



# AUDIT CHECKLIST



**Audit Satisfactory**



**Nonconformances Found**

**Observations Made**

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*- Click on text to navigate to the page -*

## From Pretium



Another year has rolled by – we are told the older you get the quicker time passes – well some of us are not looking forward to be 60 and 70 as a year would almost not be worthwhile if this year is anything to go by!!

As the last Newsletter for the year this is a JV between November and December – a bumper edition – no bells or mistletoe or free Boney M CD though and not much by the way of goodwill to all brokers we are afraid!!

Our collective best wishes to one and all for the end of the year and the start of the next and for those celebrating Christmas may you have a merry one (not too merry though – especially if driving – our services don't stretch to providing bail) Enjoy the holidays and be safe!

As we appreciate that seeing your compliance officer is not always the top of your favourite things to do – anytime – we will be sparing you from monitoring visits over the holiday period. Our offices will be closed from some time on the 23rd December (depends on whether it is the staff that decide or the management as to exactly what time) and we will be reopening on Monday the 9th January. However in the unlikely event of having a compliance emergency, you are welcome to contact either Bryan or Craig on their cell phones.

### **New format for our Newsletter**

We are looking at upgrading the format of our Newsletter from the New Year. We are looking to strike a balance between those that like to print off a hard copy and those that are comfortable with viewing and reading on the computer (or i-pad and similar device) We will be testing the format this month with a few clients to gauge their views and all being well will go live with the new format with the January 2012 edition.

In chatting to broker who produces a Newsletter for his clients he was concerned that the perception from his clients was that his letter was overly negative – but on debating the matter we agreed that the things we both needed to tell our clients, be they insured's or FSP's, often had a negative connotation to them – they were warnings of what can go or already has gone wrong.

What is it the professional media say?  
Good news does not sell!

## **A couple of things not to forget;**

### **Promotion of Access to Information Act**

In past newsletters we have highlighted the need to submit Section 51 manuals to the SAHRC and during our travels, auditing clients, we have discussed the detail and given our clients copies of our Guidance Notes and sample manuals. We have attempted to encourage all clients to ensure that their manuals are submitted by deadline the 31.12.2011, but apart from those who have specifically enlisted our services to assist with the formalisation and submission of their manuals, there has not been a great positive response confirming that this has been achieved.



There has been further information coming down the track as a result of our discussions with the SAHRC and we comment:

1. Group manuals are not permissible. Each registered company within any group needs to submit their individual manual.
2. Deadline – it has been pointed out that the 31/12/2011 is not a deadline, but the date on which the exemption expires. We are not too sure of the import of this comment but certainly if there is any extension of the expiry date of the exemption is publicized we will let you know. As far as we are aware such an extension would normally require to be announced at least 30 days before the “deadline”, but let us see what happens.
3. It has been confirmed that electronic versions of the manual are acceptable as long as they are signed off by the Head of the Body or the Information Officer and that they be in PDF format so that no unauthorized amendments can be made, accidentally!!. You do not need to submit a manual copy in addition.
4. Updating of the manual is necessary if there are changes in any information contained herein. The act does not define specifics for updating other than “Regular” and we are of the opinion that this means when any relevant information changes.
5. At point of update, the requirement is the re-submission of the amended manual, as opposed to submitting a list of changed details via e-mail and expecting the SAHRC to go and update detail on the original manual submitted.

**SAIA recently added some commentary on the back of questions flying around. They added;**

“

*It is the section on the South African Human Right's Commission's (SAHRC)*

*website dedicated to compliance with S51 of PAIA. It outlines all of the information necessary for submission. I also enclose the SAHRC's guideline document as to how to prepare the manual*

*I contacted the SAHRC directly and the consultant (Chantelle) informed me that the deadline is not the 31st of December, but rather that the Minister has placed a moratorium on compliance with S51 until the 31st of December and confirmation of continuation of same has not yet been finalised. Therefore officially the date for compliance with S51 is essentially 1 January 2012 at this stage if one is pedantic about the issue. I will seek to get further confirmation on this point today, however it is moot that the manual would eventually have to be submitted to the HRC in any event, therefore it would be advisable to compile and submit it to the HRC in any event. I will revert with the official position however soon.*

*I also enclose a links to URL's containing manuals in their complete form drafted and submitted by some other organisations. I hope that this is helpful as for precedent purposes:*

*[http://www.communitychest.org.za/jit\\_default\\_1068.html](http://www.communitychest.org.za/jit_default_1068.html);*

