



AUDIT CHECKLIST



Audit Satisfactory



**Nonconformances For
Observations Made**

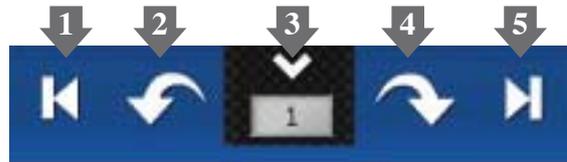
Instructions

All the text in red can are links, click on that text to go to relevant page.



**Click on one of the above in the top menu
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- 1 = Go back to cover page
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with you mouse cursor to turn over the pages (just like you
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From Pretium



Welcome to 2012 and our new format Newsletter, which we hope will enhance its functionality for you. You can choose to read “on line”, which will have the added advantage of easy links to the various articles and websites we often refer to and you can navigate around the various articles as you require. However, if you prefer to read a hard copy, then simply download down load the PDF version.

The Newsletter will continue to be posted on our website so there is no need to keep copies yourself – you will always be able to access required information from there. This format also enables us to accurately establish who reads it from those that receive it and of those who is reading it online and who is downloading the PDF version.

We tested this format with a few of you in our last edition of 2011 and have incorporated some of the feedback we received into this official launch version and we would welcome any other input and ideas that you may have, after all this is a Newsletter that is meant for our clients and to assist them with necessary and (we hope) useful information for your overall compliance framework. So if we can improve our offering we are happy to do so.

And remember to get the Newsletter to your staff. It is an easy way to reinforce the importance of compliance in their day to day work and of getting up to date information to them. We often get told during visits by representatives and key individuals alike that they were not aware of certain happenings or new or changed legislation – that is what the Newsletter is for – to inform you of such things so that our formal meetings are not the only interaction we have. We realise that you are bombarded with information and that not everyone will read everything but at least ensuring you and your staff are provided with information they need to know will assist in your overall efforts to do the right thing and avoid the wrong things.

If you want to add names to our mailing list just let us know.

2011 compliance reports for FSP’s who do not need a compliance officer

These reports need to be submitted to the FSB by the 28th February 2012. We are in the process of contacting our support only clients to assist them in their submissions.

Promotion of Access to Information Act

Can you believe it? We spend a few months preaching the need to comply with this Act, we draft Guidance Notes and policies and then at the 13th hour i.e. just after the deadline has passed – an extension is given to most companies. The deadline for the submission of Section 51 manuals has been extended to 31/12/2015. This notwithstanding we are pleased to note that the majority of our clients have submitted their manuals.

The table is reproduced here below detailing the various sectors and the parameters defining those companies for which the **deadline for submission** of their manual has not been extended and remained the 31/12/2011.

Companies in the Financial Services Sector, for which the deadline has not changed are those companies employing more than 50 employees OR who have an annual turnover exceeding R10million.

SECTOR	EMPLOYEES	ANNUAL TURNOVER in millions ZAR
Agriculture	50 or more	2
Mining and Quarrying	50 or more	7
Manufacturing	50 or more	10
Electricity, Gas, Water	50 or more	10
Construction	50 or more	5
Retail, Motor Trade and Repair Services	50 or more	15
Wholesale Trade, Commercial Agents, and Allied Services	50 or more	25
Catering, Accommodation and other Trade	50 or more	5
Transport, Storage and Communications	50 or more	10
Financial and Business Services	50 or more	10
Community, Special and Personal Services	50 or more	5

This extension has been confirmed by the Dept. of Constitutional Development and Justice, apparently as a result of various queries which have been raised. We have asked for detail of these queries and whilst we did raise a few ourselves, we have not yet received a full list of queries raised.

On the basis of what we do know, it seems peculiar that the extension of the exemption was not allowed for the larger companies as we are sure that a lot of the queries which were raised affected those larger companies as well.

