



ASSOCIATED COMPLIANCE

FOR A COMMON PURPOSE

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From AC

Refcheck advanced

This service is now up and running via our website. Go to:

www.associatedcompliance.co.za

and go to the Services tab and you will find the Refcheck tab.



ASSOCIATED COMPLIANCE

All such enquiries should now be referred via this facility so we recommend that you register now as all users will need to be vetted by Lexis Nexis, a process that takes up to 48 hours. This will allow speedy feedback on any subsequent enquiries.

Annual levies

The invoices have now been sent out by the FSB so by the time you read this you should have yours – if not let us know! Don't forget the payment deadline is 31 October 2014 – failure to pay on time will result in licence suspensions based on experiences from previous years.

Representatives who do not hold an SA ID

The adding of staff that do not hold a South African Identity Document was recently queried with the FSB. There were two specific issues raised:

1: “Are the FSB doing checks on natural representatives who are from abroad?”

The answer was:

“Not representatives, but nominated Key Individuals. With regards to representatives, it should be the responsibility of the licensee”

This essentially means the qualification status – and with foreign qualifications this may

present some problems as the equivalence would need to be assessed by SAQA and the FSP would need to verify whether the qualification is on the approved list.

2: Such representatives cannot be added via the FSB’s online system but manually so the following question was asked:

“The issue of manually submitted applications for representatives without an RSA ID where the delay factor due to the turnaround times is leaving a gap if the FSP cannot add them to the register what is their status in this period?”

The answer was:

“Unfortunately our electronic spread sheet system has been configured to cater for 13 digits as is the case with our South African identification document”

This answer did not provide all the required detail so we pushed on the issue of their status between being employed and the FSB approving by asking:

“Can the FSP issue a mandate letter upon appointment and the rep is “legal” even though they do not appear on the FSB system/register?”

The answer was:

“To keep it safe, No”

So care will be needed in such cases as it can take up to 8 weeks to get a manual submission





processed, a period during which they cannot operate as representatives.

Feedback from the recent FSB presentation at the FIA road show

We recently attended this event and the following is a summary of what we perceived to be the most important aspect – the overview on content of the soon to be released (so we are told) Retail Distribution Review:

Type of Intermediary

1. Independent Financial Advisor (IFA)
2. Multi-tied agent
3. Tied agent

An intermediary can be a combination of 1 or 2 but the tied agent cannot be connected with either 1 or 2

AC Note

The actual definition of a “tied agent” and how they should be licenced in terms of FAIS needs to be clarified as we have seen recent examples of intermediaries being offered tied agency deals yet they have to stay licenced as an FSP rather than added to the insurers’ licence – which is not what we would expect.

Short-term Commission:

1. Will be paid for finding new clients.

Will be paid for servicing a client. The definition of “intermediary services” activities will be provided.

Commission will be capped. The percentage is still to be determined. So the possibility of it being reduced still exists.

Will not be paid for advice.

2. No cap will apply and FSB will not regulate advice fees.

Fee basis for advice provided will be between broker and client to agree.

3. Broker fees, if collected by the insurer, can be added to commission and may be paid by insurer with commission subject to a client Service level agreement being in place and provided to the insurer as proof of agreement on fees

Long-term Commission

1. Risk Policies/universal lifestyle (e.g. Credit Life) will be paid as and when. Rates to be determined but will be capped.
2. Retirement Annuity policies – spread over 5 years but will look to 100% allocation and as and when.
3. Investment only policies will have no commission, but with the allowance of commission in the lower end of the market.
4. Advice and Intermediary service aspects will be driven as with the Short-term.



AC Note

The issue of advice for a fee presents both opportunities and threats for the intermediary. How best to educate the client on this change will be one of the key issues to be addressed. Subsequent commentary from the FSB did indicate that the RDR will not simply import the UK's RDR, which caused radical changes to the intermediary environment, and will take into account the unique issues within SA. Time will tell what this will mean in



practice but it is clear many intermediaries will need to apply their minds to the changes coming.

The overall Twin Peaks regulations, which are planned to be fully introduced by the end of 2016, will govern, amongst other things:

- The Retail Distribution Review changes,
- Outsourcing Agreements,
- The Binder Regulations and Fees,
- FAIS Act changes and
- TCF.

A further overview can be found in the FANews of 1 September. [Click here](#) to read the full article which continues on their website.

Second Level Exams – what is the status?