*<http://altech-uec.com/PAIA%20Manual.pdf>*

*<http://www.airmedia.co.za/downloads/paia.pdf>*

*<http://www.chillies.co.za/paia.aspx>*

*<http://www.healthspas.co.za/pages/hsg-paia-manual.php>*

*The SAHRC indicated that the following methods of delivery are acceptable:*

*Email of soft copy of the manual (word or .pdf) or email of a link to the manual on your website to: [dmalesa@sahrc.org.za](mailto:dmalesa@sahrc.org.za); Registered post to the SAHRC's offices –*

*Private Bag X2700*

*Houghton*

*2041*

*Hand delivery to the SAHRC's offices.*

*Whatever method you choose to get to the finish line we really would appreciate your feedback and ultimately confirmation of the submission of your manual by 31.12.2011 ☺☺*

## Annual levies

1. These should have been paid by 31/10/201. Please ensure you ensure they have been paid. We have come across a few clients where they did not receive their invoice so had not paid – please double check. You do not want the threatened suspension letter for non-payment.

## Disclosure of the premium collection agency

Do you not hold an IGF but do “outsource” the premium collection to a collection agency such as Epic or E-Scape? Then you should see, as a result of Directive 156, which we have spoken of before, the amendment of your agency agreements to withdraw any authority to collect premiums and you will need to implement the following changes;

- Your disclosure notice will need to reflect the details of the collection agency, which as an FSP, are now an integral part of the overall process and their details need to be shown. We have a draft document to assist in this upgrade if needed. We have already seen that the main software processing providers are not yet up to speed with this requirement so you may not get an instant “fix”
- The debit order form used will need to be amended to reflect that the authority is being given to the collection agency and not you as the broker. Many we have seen already make reference to the agency but are often branded as the broker. The collection agencies are aware, well at least Epic, of this need and we understand that they will be upgrading their standard documents to ensure the authorities provided are correct.

## Voice logging

We had a rather interesting query recently regarding voice logging and the need to disclose this to clients. Just a little bit of information pertaining to this.

The Interception of Communication legislation in South Africa mentions that only one party needs to consent to a call being intercepted. So what does intercept mean, it means any communication between two people whereby the communication becomes available to a 3rd party. For the 3rd party to have access to the communication taking place, only the sender or the recipient needs to give the OK, consent by both parties is not a requirement.



With regard to business calls, consent or implied consent needs to be available. The client needs to be told about the voice logging and unless they object, it would that they have implied consent.

## **Binder regulations – status**

It seems that these have now been finalised and are almost ready for release. We have been unable to establish what changes have been made so we will have to wait until they get formally released.

### **UMA's binder regs**

We are given to understand that a discussion is well underway within the FSB as to whether or not a UMA should continue to be regulated by FAIS once both the binders and the upgraded Short and Long term Insurance Acts along with Treating Customers Fairly (TCF) have been introduced. The consensus within compliance circles is that it is inevitable that the UMA will be regulated with the insurance acts and TCF and FAIS will cease to be their primary insurance based legislation. When? No real idea. How? Pure speculation although the compliance people believe that the aspects of FAIS that need to be carried through have to include Fit & Proper standards, Conflict of Interest, financial solvency and risk management.

Would this be the end of the UMA as we currently know them? For us all to speculate.

## **FSP names and the CIB case**

The implications of the name issue in the CIB case were discussed at the most recent meeting of the FAIS compliance officer forum – an interest group with the Compliance Institute. It was reported that any existing FSP with Insurance, Insure, Assure, Underwriter or any derivative of these words needs to establish from the FSB (insurance division) whether approval of that name had been granted by the FSB. This is a requirement of the Short and Long Term Insurance Acts.

To quote from the minutes of this meeting;

“

*Apparently not all names may have been approved and notwithstanding the fact that an FSP may have CIPC approval and FAIS division approval Insurance division approval was needed.*

*One member advised that they had drawn up a list of all clients with such names structures and submitted this to the FSB for a check as to approval status. This was then checked and the Compliance Officer was*

*provided with details of which companies had not had prior approval.*

*For all those that had not had this would need to submit a formal request for approval along with a fee of R236 to get approval.*

*One of the names submitted was actually rejected and that FSP has to do a renaming exercise!!!*

*There were strong views on this with many feeling that past approval by CIPC (aka CIPRO) and the FAIS division should constitute tacit approval of the name and further approval process should not be needed. ””*

We are currently testing this process with the FSB and for those affected we will communicate with you in the New Year as to the way forward.