We are confident that the manuals already submitted will be retained, but would urge you to keep your copies thereof and ensure that the confirmation of registration has been received and is also retained.

One question that we are awaiting an answer on is whether those who have already submitted their manuals are obliged to maintain them, and update as and when changes occur. We will let you know of the SAHRC's stance once we have clarity, but would suggest that you do update as necessary.

If you have not completed yours and now want to do so notwithstanding the extension we came across a very user friendly site that will help you: www.paiabuilder.com

Conflict of Interest and immaterial financial interest

As we see you over the next quarter we will be asking you for your consolidated register on immaterial financial interest for the 2011 period. If you recall the monitoring period for this is a calendar year and we need to establish the level of activity for 2011 from you. We also believed that we would need this information for the questions on this topic in the 2012 annual FSB report but interestingly the draft 2012 report does not address the issue of adherence to the immaterial financial interest limit. We will however continue to obtain the data from 2011 as we are sure this draft report will be amended. The key thing is we need a report – even if it merely records that no such activity took place. Verbalised feedback means no records have been kept and the



annual report will need to reflect this status. One insurer seems to be managing the process better than most – well at least insofar as they are providing information to their brokers. Momentum have just provided their brokers with a report for the 2011 period on what was spent by them on each individual – well done Momentum. Whilst on this subject we recently had a UMA client who was holding a function to celebrate an important anniversary and had invited staff from their insurer. The staff members were not KI's or Reps on that insurers licence and as such it was felt, by the UMA, that the R1,000 limit need not apply. Initially we were unsure as to how this needed to be managed and as such asked around to see what the views of compliance officers were on this. The consensus was that the money spent had to be viewed as having been provided to the FSP as a whole and as such the applicable limit was R1,000 for all of them and not per person had they been treated as KI's/Reps. As the FSB has yet to agree that the relationship between a UMA and its insurer partner cannot possibly be seen as a conflict situation these limits have to be followed or reported accordingly.

WFSP names

we wrote of this in the last Newsletter of 2011. We have now established which of our clients have not had approval for use of the words Insurance, Underwriters and the like in their names. We will shortly be writing to each of you who have such words in your name individually advising you if you have been approved or not and if not the process to be followed from there.

One of our clients has already established the status of their name. Their current name is “*** ** Underwriters Pty Ltd” - this name has been rejected by the FSB who stated that “the name is misleading as it creates the impression that the company in question is a registered long-term or short-term insurer”

So they are being forced to review that name, with “*** ** Underwriting Managers Pty Ltd being the likely change.



We reported last month that sole traders using a trading as name had to have this registered with CIPC. This was supported by details on their website. It seems they have

had a change of heart. The website detail on the subject has been withdrawn and staff at the CIPC offices have confirmed this is not currently required as the Companies Act makes no provision for this.

- How the provisions on names in the Consumer Protection Act (CPA) will affect this once these provisions take effect (which can be any time from March this year) remains to be seen. These provisions state that someone may not trade under any name, unless that name is
- The person's full name as recorded in his or her identity document (if the trader is an individual);
- registered by that person in terms of a public regulation (for example, it is the registered name of a company or close corporation); or
- Registered as a business name under the CPA. These requirements do not only apply to trading under a business name.
- They extend to carrying on business, advertising, promoting, offer to supply or supplying any goods or services or entering into agreements under a business name.

FIA members and the new Code of Conduct

We provided details of the new code last month and have started to ask our clients what their reaction is and what plans they have to implement these standards. It may be a little early but to date none of the clients seen have done anything, in fact most were not even aware of the details of the changes let alone the implications. We have yet to see any draft contracts, which the FIA has said they will be providing to members. We will continue to monitor.

Micro Insurance

We have drawn up an overview of the planned Micro Insurance legislation to help any client who may be contemplating a move into this area. It is a provisional one based on the proposed content. If anyone would like a copy of this Guidance Note just get hold of Pranisha at our offices.

