ASSOCIATED COMPLIANCE

FOR A COMMON PURPOSE

June 2015 Edition

Contents

- Click on text to navigate to the page -

From AC

AC-Proofed

This month, we are delighted to launch another innovative add-on service for our clients. We have the perfect solution for those of you who don't have the time, or the capacity to ensure all of your documents are correct, up-to-date and word perfect. This service, AC-Proofed, will be managed by Kim Hatchuel who is a 'document formatting fundi and proof-reader extraordinaire!' Kim worked for a Short-term insurance underwriter, and handled management of the compliance documents for that company. She has over 20 years admin experience in the insurance industry, and managed FAIS liaison for eight of those years.

Kim can assist with reviewing all types of documents, from your current Conflict of Interest Management Policies to PAIA Manuals. Her extensive experience in the field means, that she will see to it that no mistakes occur, and that all documents are consistent with your corporate image. Kim is very detail-orientated and has the ability to spot any errors and to ensure consistency in all documents.

Naturally this service is in addition to our current procedures, controls, documents and wording development services, as it provides the final polish to these or any other documents you have developed independently. The pricing is very much dependent upon the size and complexity of the document/s to be proofed, but would generally be based on a "per word per document" basis.

You may contact Kim by e-mail if you have any requirements in this area and/or need to set up an appointment to discuss specific projects:

Email Address: ac-proofed@associatedcompliance.co.za.

FSB legislation – Registration of Representatives - The 5 year rule

We have had confirmation on the application of this ruling from the FSB. To avoid any possible misunderstanding, the following is the full summary of how the rule will be applied, as confirmed by the FSB;

- The rule applies to ALL gaps of 5 years or more in any one sub-category and/or advice/intermediary services within that sub-category. This could be as a result of leaving the industry totally or not having been licenced for any particular sub category, even if they traded in another during that period.
- The educational standards that applied at the time of the DOFA date apply, thus when wishing to be licenced once again it is those standards that need to be in place upon re licencing.
- Should those standards not be in place, the person is prevented from being licenced until such time as they have been attained. Thus;
  - For a rep with a 2004- 2007 DOFA date, the minimum educational standard would be the credit requirements applicable in that period e.g. 30 credits @ NQF4 for Personal Lines or 60 credits @ NQF 5 for Long Term C, plus RE5 certificate.
  - For a representative with a 2008 – 2009 DOFA date, the minimum would be the credit requirement, if they had been attained before 31 December 2011 or an Approved Qualification by 31 December 2013, as well as the RE5 certificate.
  - For a rep with a 2010 (+) DOFA date, an Approved Qualification is needed plus RE5 certificate.
- Based on a recent case we handled – prior to this circular, but where these standards were applied – it would appear that where re-licencing is not possible due to a shortfall in the Qualification requirements, it is possible that the representative can make an application for an extension, which would allow them to be added to the representative register and act as a representative, under supervision, for whatever period the registrar allows the candidate to complete the required educational standards. This approach seems to be fair, as otherwise that person is prevented from re-joining the industry until the educational standards have been met.
- "Is this going to be standard practice going forward? If so, are there any specific prerequisites for such an application?"

If the minimum educational standards are in place, then the only additional requirement is the applicable 'minimum supervision period.'

POPI

It would appear that insurers are starting to ask for input from Brokers on their state of readiness on POPI issues. The first insurer to "hit the streets" seems to be Liberty, with a comprehensive questionnaire directed to, what the broker has in place. This is not a direct FAIS matter and as such falls outside our standard monitoring process, but if required we can assist.

Binders and due diligence

We have just seen our first example of an insurer conducting a due diligence exercise, PRIOR to granting a binder agreement. This is exactly as it should be in terms of the Binder Regulations and Board Notice 158 (Insurer Risk Management Requirements) but the first time we have seen the responsibility being implemented. We expect to see more of this approach. In this particular case, the insurer was concerned about the lack of segregation of duties and reliance on one key person at the brokerage that they limited the mandates provided. Whilst disappointing for the broker, this makes for good Risk Management controls from the insurer's perspective. Look out for more of this type of approach.

Broker Fees – What Are Insurers Doing?

Given the proposals contained in **RDR,** we did not expect any activity from insurers on monitoring what their brokers are charging as fees, until the RDR proposals had been

finalised. So, we were slightly surprised to see an enquiry from a leading insurer being submitted to an FSP during June. What made this enquiry even more interesting is that, the client is an administrator in the Short-term sector and the immediate reaction from the client was that this enquiry was aimed at their sub-brokers rather than themselves, who do currently charge a fee. The questions posed by the insurer were as follows:-

BROKER FEES APPEARING ON 'ABC Insurer' SCHEDULES

Per the FSB's information Letter 3 of 2012, "Brokers may not be paid twice for performing the same function. As insurers, we may pay the broker:-

- Intermediary Services: commission for conducting an intermediary service (which includes marketing, canvassing and collecting premiums);
- Admin or Outsourced Services: we may pay an admin fee (if the broker issues Policies, performs portfolio management or data quality) and
- Binder Functions: finally we may pay a binder fee (if the broker performs any one of the 5 binder functions for us).