The minutes went on to discuss **T/as names**.

The discussion focussed on requirement that all sole traders using a “trading as” name as well as any Pty and CC using trading as names need to get that trading as name registered with CIPC.

This has been verified with CIPC. We will be looking into this matter further so we can advise you on how to go about this process.

## **From the FSB**

### **Intermediary Services and related remuneration in the insurance sector**

By far the biggest document out of the FSB this year!! It is a “call for contributions” from the industry and has been sent to ASISA, SAIA, FIA, FPI and SAUMA.

The document is fairly comprehensive – some 14 pages plus annexures. There are many issues raised within these pages but in simple terms the FSB are looking to establish a standard for what a broker can receive/charge by way of commissions and/or fees for the services they perform.

**The process is looking for input on the following key questions:**

### **With regard to the Definition of Intermediary Services**

- How can the definition of “services as intermediary “be further clarified?

Specifically:

- Should the definition of services as intermediary in the insurance laws continue to include all activities supplemental to the sale of an insurance policy?
- If there is a view that the definition should be separated into component parts, how could the separate activities be categorised? In particular, should “advice” form an explicit component of the definition of “intermediary services”? Or should “advice” be defined and dealt with separately from definition of “intermediary services”?
- Should there be a distinction between the upfront activities directed at engineering into a policy and opening the activities aimed at serving a policy?
- What type of services provided to a policy holder might fall outside of the definition services as intermediary?
- Should the definitions of “advice” and/or “intermediary services” in the FAIS Act and the insurance laws be aligned, and if so, what suggestions are there in this regard?

How, if at all, should referrals, introductions or “lead” generation be dealt with for purposes of these definitions?

## **With regard to Remuneration for Intermediary Services:**

### **Investment business**

What is an appropriate definition of “independent advice” in the South African context? What criteria should be taken in account in determining whether advice is “independent”?

- Do stakeholders agree that a customer contracted fee-based approach to intermediary remuneration for investment products will be support appropriate advice and a level playing field across sectors?
- Do stakeholders agree that a fee-based approach can be a sustainable business model for intermediaries – for instance, if facilitated through ongoing deductions from investment amounts?
- How may the fee-based approach need to adapt – if at all – to accommodate sales of investment products to the low-income sector?

Specific questions with respect to fee-based approach include:

- Should the fee basis be prescribed or flexible – for instance, should a fixed fee, an hourly rate or percentage of funds invested, all be considered viable options?
- Is it agreed that the structure of an intermediary’s fees should vary according to the type of product or product provider that is recommended?

- Should intermediaries be required to select whether they offer independent financial advice or restricted advice in respect of all clients – or should an intermediary be able to offer a combination of the two, varying depending on the type of product being sold?
- If an advisor is to provide an ongoing service, should the adviser be required to send a periodic renewal notice to the client (and if the client does not renew the services, then the advisor cannot continue to charge the client)?

## **With regard to Remuneration for Intermediary Services:**

### **Risk Business**

- Do stakeholders agree that a shift towards an as-and-when commission basis for the life insurance products is necessary to reduce the miss-selling and support industry sustainability?
- To what extent do certain up-front advice and intermediary services performed for life insurance risk products argue for an-upfront element to remuneration?
- How must a shift towards an as-and-when commission basis for life insurance risk products be adapted –if-at- all – to accommodate sales of risk products to the low-income sector?
- How can the equivalence of reward provision be strengthened to avoid arbitrage between independent advice and in-house agent models?
- On what basis should an interremediary be permitted to receive a fee from a policy holder over and above commission? In return for what types of services?
- Do other elements of the commission structure, like claw back rules or the treatment of contribution increases, need to be revisited to support the desired outcomes for consumers?
- Consistent with the principle that all remuneration must be reasonable and commensurate with the actual services rendered , how should remuneration for replacement policies differ from that for new policies, if at all , particularly given the aim of limiting the risks of inappropriate commission driven churn?
- Are specific provisions needed to address equivalence of reward and risk of miss-selling by representatives appointed form limited period , such as call centres appointed to deal with specific campaigns- for instance a requirement to hold back a reserve or portion of the up-front commission that is only paid back after the claw back period expires and the extent of persistency can be accurately ascertained?