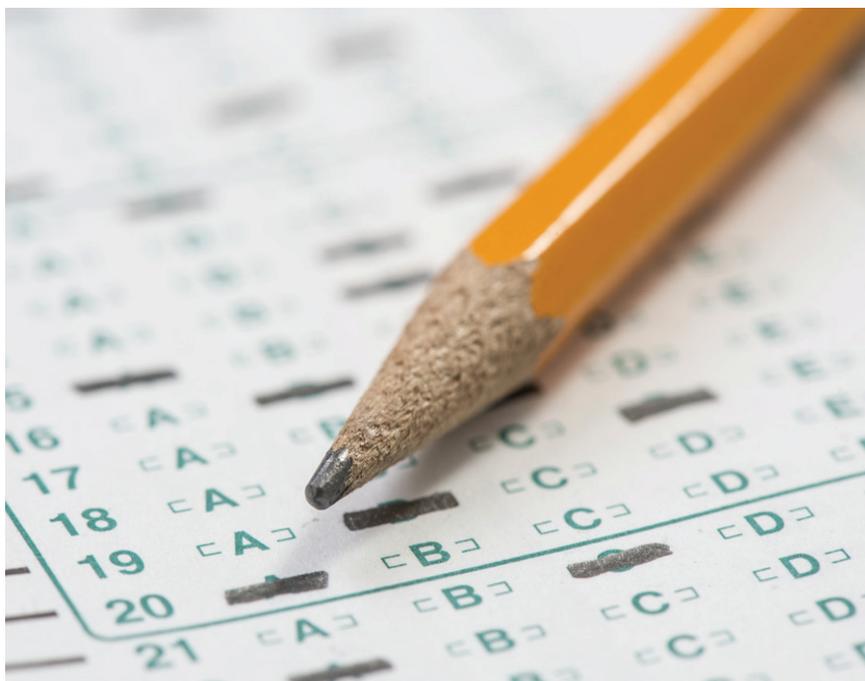
The following is an extract of a response from the FSB to a request from SAIA to participate in the current focus group dealing with this matter. It provides an insight into what has happened and will happen before RE2 sees the light of day, but it seems this day may be some time off so no need to get the study books out just yet.

“The first meeting took place late in 2013, but this meeting did not result in much clarity because there were too many “what if” scenarios and the discussions ended up going in circles. So it was proposed that a draft level 2 exam model / discussion document is developed by the FSB which will give the group something to work with. This took some time to develop, and as a result the next meeting only took place on 5 August 2014.

The participants were requested to provide feedback in writing and this feedback was only received last week. It is currently being collated. However, it was recognised that the FSB must conduct fact finding research to test some of the basic principles being applied before industry consultation commence. And this will therefore be the next step – to conduct research to obtain factual information regarding specific principles and

assumptions made in the draft proposal. The outcome of the research will be documented, and will be taken back to the focus group to see how it affects the draft proposal.

Thereafter the normal industry consultation process will commence where ALL industry associations, representative bodies, FSPs, etc. are consulted with. Documents will be published on the website as well, and the industry will be given time to comment. It will be a long process due to the nature of the discussion and myriad of issues that would require discussion. Workshops will also be conducted, but I cannot tell you at this stage when, where and how”



New market standard disclosure?

Apparently National Treasury are doing a GAP analysis on the current disclosure standards within the short-term sector in light of the ongoing work on the Key Information Documents (KIDs) being developed as part of the TCF initiative. They are looking at the current requirements arising from FAIS, the Short-term Act, PPR and a draft FSB document (that we have yet to see). There are concerns being expressed by those involved in the project about the level of duplication by the various players and its obvious affect on the costs, which as we all know ultimately get paid for by the consumer. And who will pay to upgrade your system driven disclosure?

It seems that a market standard document may become a reality, at least in the personal lines arena – back to the future if another “statutory notice” emerges.



We were approached for our comments, which we did, but without site of the KIDs this was not as extensive or specific as it could have been.

Rotation of auditors

We recently had reason to check the rules on auditors within the Companies Act and were reminded of the rules on the requirement to rotate auditors, which is as follows:

92. (1) The same individual may not serve as the auditor or designated auditor of a company for more than five consecutive financial years.

(2) If an individual has served as the auditor or designated auditor of a company for two or more consecutive financial years and then ceases to be the auditor or designated auditor, the individual may not be appointed again as the auditor or designated auditor of that company until after the expiry of at least two further financial years.

If a company has appointed two or more persons as joint auditors, the company must manage the rotation required by this section in such a manner that all of the joint auditors do not relinquish office in the same year.

Whilst the larger auditing firms can manage this easily enough given they would have a number of auditors registered the smaller practices or a sole trader this may not be easy at all or even possible. This is a discussion you should be having with your auditors to see how you will be affected come the expiry of your 5 years.