There are some brokers that charge their clients a fee which they refer to as a "Broker Fee" or "Admin Fee" or "Debit Order Fee". Those fees though, are often charged for a function (like issuing or premium collection) that the broker is already being remunerated for from the insurer by means of commission or admin fee.

After seeking advice from our compliance officers and legal counsel, 'ABC insurer' management's approach is the following:

"If these fees appear on our schedule, a degree of responsibility lies on our shoulders for ensuring that the fee is legitimate. To that end, we need to ask all our brokers to confirm that they have received the required consent from their clients to charge them those fees."

Our response was as follows:

They are, to an extent, choosing to act before RDR forces them to do so. We agree with the view that they do have a responsibility now – RDR will simply enforce that

responsibility. Whether it is wise of them to start the process before the market place is ready for this level of control is another. Not always good to be the first!

First point - you are a broker (remember this FSP is an administrator and does not see themselves as a broker) and thus the approval question applies to you as much as your sub-brokers – not only the aspect of the client being made aware of the services for which the fee is being charged but also the acceptance by the client. In your current role the broker is yourselves and the question may well be directed at you alone. The fact that you choose to pass the commission to the sub-broker is a separate matter and one that may push that sub-broker far enough away from ABC Insurer, that they do not want verification. Is the agency agreement for ABC Insurer inclusive of the sub-broker or just with yourselves? If the former, the question has to apply to the sub-broker, if the latter, maybe not – you would need to chat to them about that, but we expect all sub-brokers would need to be included as the fee appears, as ABC insurer say, on 'their schedule'.

As to the responsibility issue: if the insurer delegates certain functions to yourselves then they can reasonably expect that you, in your business model of sub brokers, to be responsible for monitoring this aspect with those sub brokers.

How you do this is another issue

We don't believe individual client based verification is practical for anyone. What we are thinking at this stage is, that a broker would be forced to have an SLA with their clients that would deal with issues of services for fees charged (including the advice fee if that materialises via RDR) and the clients' acceptance (by signing SLAs). If we look at the RDR proposal on collection of advice fees, it demands that the insurer (or their agent in your case) needs to have proof of client acceptance – again a signed SLA would tick that box. "Is mere disclosure of a fee and the services for which they are for, sufficient?" We would say "no" without a signed document.

At this stage i.e. pre RDR finalisation, we would be suggesting a preliminary assessment of what your brokers do with regard to:-

- *Charging fees and if they do?*
- *What services are these fees for?*

- *How are they disclosed to clients? (and get examples of documents used at quote/renewal stage so you can assess how clear the disclosure is)*
- *Do they get clients' written acceptance of the terms generally? Fee, specifically? Both? Or neither?*

The results of this exercise will help manage this issue once we do have RDR clarity – not only for ABC insurer, but all of your Risk Carriers and they will all need to have this level of control in place sooner or later. We expect that these standards or possibly limitations of fees, will have to find its way into agency agreements and adherence will need to be monitored.

Of course, what do you do once you have this detail and you see wide variances in standards and amounts? Sometimes ignorance is bliss!

Expect to see further enquiries from insurers along similar lines, although post RDR seems more logical right now, so you need to be prepared.

Whistle blowing policies

As you know the risk management section of our report deals with the recommendation for a Fraud and Whistle blowing policy. Many clients feel this is not needed, but never-the-less we still believe an increased formality around these aspects is recommended by all but the very small FSP, especially if you have binder and/or outsource agreements.

Many who do have such a policy, choose to outsource the management of this to a specialist provider. One of these we have come across the most, is managed by Deloitte under the name of Tip-offs Anonymous (www.tip-offs.com). One aspect of their website we found of use is, the "Whistle blowing health check" that provides an on-line assessment tool, once completed, allows Deloitte to provide an assessment of your need for a formal policy. We have attached what they

refer to as an ‘Inforgraphic” that sets out how the service works. Click here to download

The primary “rating” criteria for the service are:

- Number of Sites within South Africa,
- Number of employees at each of these sites,
- Would the service need to be available to the public?

Typically a company with less than 100 employees will pay R 20,000 per annum, plus a once off set-up cost of R 3,500. This includes up to 26 reports made by the public, on the free call-number setup.

We would encourage clients to at least do the assessment to establish your exposures in this area.

Regulatory Exams 1 & 5 preparation guides

Updated guides are now available from LexisNexis. Contact:

Tel: 0860 765 432

E-mail: customercare@lexisnexis.co.za

Website: www.lexisnexis.co.za

Promotion of Access to Information Manuals

If you are one of those companies that took advantage of the previous postponements of the deadline, for compiling and lodging your manual, you will be delighted to know that you have until 31 December 2015 to complete the exercise.

From AC-HAS

You can hear your staff members groaning outside your office after you hit the 'send button' on yet another e-mail, requesting them to complete 'X form' and to return it back, signed, within 'Y days'…. or else….

But have you ever explained to your staff the "or else"? Do they really understand why an employer does or expect certain things? The same goes for the employees. Do you, the employer, really know what your employee's rights are?