The initial deadline for submissions is the 30th March 2012. If you have a view, which you will, you need to get involved – either in your own capacity or via one of the associations. If you wish to submit these via ourselves we will gladly coordinate these and

ensure they get to the FSB on time. The end result of this process is likely to be ground breaking. With the binder regulations becoming effective early in 2012 and before any changes arising from this discussion document do so all brokers need to understand where they are likely to fit within the new regulatory framework and make decisions accordingly.

We are formulating our own views on this document and will provide this and other opinions we become aware of over the next couple of months. In the meantime have a read of the article in FA News 22 November - which will also be on their website – for a good overview using the FPI’s communication to members on the matter as its base reference.

**A restructuring of the Insurance division** has taken place effective October. This division, separate from the FAIS division, is now made up of the following departments;

A copy of the full Information Letter released on the 24th October can be found on the FSB website ([www.fsb.co.za](http://www.fsb.co.za)) or by contacting our offices.

**The last of the FSB events of the year** took place in November, two of the FAIS focussed ones we attended.

The first dealt with advertising. Marketing and direct marketers and the second was the general conference.

Neither produced anything earth shattering by way of content but useful reminders of some key aspects worthy of noting here.

In the direct marketing presentation the FSB listed some of the key aspects picked up from on-site visits. Some of these were;

- There is minimal compliance with provisions of Section 15 of the General Code of Conduct;
- Approved telesales scripts do not address all the disclosure information;
- There is lack of call centre facilities e.g. voice logging ;
- Identity of the entity rendering the financial service is usually withheld and this is usually due to misrepresentation of principal and agent;
- There are no systems in place for record -keeping ;
- Some FSPs set very high sales targets for call centre consultants resulting in focus

on quantity and compromising the quality of service;

- When making statutory disclosures, the call centre consultants are not clear because they are rushing to conclude the transaction.
- Quality Assessments of calls are not focused on whether the call centre consultants did actually make the required disclosures. Example is when the FSP fails to disclose the product supplier thus confusing the client.
- The consultants speak negatively about another FSP in an attempt to sell a product/ conclude a transaction;
- Failure by FSPs to verify the qualifications, accreditations, debarments if any that occurred of their representatives and KIs when employing them. HR policies should be put in place to include these when hiring staff;
- Failure by FSPs to register their representatives and Key Individuals at the FSB;
- Failure to implement supervision procedures for representatives who are rendering a financial service under supervision;
- Lack of training and awareness on FAIS and FICA

In the general conference we finally started to get some stats on the RE's

- 47 % of KI's have passed
- 38 % Reprs have passed

The FSB has reminded the delegates that there will be "bottlenecks" in 2012 as everyone is waiting for the last minute to write their RE's.

There was no mention of an extension. Any one care to take a bet?

- It was also confirmed that the 2nd level Re exams will have pilot exams starting in the first quarter of 2012.

The third, which we could not get tickets to (not exactly U2 or Coldplay but obviously very popular) dealt with regulatory issues, the full agenda being;

- Solvency Assessment and Management (SAM) project
- Risk Based Supervision & Insurance Groups
- Micro insurance in South Africa

- Treating Customers Fairly (TCF)
- Regulatory Projects: Legislative program & current and forward looking projects
- Implementation of the Binder Regulations
- Overview of Issues Paper on Definition of Intermediary Services and Related Remuneration Matters (see above article on this issue)

### **FSB's official position on section 7 (3) of the FAIS Act**

As you know, especially if you are an insurer or UMA/administrator we have been nagging to get upgraded agency agreement procedures in places to ensure that not only is the broker you deal with correctly licenced but that their representatives are also correctly licenced. And yes we know it can be an administrative burden to do the job properly, but here is a press release from the FSB that sets out clearly what is needed and the risks you run by your process not being effective.

Charene Nortier of the FSB recently commented and said: Section 7(3) of the Financial Advisory and Intermediary Services Act, 2002 (FAIS Act), requires that FSPs and their representatives only do business with a person rendering financial services if that person is licenced to do so and meets the relevant conditions, or is a representative that is properly appointed and meets the conditions.

FSPs tend to check at FSP level, but they don't drill down to representative level. It is quite possible for the FSP to be correctly licensed, but that a specific representative within that FSP is not appointed for the relevant financial product category or subcategory. If the FSP accepts business from that representative in respect of a financial category or subcategory for which the representative is not authorised, it would be a contravention of section 7(3) of the FAIS Act. As a result the FSP could be referred to the Enforcement Committee of the FSB.

In the short term arena SAIA have been discussing obtaining access to the FSB site on behalf of its members to make the process of searching for data easier but to date this has not produced any meaningful results.