Client VAT numbers

We are currently conducting a check on our data base to ensure that we have VAT numbers for all and that your invoices correctly reflect this. If you see that your invoice does not reflect your VAT number please let us know by sending an e-mail to anke@associatedcompliance.co.za

POPI Another Guide

There are many guides being produced and the latest - which is very user friendly - is by Everlytic, a technology solutions company, and is available via our website under the



September newsletter section. [Click here](#) to view the news page.

From the FSB

Juristic representatives – their future looking clearer – if not happier

We have written a fair amount on this subject over the last few months as we all awaited the promised Guidance Note. A draft of this document was finally issued on 11 September. There is little dramatically different from what was originally understood i.e. all trading has to be in the name of the FSP and it provides the rationale for the changes, which are:

- So that the customer knows with whom they are actually dealing and who accepts responsibility should things go wrong,
- To remove any uncertainty as to whether the Representative is acting for the principal or themselves,
- To prevent the undesirable practice of renting a licence,
- To ensure all monies collected by the FSP and its representatives are reported on by the auditor.

Unfortunately it makes no changes to the collection of premiums by the Juristic Representative. Whilst it technically allows a Juristic Representative to collect premiums it must do so in the name of the FSP and into the bank account of the FSP and be subject to having an IGF (for Short-term premiums) either in its own name or be included in the IGF issued to the FSP. This structure will not suit the motor industry in particular although some premium collection/distribution facilities will no doubt be delighted as these platforms will be the logical haven for FSPs to use going forward.

It also clarifies that a binder agreement cannot be provided to a Juristic Representative, although no mention is made of the effect on an outsource agreement – hopefully this will be clarified in the final version.

All advertising must clearly state that the products or services are being done on behalf of the FSP.



A full copy of the draft notice is available via our website under the September newsletter section. [Click here](#) to view the news page. Comments can be submitted to the FSB by no later than 13 October 2014. If any clients wish us to submit comments via ourselves they can do so by submitting these to info@associatedcompliance.co.za.

With the proposed deadline for changes being 28 February 2015 those FSPs and/or Juristic Representatives who will need their own licence in place will need to start the arrangements for this as a matter of urgency. Five months may sound like a fair time period to do this in it must be remembered that December and January are not the most productive and this applies equally to the licence application process. Do not delay or you may be faced with major challenges come 1 March 2015.

Sign on bonuses

The FSB issued an invitation to comment on a proposed amendment to the FAIS General Code of Conduct that proposes to prohibit the payment of bonuses to individuals or companies by product providers to switch their business to that provider. These were generally seen in the Long-term sector.

To quote from the explanatory addendum to the notice:

“An analysis of the current distribution landscape has pointed to concerns about substantial ‘sign-on bonuses’ offered by product suppliers to financial services providers and representatives (collectively referred to hereinafter as providers) contributing to incentive-driven churn of financial products.

These sign-on bonuses are viewed as a major potential driver of incentive-driven churning of financial products for as long as the current distribution landscape and related remuneration models are in place. Accordingly, it is proposed that the payment of such incentives be prohibited. The prohibition may be reviewed once structural reforms arising from the RDR have been finalised and implemented.

The proposed amendment supports the consistent delivery of fair outcomes to consumers and ensures that advice is appropriate through explicitly addressing any potential conflicts of interest that may undermine a provider’s duty to act in the best interests of clients.”



This was seen as such an important issue that the FSB did not want to wait until the RDR legislation was introduced, nor did they allow a long period for comments to be made – a mere 15 days.

A copy of the draft can be downloaded from [here](#).

And an article from FA News gives more background to the change. [Click here](#) to read the full article which continues on their website.

Common FAIS Contraventions

The FSB did a presentation at the recent Guardrisk client day earlier this month. Whilst there were no radical news items there was a list of what they term as Common FAIS Contraventions. These included and in the order they listed them although whether any significance can be taken from this is not known. Our comments in brackets where appropriate):

- Focus is not on the clients' interest. This would be seen as a breach of Section 2 of the general code of conduct along with TCF.
- The difference between advice and intermediary services not understood. (We tend to have this debate with clients around the so called non advice sale.)
- Unlicensed FSP's – specifically mentioned were motor dealers collecting short term premiums without the relevant authority. (If a common offence why do we not see evidence of more regulatory action against them?)
- Limited compliance over Juristic Representatives – specific examples provided included financial solvency, insurances and no control over the clients. (Whilst we agree this does happen it is generally as a result of the licence holder not insisting on these standards when they agree to appoint such a Representative – it can be done. As a matter of course we monitor the Juristic Representatives to help clients have this level of control.)
- Selling of non registered insurance products – referred to the sale of so called 'value add product' that are assumed to be non insurance yet a "premium" is charged and advice given. The FSB are to provide further clarity. (We have been pushing for some time to list non insurance products separately from the premium and to fully disclose the provider in an attempt to ensure the client under-



stands the difference. The issue of whether these products are insurance or not is another debate as many often look like insurance, sound like insurance and react like insurance but we are told are not insurance – hmm!)