FETC suppliers

We have an updated list of all public and private institutions that are offering FETC qualifications – if you need a copy send a request through to Pranisha

CIPC (the Companies and Intellectual Property Commission) and their paperwork

For those of you who deal with changes to company profiles we have a list of the forms used in different circumstances when making changes with CIPC, which includes a comparison to the old CIPRO paperwork that was used. We also have copies of all the forms should you need any – just give Babalwa a ring.

From the FSB

Binder regulations

these were gazetted late in 2012 and have an effective date of 1/1/2012. They make provision for existing binder agreements to remain in force as is for a maximum period of 12 months during which time the current agreement must be aligned to the new regulations. New arrangements will be subject to the regulations from day one.

There are still “left over” questions from the consultation stage that have not been addressed by adequate explanations – or even a response – from the FSB. It is a pity the explanatory notes that accompanies the regulations was not used to address these so as to complete the understanding process.

One of the main ones is;

- Is the issuing of policy schedules i.e. no other authority at all, on behalf of an insurer seen as a function in need of a binder? And if not can a UMA outsource this functionality? Our view is that it does not demand a binder. The FIA have stated that issuing policies on the insurers system is not seen as a binder function but made no mention of issuing on a broker system – we have queried this opinion with them. We believe these functions can be seen as outsourcing by the insurer of this functionality, the question of the payment of a fee for this and how it is regulated is not dealt with in these regulations and requires a conclusion of the discussion around intermediary services and related fees before this becomes clear.

From our perspective some of the main issues that will arise from these regulations are;

- A binder holder may not add any amount to the gross premium that will be paid by the client. It is unclear if this prohibits policy fees and the like to be added as the regulations do state that a broker may charge a fee provided there is no duplication of fees for the same services i.e. if a broker gets paid for policy under-

writing and claims by the insurer a general policy admin fee cannot be charged by the broker. The FIA have gone on record to state that debit order fees are not allowed, although we do not see such a clear statement in the regulations.

- No broker activity or direct business for a UMA
- No outsourcing of any binder function by a UMA or a non-mandated intermediary to any other party
- Restrictions placed on non-mandated intermediaries on moving books of business i.e. written permission needed from each and every client prior to any move
- Those FSP's that operate as "administrators", specifically in the short-term market will be forced to get UMA status or act as non-mandated intermediaries with one or more binders but this may limit their ability to charge fees, which is the backbone of their income stream.



The explanatory notes that have been provided, as were used in the first two drafts, are useful to the extent that they add clarity to the intention of the wording used in the regulations themselves. However we wonder if a meaning needs explanation, for example the section on a UMA not being allowed to act as a broker nor handle direct business is not well written at all in the regulations but is clarified in the notes, then why not use the wording in the notes in the regulation and not have a need for an explanation? In addition some aspects of the explanatory notes give detail that would not have been read as such in the regulations e.g. the definition of a non-mandated inter-

mediary is quite simple and provides no restrictive detail at all however in the notes there is a lot of restriction around the moving of books of business by a non-mandated intermediary. So if this was the intention why not include that in the regulations? Are we to regulate by Guidance Note rather than regulation?

It will be interesting to see how the market reacts to these changes. Will any choose to use the situation as a marketing initiative? Will everyone wait until December to implement changes? A subject that we are sure to deal with many times as the year pro-

gresses.

Customized 1st level regulatory exams

We are aware that SAIA has been invited to provide input to the FSB on the possibility of a customized 1st level RE for representatives in the personal lines arena. This follows requests for similar customized exams for reps operating in the Long term sub category B1 and B2. We are not aware of the details of the submission nor of the time frames the FSB intend working with but given the deadline is 30/6/2012 we have to assume this is a project marked as Urgent at the FSB.

Latest RE stats

These were due to be released in the week of the 23rd January but at the time of releasing this Newsletter this detail had not filtered down to us. Unfortunately this is information the FSB do not provide directly to compliance officers.