## CPD

The FSB have advised that a new Board Notice will be issued shortly, probably before the year end, that will clarify the detail around CPD. We need this as at the moment various KI's and Reps who have completed their applicable RE's should be starting their 3 year cycle on January. A discussion has recently started on whether a person who is a KI and a Rep need "comply twice" i.e. do hours as a KI plus hours as a Rep. Our view is that this is nonsense – but we have been wrong with such logic before. Watch this space!!

The FSB have also confirmed that despite having received 22 applications for the SP version of specific qualifications i.e. those that are specific for new rep appointments from 1/1/2010 – not one has been approved. This would appear to be due to the poor quality of the submissions by the developers of these qualifications. So as you read this there are no qualifications that can be studied by new entrants to rep status, to attain dispensation from the 2nd level RE exams – some 2 years into the new process. Irrespective of who is to blame this is very poor – this is people's careers that are being messed with. How can anyone – compliance officer or educator, be expected to advise effectively in such an environment?

## Lead aggregators – what is their role?

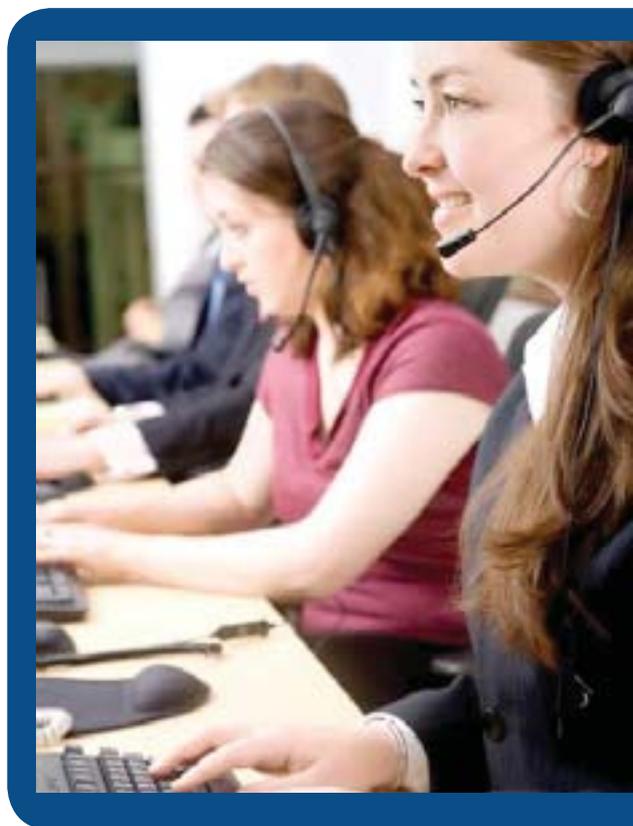
The FSB are looking into the role of so called lead aggregators.

In this Notice, any word or expression to which a meaning has been assigned in the Acts has the meaning so assigned to it and "insurance lead aggregator" means any website portal web-based search utility, call centre or any other similar medium that enables the public to obtain and compare insurance quotes from more than one insurer, from that website portal, search utility, call centre or other similar medium

The purpose of the request for information is;

The notice states the information is required to:

- improve the Registrar's understanding of these relationships;
- monitor that all relevant provisions of the Long- and Short-term Insurance Acts are complied with;
- inform an appropriate policy and regulatory response, if necessary



And what has they asked for?

## **Information requested**

Insurers must provide the following information to the Registrar-

- the names and contact details of any insurance aggregator(s) with whom the insurer and/or any binder holder of the insurer had any relationship;
- details of the services insurance lead aggregator(s) render to the insurer and/or any binder holder of the insurer including the type, working and features of the services;
- details of the remuneration , including the form thereof (commission fees or other), paid by the insurer and/or any binder holder of the insurer to the insurance lead aggregator(s);
- details of the remuneration , including the form thereof (commission, fees or other), that the insurer is aware of that is paid by any person other than the insurer and/or any binder holder of the insurer to the insurance lead aggregator(s);
- details of the oversight, management and the monitoring mechanisms the insurer and/or any binder holder of the insurer have in place to ensure the fair treatment of the public;
- copies of any written agreements between the insurer and /or any binder holder of the insurer and the insurance lead aggregator(s); and
- details of any ownership interest that the insurer and/or any binder holder of the insurer Have the insurance lead aggregator(s).
- Insurers that do not have any relationships with lead aggregators must confirm this in writing to the Registrar.