- Misinterpretation of insurance categories. Specifically mentioned were personal lines licenced FSP's selling commercial business and Short-term insurers selling credit "life". (Is it personal or commercial has been an issue since FAIS came along as the definitions were not spelt out within FAIS only the Short-term Act. We follow the Short-term Act definitions when assessing whether an FSP needs a personal and/or a commercial FAIS licence but clarity within FAIS would clarify this once and for all.)
- Non compliance with FICA – specifically with sections 28 (cash transaction reporting), 29 (suspicious and unusual transactions) and 43 b (registration by accountable and reporting institutions.)
- Rent a licence and/or Key Individual and the lack of oversight of the Representatives within such structures. (Such structures are not inherently bad but they can be if the licence holder and/or the Key Individual do not take their role seriously. It is clear the FSB are looking closely at such structures based on enquiries we have seen but we do hope that the FSB do not remove these options as very often it is the only way of entry into a new licence category.)
- Financial soundness requirements are not met – especially where client funds are handled the liquid asset standards are not being met. (We monitor these standards at every meeting and generally find that our clients have adjusted business practices to ensure they do not fall into this category.)
- Failure to meet competency requirements by KIs and Reps. (There is no real excuse for this and we do monitor this on an on-going basis however we do see new KIs Reps joining our clients who have "slipped through" and clearly have not been advised correctly in the past or the previous FSP(s) have not managed well and the new employer ends up with the problem. We find it especially prevalent within the call centre environment.)
- Needs analysis and Records of advice are not kept – apparently prevalent where the sale is seen as a "single need" and therefore not felt necessary. (The single need debate needs clarity from the FSB as there are many views around this – even amongst compliance officers. On the analysis and record of advice; it is not so much record keeping that we often battle with clients on but the quality of these documents.)

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- Motor Workshop personnel selling motor warranties where they are clearly not fit & proper.
 - Conflict of interest policy breaches – these include incentives from providers on promoting warranties (we are sure there are more than this but once again it seems the motor sector is leading the pack) and incentives for quantity over quality.
 - Sharing of clients' information – the forwarding of clients' information to product providers without the clients' written permission. (We are not sure what the issue is here as this is an integral part of the new business process – we can only assume this is post sale of a new product to allow the insurer to cross sell other products. POPI should force a tightening up of this practice.)
 - Compliance officer visits to branches and Representatives not as required (We are confident that we deal with this issue well – in fact the logistics around this process are a constant point of focus for us.)

Our assumption has to be that these are areas that will be the subject of both on-site visit focus areas and possibly regulatory change. We are confident we are already working on these areas with you however adherence to the results of our monitoring is your responsibility.

Information letter 2/2014 (LT) This letter was issued on 29 August and deals with the so called 80/20 structures prevalent within the funeral business sector of the life industry. The full copy of the letter is available via our website under the September newsletter section. [Click here](#) to view the news page.

In simple terms the structure now being made illegal allows for the funeral parlour and/or administrator to retain all premiums from which they pay the insurer an agreed fee (the 20%) and retain the balance (80%) for claims and anything left over is for the parlours own account at the end of the year. The letter sets out why this is not seen as being in line with the regulations – which clearly they are not and we don't understand why an insurer would think otherwise. These arrangements cannot be entered into going forward and existing ones should be brought in line within 120 days.

We wonder why similar arrangements in the Short-term sector were not dealt with



at the same time?

The TCF department will soon stop operating as a standalone unit and will form part of the Market Conduct Strategy Unit – in line with the overall rebranding of the FSB as we see it now within the Twin Peaks framework.