Consumer credit insurance

The FSB has submitted a request to the market place, both long and short term, for information on both credit insurance policies and practices within these industries as at 30 June 2011. The deadline for providing information under the following headings is 30 April 2012;

- Disclosure
- Product standards
- Claims and complaint handling
- Market structure
- Remuneration

If anyone would like a copy of the actual request to obtain more details just let us know.

Audited financial statements for FSP's – a change

The FSB have released a Board Notice – 193 of 2011 – that will allow FSP's within Category I who no longer need to have audited financial statements in terms of the new Companies Act to have a similar dispensation terms of FAIS, provided they are not handling client funds or are required by any other law to do so.

The Board notice also provides for FSP's only transacting business in the long term Category A or Friendly Society Benefits licence categories and who can collect client

funds not to have audited statements subject to applying for the exemption.

This option is not available to FSP's who are Category II, III or IV or where any other law demands that audited financial statements are needed

The FSB have chosen to have a formal dispensation process to enable FSP's to take advantage of this amendment. All qualifying Category I FSP's who have decided to stop having audited statements must apply for a formal exemption. They are also required to appoint an accounting officer, whose details need to be included on the application and thereafter prepare financial statements in accordance with the accounting officer profession. They will also be responsible for reporting any irregularities to the FSB in terms of the FAIS Act. Thereafter changes to the accounting officer must be notified to the FSB as has been the case for auditors which will mean a formal application form is to be completed (FSP9) and a fee paid, which is currently R250.

It is interesting to note that a CC not handling client funds/premiums, who previously did not have to worry about keeping the FSB up to date with their accounting officer details now has to do just that and pay the require fee and apply for the privilege to do so!! Not exactly an exemption is it?

A formal application form is to be completed and submitted to the FSB within 6 months of the release of the Board Notice i.e. 28th May 2012. Circular 11/2011 that accompanies the Board Notice stated that this period was 3 months but we are following the Gazetted time lines given that this is actual legislation.

We will shortly be submitting the required application to qualifying clients and will be submitting the applications, where required, on their behalf.

Proposed changes to the CPD aspects of the Fit & Proper regulations

A draft Board Notice has been released by the FSB that intends to add some structure to the CPD process. The bulk of the Notice is devoted to the paperwork required in approving CPD content and the subsequent monitoring of the CPD hours done by an individual. The major proposed change is that the CPD period will be per calendar year and not a three year period as originally proposed. This makes sense as it will ensure that FSP's and their KI's and Reps will have to work each year and not wait until the end of a 3 year period to do their hours.

Our main concern on relates to the proposed monitoring of the CPD hours. Whilst the switch to the yearly cycle will help the structure for reporting to the FSB is multifaceted with all role players i.e. the KI/Rep, the FSP, the CPD provider and the compliance officer all involved which appears to create a duplication of information flow to the FSB.

They will also be taking the opportunity to make some fine tunes to the main Fit & Proper regulations, the most significant of which is a proposed change to the times lines for supervision for those reps appointed in 2008 and 2009 which would mean that supervision would stop after having attained the minimum experience only, which is generally 12 months, and not after having attained the educational standards as well

We have provided feedback to the FSB.

Treating Customer Fairly (TCF)

The FSB at a conference held in November 2011 noted that TCF will require product suppliers (insurers) to:

- Ensure that the identification of suitable targeted distribution models is part of the product design process;
- Establish whether advice is necessary in the distribution of the products;
- Consider how they should satisfy themselves and monitor that the distribution channels they choose to use on a macro prudential level are delivering TCF outcomes for their customers. This does not mean that the product suppliers are responsible for the FAIS requirements but that the merely checking for existence of a FAIS licence will not be enough;

(This will clearly go beyond the current Section 7(3) compliance process – which itself is not well managed by the market as a whole so it will be interesting to see how an insurer will monitor at this level)

- Ensure that they have the right controls and management information in place to monitor that any outsources activities are carried out fairly. The self-assessment tool should serve as a guideline to develop own tools.