## **Timeline for submission of information**

The public Officer must submit the information requested by no later than the close of business on the 16 January 2012 to the Registrar's office c/o:

[inforequest4.2011@fsb.co.za](mailto:inforequest4.2011@fsb.co.za)

## **Conflict of Interest – an article by Wendy Hatting of the FSB**

We picked this up from [Cover Connect](#)

Financial services providers that aren't complying with FAIS Conflicts of Interest legislation won't be given any further leeway. We've always followed the approach of giving companies time to rectify what they're doing wrong. But they've had

enough time, and we're moving into a new phase of enforcing the legislation.

The requirement to avoid conflicts of interest is not new. Though only a few lines long, it has always been part of FAIS. The new amendment spells out the policy in detail and leaves companies with little or no room to prevaricate; however, as it is more principles-based than rules-based, companies need to figure out how best to interpret and apply the amendment to their businesses.

Julie Methven, CEO of the Compliance Institute said that some companies view conflicts of interest as a compliance issue that simply requires a policy. Yet, effectively managing conflicts of interest rests means instilling the principles into your business practices and transactions with your clients. While the compliance function plays a key role, ultimate responsibility for ensuring that conflicts of interest are properly managed lies with management. Companies know the legislation is there, yet management still hasn't questioned itself about what it means to the business.

Hands up all those that believe they are compliant because you have a policy?

**We recently submitted a request for clarity to the FSB as follows;**

“

*We have come across a few instances of the R1,000 limit being breached. Not in a material way, basically poor maths or systems that don't effectively link the spend from various reps within a company and only when collated the error is picked up.*

*A debate seems to be starting as to what to do next.*

*I do not see such issues as material and provided that the controls are improved to prevent further transgressions and that this is tested by us to prove as such, I feel that is it. However I have now come across two cases where insurer compliance officers are suggesting that the recipient of the “over spend” be invoiced for the excess amount to correct the error. Surely your offices would not be looking for such corrective action.*

*Your thoughts on this would be appreciated. ”*

And the answer we received was;

“

*Contravention of prohibitions is seen in a serious light, companies should not be using immaterial interest to reward other financial services providers, and it is used for immaterial and incidental expenses. Any contravention that we find is referred for further investigation by FAIS Enforcement Department. ”*

Not what we were hoping for - we want specific guidance on how to manage issues not general commentary. Do we have to wait until an FSP is issued with a penalty to get that clarity? We are trying hard to guide our clients but when you know you can get lost a map becomes quite a useful tool.

### **Mind the Gap – Medical insurance under the spotlight**

**The FSB are also looking into the so called GAP covers. The following is a copy of an article from the FIA October Newsletter**

It appears that Guardrisk’s successful appeal to continue marketing Gap Cover as a short-term policy may soon face new headwinds.

Guardrisk succeeded in obtaining permission to market gap cover policies as short-term insurance without having to be registered for licence category 1.16, Healthcare benefits.

One of our compliance officers forwarded a copy of documentation sent to all long- and short-term insurers who are registered to offer health policies, as well as accident and health policies. This is a request from the FSB for detailed information of all products of this nature sold over the past two years.

The feedback forms cover substantially more than just Gap Cover:

On the long-term form, feedback requested includes details of hospital plans, dread disease cover, lump sum disability, income replacement, premium waiver and liability cover.

The short-term insurers are requested to provide feedback on four types of products which include travel insurance, third party insurance and gap cover, top-up cover and health insurance. It appears that a far wider focus is being placed on this market. The request states that the information gathered will be used to assess “the ...potential eco-

conomic impact of the eminent demarcation regulations”.

This in turn is defined as follows:

The proposed regulations to be promulgated under the Long-term Insurance Act and the Short-term Insurance Act, will facilitate a clear demarcation between what constitutes insurance business (namely, “health policies” and “accident and health policies”, in the respective Acts), and what constitutes the business of a medical scheme, in instances where there appears to be uncertainty and ambiguity in the legislative framework.

Details of the request, as well as the spread sheets detailing the products that need to be reported on, are available on the [FSB website](#).

## **From the Short term Ombud**

The Board of the Ombudsman for Short-Term Insurance has announced the appointment of its new Ombudsman. Dennis Jooste will take over the role of Ombudsman from Brian Martin with effect from 1st January 2012.