Upcoming FSB events

- **INSURANCE REGULATORY SEMINAR**
 - Sanlam Head Office, 2 Strand Road, Bellville, Cape Town
 - Monday, November 10, 2014 8:00 AM - 4:00 PM

- **SOLVENCY ASSESSMENT AND MANAGEMENT (SAM) WORKSHOP**
 - Sanlam Head Office, 2 Strand Road, Bellville, Cape Town
 - Tuesday, November 11, 2014 8:00 AM - 4:00 PM

- **INSURANCE REGULATORY SEMINAR**
 - CSIR International Convention Centre, Meiring Naude Road, Brummeria, Pretoria
 - Friday, November 14, 2014 8:00 AM - 4:00 PM

- **SOLVENCY ASSESSMENT AND MANAGEMENT (SAM) WORKSHOP**
 - CSIR International Convention Centre, Meiring Naude Road, Brummeria, Pretoria
 - Friday, November 21, 2014 8:00 AM - 4:00 PM

From the FIC

The FIC have issued a notice, interestingly addressed to Accountable and Reporting Institutions only, on the practice of advising other people of the fact that a report has been submitted and/or the contents of such a report, which, in terms of section 29(3) of the Act, is a criminal offence with the usual fine of up to R100M. The two things that we would question are:

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1. How do we as compliance officers monitor compliance with the Act? Must we simply not ask and allow transgressions of the reporting requirements to go unchallenged?
 2. And what about non accountable institutions? Why have they not been reminded of this standard? We have to assume this is just an oversight.

From the FAIS Ombud

A recent determination, Molokomme V Duval/Quanway Insurance Brokers, highlighted the bad practice of the moving of books of Short-term business without the correct discussions with the client and the obtaining of their permission to do so.

In this case it was a motor policy, originally with Constantia that was moved to Renasa – or as it transpired was not transferred as the broker omitted to move this policy, a fact that only came to light when there was a claim.

The broker even asked the client to pay the “outstanding premium” of R3, 000 for a policy that did not even exist.

The Ombud obviously ruled against the broker who throughout the process simply did not seem to take the matter seriously. They will now need to pay some R 52,700 although the R 22,000 for storage fees, that would appear to have been covered had the policy stayed with Constantia, did not form part of the ruling.

Another thing that struck us is that this case happened in 2008 and the ruling was issued in 2014 – 6 years to sort out a simple case. Sounds like it got lost in the Ombuds office for a while!

An interesting statement made by the Ombud in the ruling:

“A further assault on the rights of the client is that of denying them the right to choose whether they want to deal with a particular insurer. Clients like 10 complainant learn after the fact they are now insured with a new insurer without them having had any say



in the matter and are expected to continue with the payment of premiums and adhere to the terms and conditions of the new insurer violation as though they were party to the negotiation of such terms. Such conduct cannot be allowed. Brokers like respondent continue to feel emboldened to act in this fashion because, very often, there is no resistance from clients. They are simply not aware that they have been violated”

It is clear that the moving of books need to be managed very well and the rules followed. We are busy discussing this very issue with the FSB based on input from them on moving books where binders exist to try and get clarity on their expectations where there are no binders and if the rules for a NMI differ from those for a UMA. We will keep you posted.

In another ruling in Roos V Johan Kunneke where poor advice was provided to a retired widow looking to maintain her capital and she was ushered into buying shares in an unlisted company – which subsequently went into liquidation. The loss to Mrs. Roos was R 300,000 – which the broker was ordered to pay to her as the awarded penalty. FA News have a full summary available. [Click here](#) to read the full article which continues on their website.

From the IISA

The IISA have issued a document entitled Annual Publication 2014 – a useful tool when looking at the study paths available via the IISA, the various professional designations and their CPD program. The full copy of the program is available via our website under the September newsletter section. [Click here](#) to view the news page.

Cyber crime breakfast presentation on 19 September: The various presentations are available from the IISA website www.iisa.co.za.

Interesting things we have read

No paper based publications this month due to the postal strike – so commentary limited to our top 2 on line publications:

Insurance Gateway

Camargue, one of our clients, has launched an e-learning platform, which also allows for IISA CPD hours. [Click here](#) to read the article.

Cindi v FSB – an appeal against a debarment notice, which whilst not upheld it did highlight some poor administration issues within the FSB. [Click here](#) to read the article.

TCF – more useful reading material. [Click here](#) to read the article. [Click here](#) to view part 2 of the article.



SAIA news – includes commentary on RDR and Micro insurance. [Click here](#) to read the article.

An article on UMAs and what differentiates one from another. [Click here](#) to view the article.

FANews

27 August: THE CHALLENGE OF ADOPTING BEST PRACTICE PRINCIPLES

An interesting article on how to adopt best practices into a business which includes a view from KPMG as to where the compliance function fits into this challenge. [Click here](#) to read the full article which continues on their website.

2 September: THE FSB WANTS TO BECOME THE INDUSTRY'S NEW BEST FRIEND. Amongst other things raises the possibility of an industry standard for the Record of Advice – although the FSB acknowledge that this would be difficult to achieve,



but with the TCF driven KIDs maybe we are closer than people would want to admit?
[Click here](#) to read the full article which continues on their website.



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