The FSB has noted some concerns that industry might underestimate TCF.

For more information on TCF that arose from the FA News seminar held in December follow this link [*Click here to read the full article which continues on the FA News website.*](#)

2nd level RE exams - The FSB announced that the level 2 RE will only roll out as soon as the level 1 deadline is met. The process of piloting the level 2 RE is however expected by the first quarter of 2012. With the deadline for the 2nd level RE's currently set at 31/12/2013 that would give people a maximum of 18 months to complete this level, assuming the deadline referred to is the 30/6 one and not the 30/9 one.

What's next? The Specific Code of Conduct for Professional Clients is expected in the first quarter of 2012 and a Specific Code of Conduct for Assistance Business for funeral policies/friendly societies is expected for comment by the end of March 2012.

A single statutory consumer complaints resolution office for the financial services industry is back on the agenda as part of the government's proposed "twin peaks" approach to regulating the industry as reported by Bruce Cameron in Personal Finance earlier this month.

The article, amongst other aspects, stated;

“New investigation has been launched into creating a single statutory ombuds office, in line with the government's policy document entitled “A safer financial sector to serve South Africa better”, which was published in February last year.

The “twin peaks” approach means separating the regulation of prudential risk (the probability of companies going bankrupt) and market conduct (how the industry deals with you), of which consumer complaint structures are part.

Tembisa Marele, the spokesperson for the Financial Services Board (FSB), confirmed this week that “a comprehensive review of the ombuds system has been commissioned by the National Treasury”.

The investigation includes holding consultations with the existing ombuds offices, she says”

Watch this space!

The Minister of Finance, Mr Pravin Gordhan has re-appointed Dube Tshidi to serve as Executive Officer of the Financial Services Board for a second term. Mr Tshidi has served in this position since 2009, and his new term will end on 30 June 2015.

From the FIC

The FIC have recently been sending out letters to all registered Accountable and Reporting Institutions. These letters mention that should you have been registered prior to 31 December 2010, you would need to confirm your details at the FIC. Reasoning behind this is that the FIC are updating their database and therefore confirming these details enables them keep their records up to date at all times. I'm sure this is not the last letter we'll be seeing from the FIC regarding confirmation of details.

And whilst referring to FICA an actual example of a transaction from the short term sector – a short term broker specialising in high net worth clients recently had the profile of their client queried by the UMA involved in insuring a vehicle. The vehicle in question was a Porche – some R1, 2M worth of motor vehicle. Why the question? Well the occupation of the insured was a policeman (and no his name was not Selebi) The UMA, quite rightly, believed the profile of client and vehicle was one that needed to be looked into. Apparently the bank who had provided the finance, when approached, advised they had already looked into this as well – specifically as the cash deposit was some R900, 000. The client had explained his circumstances and the bank was happy that the transaction was acceptable. So no actual report was needed. We were happy to see that the UMA was taking such issues seriously and now have a broker who is also much more aware of their responsibilities.

1 December 2011 MARKED the first anniversary of cash threshold reporting obligations across all sectors identified in terms of the Financial Intelligence Centre Act, 38 of 2011. This reporting obligation compels 18 sectors of business to report cash transactions of R25 000 or more. Over the last 12 months the value of cash threshold reports received by the FIC amounts to at least R142.8 billion. This figure is derived by applying an absolute minimum value of R25 000 for each cash threshold report received by the FIC over the last 12 months. By end of business on 30 November 2011, the FIC had received 5 710 916 reports.



The Financial Intelligence Centre plan to conduct more audits in the New Year of chosen FSPs. The initial meetings will be exploratory where the FSPs will be informed of what is expected from them as far as FIC is concerned. Subsequent meetings will dig much deeper into FIC compliance and non-compliance thereof will be addressed strictly.