There is an interesting article in COVER – their “e” newsletter of 17 November and can be accessed on their website under [Governance: short term](#). It deals with the trend in the Ombuds rulings when looking at repudiations due to a breach of a policy warranty. The article by Prof Robert Vivian is typically detailed but his conclusion that the industry need to sit down and talk to each other on how to deal with claims given the Ombuds rulings make a lot of sense. Time will tell whether Dennis Jooste continues in the Brian Martin thinking or not – but one has to assume that he will.

## **From the FIA**

We see the FIA have released a new Code of Conduct. We plan on adding adherence this code to the monitoring process of all our clients who are FIA members.

The code follows closely the FAIS standards. Two aspects we found of interest;

### **Step 3 - Enter into a service agreement with a client**

FIA members will, on acceptance of a client request or instruction to offer any recommendation of a financial nature to the client, enter into a recorded client request, instruction or service agreement.

And...

## **...Step 6 - Enter into a Financial Service agreement with the client**

FIA members will, on acceptance by the clients of any financial advice and/or intermediary service proposal, enter into a recorded contract with the client and ensure that the client is provided with a copy of such a contract

Both talk of formal “service agreement:” and “recorded contract with the client”

We are keen to see exactly how these standards are going to be applied on practice.

## **From the FAIS Ombud**

**A summary of a press release courtesy of COVER**

The number of determinations made by the office of the Financial Advisory and Intermediary Services (FAIS) Ombudsman has increased dramatically by 333 percent from 21 determinations in 2009/2010 to 91 determinations for the 2010/2011 financial year, resulting in R34.78 million being awarded to complainants in the past year.

The number of complaints received by the office of FAIS Ombudsman, Noluntu Bam, increased marginally by just three percent from 7 647 complaints in 2009/2010 to 7 944 in 2010/2011 but Bam’s office has made significant progress in terms of tackling complaints. At the launch of the 2010/2011 FAIS Ombud’s annual report this week, Bam revealed that her office has succeeded in resolving more than 60 percent of complaints received within a 9-month period and has reduced the time taken to acknowledge receipt of a complaint from one month to just seven days.

Elise Barnes (the complainant), D Risk Insurance CC (first respondent) and Deeb Raymond Risk (second respondent).

**FA News (30/11)** looks at this case – not that it differs in substance from other FAIS Ombud matters – but it looks at why the ruling is being challenged in court by the PI insurers of the respondent. We hope this goes all the way as the editor of the article puts it;

“

*I think it is time for the Courts to determine to what lengths an independent financial intermediary must go to satisfy the due diligence*

*requirements outlined in the FAIS Act. Even an institution with massive resources (think of the Financial Services Board) takes months to thoroughly investigate questionable product providers. ””*

Some are saying this is an action based on anti-consumer rights and will reflect badly on the insurers challenging the ruling (Santam via SHA) but the results would set the scene going forward – everyone would know where they stand – so maybe we should applaud the case?

## **INTERESTING ARTICLES WE HAVE READ**

### **COVER magazine November 2011;**

There is a liability feature with contributions from various players in the liability, including D&O, arena. Well worth a read – we don't see too much activity in this segment when looking at the needs analysis done. This is potential “gap” and an exposure to brokers – every broker needs to up skill in this segment.

A listing of underwriting managers in the Santam stable is also included (as does November Risk SA).

On the subject of UMA's we still find that many brokers when noting the “insurer” in their records of advice and/or disclosure information still note only the UMA. As they are not the insurer reference needs to be made to both the insurer and UMA.

### **Risk SA November 2011;**

#### **Telematics: Big Brother or Best Friend:**

An article on the use of technology by insurers in the motor insurance sector. Our experience in chatting to our clients is that they are generally sceptical on recommending these products – they have an inherent fear that the tracking information may work against their clients when it comes to the claims process if it can be shown that speed limits were exceeded and there was an accident. With full product disclosure this should not be a problem for the broker so our view is that if this type of product is suitable to the clients profile then why not use them?



## Micro-Insurance – Going Big:

- With the likely arrival of this new piece of legislation in 2012 this is a useful, if short, article worthy of a read for anyone with aspirations of operating in this sector. It is also likely to have its own FAIS based regulation that reflects the unique issues within this segment. Interestingly the operators within the funeral segment don't want to be governed by this new regulation – maybe surprising given their policy-holders most definitely fall within the Micro environment.

## Your money or your wife:

- An article on kidnap and ransom insurance. Why was it interesting? Well from a FAIS perspective we have yet to see any analysis process deal with this cover. Are our clients client's not in the exposed sector or are most brokers simply not thinking outside the usual box?

