. They also advised that penalties will now been instituted for those that have not registered as yet.

In November we will be attending a broadcast on Advertising, marketing and direct marketers.

Proof of previous representative status

The FSB have advised us that they can no longer provide us with the FAIS history of a person – it is apparently due to the confidential nature of the information.

In the past where a rep was unable to verify their previous status and dates we would approach the FSB and get the required details. As we are no longer allowed to do this the applicant will have to make contact with the FSB themselves and provide us with a formal response from the FSB. We will be updating the supplementary questions on the rep application form to ask for a copy of the reps previous mandate letter as proof of their past status – as there can be no excuse after 7 years of FAIS and the recent regulatory exam studies for a rep not to know their status. Reps unable to prove their past status will have to be treated as first time appointees that attract the supervision status demanded by the regulations.

The IISA CPD Framework is finally on the agenda for the committee meeting at the FSB this month. So some structure around the CPD requirements and management may be possible soon.

The Qualification application for the IISA's Associate status is also awaiting FSB approval. It is hoped this will provide Specific status to the qualification.

Annual levies

Don't forget that your levies were due to be paid by the 31st October, if, for some reason, this did not happen please do so as a matter of urgency.

We have seen that the FSB have sent reminders that show the amount due as R0. We have checked with the FSB and established that this confirms your payment has been made and that this has been allocated to your account.

When is a specific qualification not specific?

In the past week we have been told that the concept of a two level specific qualification – one for what is referred to as the transitional representative (denoted as an S on the FSB's approved qualification list) and one for the post 2009 representative (was meant to be denoted as an SP on the approved list) has fallen away and that all S rated qualifications are equally applicable to pre and post representatives.

We believe this is a positive move and is probably based on the almost total lack of SP rated qualifications and the delay in the roll out of the new general educational standard (to replace the NQF) to, at the earliest, 2016.

Whilst we are happy with this move we have to admit to being just a tad irritated that such an important move is not openly communicated to the market and specifically the compliance officer fraternity as we are the ones approached almost daily for advice on what a new representative should study and such detail would enable us to provide that advice so much better.

It also seems that the regulation requiring an RE1 to be in place prior to the approval of new Key Individuals has also been relaxed – presumably due the extension of the RE deadline. Again a logical and practical approach from the FSB – just poorly communicated.

If you want to access the latest list of approved qualifications used the following link. You will need to copy this into a word document for the link to work – it will not work from the PDF newsletter (or copy and paste it straight into your internet browser's address bar).

http://www.fsb.co.za/Magic94Scripts/mgrqispi94.dll?APPNAME=Web&PRGNAME=BN44_Lists&AR GUMENTS=0.0.-N1

Binder regulations

We hear that these are likely to have an effective date of 1/2/2012. What we find almost scary is the number of intermediaries out there who are not aware of these regulations and even less aware of the possible impact on their business models and cash flows.

Intermediary fees

We are led to believe that the planned discussion document on broker fees is only due to hit the streets in the latter part of 2012.

Two more fines imposed by the FSB

Two more fines imposed by the FSB, in two separate but related actions.

- 1) Safrican Insurance Company Ltd. And
- 2) Sanlam Developing Markets

Safrican has been fined R60, 000 for transacting business with an un-licenced FSP when setting up a funeral scheme. The fact that the FSB understood this was an oversight and not intentional and the insurer was relatively small the fine was reduced.

The same broker caused Sanlam to be fined as well – they were hit for R100, 000, one would assume because of the fact they are much larger than Safrican

It is interesting that the broker involved – Multi Brokers – was fined "only" R45, 000 for trading without said licence.

So for all those UMA's and insurers out there who tell us it is an administrative headache to fully manage the requirement to verify an FSP's status in terms of Section 7 of the FAIS Code of Conduct at least you now know where the regulatory bar has been set.

FROM THE FAIS OMBUD

Newlove V FNB. An interesting case where a financial advisor employed by FNB arranged an investment for a client – but not with the bank or with a bank approved product. It was clearly a deal of the advisors own making and not a legitimate investment. It was established in the Ombuds investigation that Newlove was not the only person to suffer the fate of money being given to the so called investment.

FNB attempted to defend their position by stating the client must have known the offered investment was not an FNB product and that the employee, a certain Mr Mooi, was not acting on behalf of FNB, notwithstanding the meetings had by the Newlove were at an FNB branch.

The Ombud did not accept the FNB stance and ordered them to pay the lost investment amount -some R320, 000.

FROM INSETA

The following is a slightly abbreviated & edited version of a recent INSETA press release;

INSETA has been discussing with industry associations, other experts and the Financial Services Board (FSB) to discuss the potential of aligning a new occupational qualification with the requirements of the FAIS level 2 qualifying criteria i.e. 2nd level regulatory exams.

INSETA has conducted an extensive analysis of the level 2 qualifying criteria, which effectively groups knowledge and skills criteria into themes or proposed subjects, for the possibility of inclusion in a new occupational qualification.