From the Short Term Ombud

New jurisdictional limits for the Ombudsman

The Board for the Ombudsman for Short-term Insurance has announced new jurisdictional limits for complaints from consumers to the office of the Ombudsman, with effect from 1st December 2011.

The new jurisdictional limits are as follows:

- *Personal Lines Complaints*
- *General complaints relating to all classes of business save for homeowners - R2 million*
- *Complaints arising out of home owner or buildings policies - R4 million*
- *Commercial Complaints*

The turnover limit for a juristic person referring a commercial complaint to OSTI has been increased from R10 million to R25 million. The same quantum limits as applies to personal lines complaints will apply to commercial complaints as well and the jurisdiction of the office will extend to all classes of commercial business save where in the opinion of the Board and nature of the complaint involves highly specialised business which falls outside of the skills and expertise of the Ombudsman for Short-term Insurance. In general terms however the jurisdiction for personal lines and commercial complaints should be identical.

The new jurisdiction limits will apply to all complaints received by OSTI from the 1st December 2011 onward, but will not affect any existing unresolved complaints.

Interesting articles we have read

Compliance for Insurance people, by Insurance people

Directorship (First quarter 2012)

The quarterly magazine of the Institute of Directors runs a frequently asked questions and one from this edition has relevance in our client base as many have staff appointed as directors.

The question posed: What does a director's duty of care and skill entail?

“A director is required to act with the care, skill and diligence that could be expected:

- *For someone with that director's knowledge and experience, and from a reasonable person in that directors position.*
- *This means that more could be expected from directors with above average skills. However, directors with below average skills will not be subject to a lower test as they will still be tested against the reasonable person average. The duty is derived from the common law.*

The Companies Act (no 71 of 2008) partly codifies the duty of care and skill, which means that this duty is expressly referred to in the Act to draw directors' attention to it. The common law guidelines on the content of this duty will apply together with the Act, in order for the directors and the courts to interpret exactly what it entails.”

Enterprise Risk – an article on the state of readiness of companies to the Protection of Personal Information (soon to be?) Act. We will all need to deal with this to a greater or lesser extent so a worthwhile read. We will be doing a Guidance Note as and when the Act is published to help clients implement any required changes.



AN ARTICLE BY DAVE LOXTON FROM WERKSMAN ATTORNEYS - UK Bribery Act poses potential risks for SA companies.

Distinguishing between genuine hospitality, promotional gifts and what could constitute a bribe, is a grey risk area that South African corporations need to take into account – particularly those associated with British companies.

Dave Loxton, director and Forensics Practice Area Head at Werksmans Attorneys, says that defining this legal distinction presents a challenge across jurisdictions worldwide.

However, he points out that the UK Bribery Act is different to the Foreign Corrupt Practices Act in the US, and the South African legislation, in that it specifically provides for a strict liability offence to cater for corporations that do not have adequate measures in place to mitigate their risks.

Referring to the UK Bribery Act, Loxton cites the example of a company that invites its business partners to a variety of events, such as dinners and sporting occasions, to cement relationships.

In this instance, private bodies and individuals pay their own travel and accommodation costs, but the cost of the travel and accommodation of any foreign public officials attending is met by the host company.

Loxton cautions:

“We now enter a very grey area as to whether this is bona fide marketing, or constitutes bribery, which would be an obvious contravention of the UK Bribery Act.”

“Werksmans advises corporations associated with British companies to conduct bribery risk assessments relating to their dealings with business partners - and in particular foreign public officials - and specifically investigate the provision of hospitality, entertainment and other promotional expenditure.”

Among other safeguards, Loxton advises these companies to publish policy statements committing themselves to “transparent, proportionate, reasonable and bona fide hospitality and promotional expenditure”.

They should also issue internal guidelines on procedures that apply to hospitality and/or promotional expenditure - and indicate areas where employees might potentially be in breach of the legislation.