## Directorship – the magazine of the Institute of Directors:

- In our view membership of the Institute of Directors is well worth the membership fee – for this magazine alone - but there is lots' more – worth a look.

Their articles – if you would like a copy let us know,

## The Latest in high-risk occupations

- To be or not to be a Director under the new Companies Act... Interesting in itself but with a view to talking D&O with your clients valuable. Enterprise Risk posted an article by CGF on 31/10/2011 on a very similar topic but more focussed on prescribed officers and their exposures within the Act, even if not directors.



## The practical challenges of implementing governance in SME's

- This article deals with the thought that corporate governance has no place in SME's. As part of our 2012 monitoring profile work we have King III and corporate governance as an item to be discussed. The majority of our clients are

SME's and we found that almost 100% felt that that a formal assessment of their governance status was not felt necessary as either they were too small and/or that any additional work in the compliance arena that was not demanded by legislation that could be avoided should be avoided.

Whilst we can understand this thinking given the deluge of legislative demands it remains to be seen whether or not in the long run this approach will cause the FSP to be found wanting when a good governance structure is being looked for – by a client or a prospective purchaser – remains to be seen.

- Those of you involved in the investment arena will/should be interested to note that the Code for Responsible Investing in South Africa (CRISA) published in July of this year incorporates King III principals. So if you do investments shouldn't you?
- We are in the process of implementing a governance assessment structure for ourselves – also an SME. We intend keeping you advised of how well we fair in this process.

## Enterprise Risk

Is auditing a thing of the past? A good article by Nylde Hoffman, Director at FinFive that clearly sets out the process to be followed by a company in deciding if they should have - or need to have – their financial statements audited. But remember from a FAIS perspective if you handle client funds or premiums you will still need them to be audited.

## FA News

The **2nd November electronic edition** dealt with plain language in policy wordings. Despite the editors statement that insurers should have upgraded their wordings already, which is not the case as this requirement, from the CPA, has yet to be aligned to the insurance legislation, it is still a worthwhile read as it does set out where the industry is likely to be led. And don't believe it is only insurers who will feel the impact of plain language – terminology in records of advice are also likely to be impacted upon. Maybe some of you want to get a head start?

A couple of related articles on the **7th November** and **8th of November** on the operations of the Ombud for Short term Insurance (OSTI), with one focussing on the impact on prescription when using the Ombuds office. Brokers need to better understand the operation of the Ombud's office when problem claims arise. The brokers own com-

plaints procedures should identify problem cases and enable effective use of the Ombud.

Their **newsletter of 16 November** then throws the focus onto the Long term Ombud.

## **China: Mainland property baron gets death sentence for illegal fundraising**

A Chinese property developer has been sentenced to death for an illegal fundraising scheme involving 5.5 billion yuan (US\$870 million), state media said Wednesday. Ji Wenhua, head of the Yintai Real Estate Investment Co. in eastern Zhejiang province's Lishui city, raised the funds from the public between 2003 and 2008 by promising monthly returns as high as 12 percent. And you thought the FSB were hard!!

We just had to borrow this little joke from one of our clients own Newsletters that they send to their clients.

## **Christmas Angel**

*One Christmas, a long time ago, Santa Claus was getting ready for his annual trip; but there were problems ..... everywhere.*

*Four of his elves were away sick and the trainee elves did not produce the toys as fast as the regular ones. So, Santa was beginning to feel the pressure of being behind schedule.*

*Then, Mrs. Claus popped in to tell Santa that her mother was coming to stay for Christmas; which stressed him even more.*



### ***Santa's last ride!***

*After a while, he went to harness the reindeer, he found that three of them were about to give birth and two had jumped the fence and run away, heaven knows where to.*

*Then, when he began to load the sleigh one of the boards broke and several large toy-bags fell to the ground, scattering their contents all over the place. Needless to say, Santa was not in the best of moods.*

*Suddenly, the doorbell rang and he went to the door expecting another problem. But when he opened it, there was a little angel with a great big Christmas tree that she had brought especially to cheer him up.*

*The angel greeted him very cheerfully, "Merry Christmas Santa Claus. Isn't it just a wonderful day? I have a beautiful tree for you. See, isn't it just the loveliest Christmas tree you've ever seen? Where would you like me to put it?"*

*Thus began the tradition of the little angel on top of the Christmas tree.*

*You ever felt like that angel?*