The FSB has expressed support of the proposed inclusive learning design and has agreed to work closely with Inseta and the industry to ensure that, should the proposed qualification comply with the FSB requirements, it could be recognised as a "specific" qualification which will then result in the holder of such a qualification not being required to write the second level regulatory examination as per BN 105.

The impending development of the "Financial Services Representative" qualification will test the proposed model by aligning the inputs of industry experts with the mapped qualifying criteria. The participation of industry experts is therefore vital to the success of this project and Inseta will be calling on participation of relevant experts towards ensuring a qualification that, while incorporating FAIS regulatory criteria, is also fit-for-purpose to meet industry and labour market needs

INTERESTING ARTICLES WE HAVE READ

SASRIA communiqué No 24

An increase in commission!!! Not a bad thing when you get told the rate of commission you receive will be increased – and that is exactly what this communiqué details. Commission rates will be increased from April 2012. The brokers comm' will increase to 10% on coupons issued under the R500M level.

The communiqué also dealt with changes in the audit return process for insurers whereby provided there have been no qualified SASRIA audits in the preceding two years and the insurer, referred to as the agent company, is generating premium less than R5M per annum, then that company need only provide one audit certificate per annum.

RiskSA October

How the CPA affects the motor dealership and Policy Holder Protection Rules and the Consumer Protection Act. We have found that the level of understanding of the impact of the CPA is low – too low. Whilst there is a general appreciation that the CPA is out there its actual application to the brokers themselves and specifically to the non-insurance products sold by many of them is just not there. Nor have the providers of such "non insurance" products done much about advising their clients – the brokers and UMA's who use these products – about what is needed to ensure these offerings are as compliant as they need to be. Are we the only ones concerned? These articles help in the general awareness stakes.

From Enterprise Risk 27/9

Who is the typical Corporate Fraudster? A new report from KPMG indicates that the "typical corporate fraudster" is a senior finance executive, and that 32% of all employees that commit fraud work in corporate finance. Perhaps as worrying, KPMG's report also shows that CEOs are the fastest-growing group of fraudsters—26% of those committing fraud are chief executives, up from 11% in 2007.

Still on fraud – FA News of 28/9 had the following numbers on medical aid fraud:

It emerges that healthcare insurers believe between 7% and 15% of their claims are tainted with fraud. How much are we talking about? The Board of Healthcare Funders (BHF) provides a rather wide estimate (or guess if you prefer) that the healthcare sector is defrauded of between R4 billion and R13 billion each year!



From Insurance Gateway® 13 September

"Embrace change, compliance officers told" a summary of a presentation at the recent CISA conference by Harry Gill of ABSA. To quote the last paragraph;

"Compliance is sometimes seen as holding a business back, but Gill said the role of the compliance officer is actually to help companies move forward. "Help management find solutions and streamline processes while still operating within the required regulatory framework."

How do you see it?

In an extract from another presentation at the same conference a quote from Dr Janette Minnaar-van Veijeren of EthicsSA.

"The domain of compliance has always been the legislative framework – the realm of crimes and offences - but this has become the minimum standard," Minnaar-van Veijeren said. "Now, in addition to legislation, compliance professionals need to concern themselves with corporate governance - the realm of rules and policies - as well as with ethics."

She said that ethics concerns doing what is right and good, beyond the demands of laws and regulations. It is about complying with universal laws such as fairness, honesty and integrity. "And being an ethical leader requires more than just talking about the right thing, but actually doing the right thing."

So don't be surprised if you see us wearing our super hero cape and arriving on a white horse to rescue you from these issues!!



Also from Insurance Gateway® 27 September

An article entitled "Companies Act - Dealing with the Memorandum of Incorporation (MOI)"

We have been raising awareness of the changes arising from the companies act during recent monitoring visits and this article will be a useful part of that awareness process.

And the last one from Insurance Gateway® from the end of August is an article on a new product that many of you might find of interest. Underwritten by Western National Insurance Company Limited,TURTLE I'COVER™ managed by Alternative Commercial Acceptances (Pty) Ltd have launched a new product for Brokers to provide top-up cover in respect of the extensions on their insured's underlying personal lines policies and to provide protection against the vagaries of average. The product also includes some other interesting policy extensions and you can find out more about this at www.turtlecover.co.za

COVER Connect

Non-disclosure of credit rating by an insured causes a motor claim to be repudiated. An article in COVER Connect of 29 September. Interesting in that the Ombud agreed with the insurer and allowed the repudiation and in that the vehicle had been financed at the same time the insurance had been taken out – surely the finance house would see the clients' credit history as a risk more than the insurer?

"Product liability and the consumer protection act" an article with a number of contributing authors.



P O Box 9655 Devon Valley Johannesburg 1715

Tel: 011 678 2533 Fax: (011) 678 7731 e-mail: <u>info@pretium.co.za</u>