In addition, recipients of hospitality and gifts should not be given the impression that they are under any obligation to confer business advantages, or that their independence will be compromised.

Criteria should also be applied when deciding the appropriate levels of hospitality and the type of hospitality that is appropriate in different sets of circumstances.

Loxton adds that companies should regularly monitor, review and evaluate internal procedures, as well as compliance with them. Appropriate training and supervision should also be provided to employees.

He points out that if South African corporations associated with UK companies do not have adequate measures in place to deal with possible contraventions of the UK Bribery Act, they risk incurring a strict liability offence (where intention is not a requirement).

FA News

An article from the 6th December with a link to the original article under the heading **Does treating the adviser fairly extend to the FAIS Ombud?** This is an on-going discussion following the FAIS Ombud case of Elise Barnes (the complainant), D Risk Insurance CC (first respondent) and Deeb Raymond Risk (second respondent). The Ombud ruled in favour of the complainant and ordered the respondent to repay capital in the amount of R800,000

From the Camargue Weathervane Newsletter

THE CONSUMER PROTECTION ACT - 8 MONTHS LATER

Part 1 - Product Liability, written by Simon Colman - [Read more](#)

THE IMPORTANCE OF DIRECTORS AND OFFICERS LIABILITY INSURANCE

In spite of the new Companies Act and King 3, written by Lucian Carciumaru - [Read more](#)

Questions we have been asked

A suggestion from a client was to provide details of the questions we have been asked by clients as it is likely that many of these will just as relevant to other client as to the one who actually asked it. So each month we will do just that.

Will my supervision stop once I have completed the 1st level RE exams?

It depends. As the regulations currently stand the situation is as follows;

For those with a specific qualification when you have completed your 1st level regulatory exam/s and provided you have had more than 12 months experience then yes supervision will cease.

If you have a generic qualification then you need to complete the 2nd level RE's before supervision stops and similarly if you only needed credits and you have achieved the relevant number 2nd level RE's are needed first.



Refer to the article on the proposed changes to the Fit & Proper regulations as there may well be changes to the above for reps appointed in 2008 & 2009.

Do I need to ask the FSB before I change my auditor?

No. you have to advise them within 15 days of having done so by completion of an FSP9 and the payment of the fee of R250. The outgoing auditor also has to provide a letter setting out the reasons for their removal. Going forward this will only be needed for FSP's handling client funds and for those that do not take advantage of the application for exemption from the need to have audited statements – see separate article on this.

On a related matter you do however need to apply for permission to change a year end before you actually do this – a request that we rarely see as the first we know about it

Compliance for Insurance people, by Insurance people

is when the change has already taken place.

Why is a loan to a group company not taken into account when establishing my company's solvency?

This was asked recently when the FSB stated a client's balance sheet indicated that they were not solvent due to a loan that had been provided to a group company. The regulations state that;

“An FSP in respect of category I that does not hold client assets or receive premiums or money must comply with the following requirement, namely, that the assets of the FSP (excluding goodwill, other intangible assets and investments in related parties) must at all times exceed the FSP's liabilities (excluding loans validly subordinated in favour of all other creditors).”

You will see that it is investments that are excluded – not loans – and we challenged the view expressed by the FSB, to which we got the following answer;

“Accounting framework does not recognise a loan or investment; instead it recognises liabilities and assets.

Loans to group companies have future economic benefit embodied in them that have the potential to contribute, directly or indirectly, to the flow of cash and cash equivalents to the entity.

They are classified as an asset.

A loan is an investment (asset).

This asset is excluded from the calculation because is an investment with the related parties (group companies).

Please discuss this matter with your auditors”

So we did – in fact we spoke to four different auditors. Three agreed with our view that a loan is not an investment and one agreed with the FSB, but the argument was lost and the client had to make a plan to correct the loan structure to achieve solvency to the FSB interpretation.



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