These are some of the important elements that should be communicated to your employees:-

- An induction programme is an ideal opportunity for employers to communicate the guidelines and principles that govern your workplace. I know that many employers do not take the opportunity to spend time on orientation and/or induction, but I do believe that a well thought through and informative programme can prevent a number of future misunderstandings, incorrect interpretation of company rules, misconduct and/or sighs and grunts when certain requests are made.
- Make it clear, from the start, that employment relationships are built on trust and the rights of parties and that both parties, have very specific rights in terms of 'common - law and labour legislation'.
- Also make it clear, that the company has a specific set of rules which are relevant for all employees alike and that these rules incorporate their specific rights and obligations in the workplace.

André Claassen, from the 'The South African Labour Guide', very appropriately reminds us, that with every right, comes an obligation. In other words, the rights of the employee are the obligations of the employer; and the rights of the employer are the obligations of the employee.

Here are some general employee and employer rights

Some general Employee rights	Some general Employer rights
not to be unfairly dismissed or discriminated against	to expect employees to render the agreed services on the agreed days and times
to be provided with appropriate resources and equipment	to expect employees to perform to the required standard, under the company's authorisation
to have safe working conditions	to carry out all work instructions and obey all reasonable and lawful instructions issued
to receive the agreed remuneration on the agreed date and time	to expect employees to display good behaviour in the workplace *(to comply with company policies and procedures, including the company Disciplinary Code)*
fair labour practices	to expect employees to act in good faith, be loyal, and have the best interests of the employer at heart at all times
to be treated with dignity and respect	to be respectful towards fellow employees and not to be insubordinate towards management
to non-victimisation in claiming rights and using procedures	to expect employees to strive honestly toward work objectives, and to expect employees to adhere to product specifications and quality standards
to leave benefits and other basic conditions of employment as stipulated in the BCEA	to expect employees to use the employer's prescribed resources and methods in the best interest of the company
	to expect employees to report to the employer any dishonest or unlawful practices in the workplace, including any breaches of company policies and procedures.

Section 78 of The Basic Conditions of Employment Act ("BCEA") stipulates the Legal Rights of employees and these extend to rights such as, rights to complain and/or to refuse to comply with instructions and/or terms of conditions, that are contrary to the BCEA or a sectoral determination. (You can access this section by clicking on this link: http://www.labour.gov.za/DOL/legislation/acts/basic-conditions-of-employment/read-online/amended-basic-conditions-of-employment-act-74)

An interesting part of these legal rights include, ***Section 78 (1) (b)*** which states that:

(1) Every employee has the right to:

(b) discuss his or her conditions of employment with his or her fellow employees, his or her employer, or any other person;

which ultimately implies that employers may not prohibit employees from discussing matters such as salary, wages etc., with fellow employees, because the right to do this is a legal entitlement bestowed upon the employee by Act of Parliament, and the employer has no authority to deprive an employee of a legal entitlement bestowed upon that employee by any law.

(Your BCEA Summary wall chart makes reference to ***Section 78 – 81*** with regards to employees exercising their rights in terms of the Act.)

One can then start to move on to the conversation on ***Employee privacy and/or breach of confidentiality.*** But that is a conversation for another day!

The responsibility of being an employer is therefore a big one, but it has been proven by various studies time and time again that companies that encourage open conversations, are fair in applying discipline, show strong loyalty to their staff and organisation and are consistent and driven towards set goals, create an environment where employees feel that their position has a meaning and where the job becomes less of a job and more of a passion.

Take a look at the **Guidance note on Induction** to assist you with putting together an effective and powerful Induction programme.

Have you included the use of e-cigarettes (electronic cigarettes), or "vaping" as it is called these days, in your smoking policy? Take a look at the **Draft Smoking policy: e-Cigarettes** in the HR Manual on the website.

Remember to e-mail all your HR related queries to HAS@associatedcompliance.co.za along with requests for any specific topic that you would like to read about in the Newsletter!

New documents uploaded into the HAS Manual on the website:

Guidance note on Induction

Draft Smoking policy: e-Cigarettes

From the FSB

Guidance Note on the Interpretation and application of Section 13(1)(c) of the FAIS Act

This relates to the issue of trading by Juristic Representatives. Many thought the implementation date would be postponed – but not so. For those acting as a Juristic Representative or who have juristic representatives on your licence, the landscape has now changed as the effective date of the new regulations is ***1 July 2015.***

The note seeks to clarify:

- The reasons for the restriction,
- Collection of premium,
- The need for IGF guarantees,
- Contracts with product suppliers and mandates with clients,
- Binder agreements, and
- Business documentation and advertising.

These aspects will obviously be the focus of our attention, where applicable, at the next monitoring visit,but if you find yourself in this space and have not yet taken the necessary action you need to be talking to us immediately.

A copy of the Guidance Note can be downloaded here: To view the various submissions made on the draft Guidance note. Click here to download.

Preparing for the 2015 annual levy payments

The FSB has been writing to FSPs to remind them that changes to their register of representatives need to be processed timeously so that invoices issued as at 31 August 2015 will accurately reflect the number of representatives. We will remind you again nearer the time – but remember we need time to process these changes for you, so requests on 31 August is not recommended.

Retail Distribution Review status

Everyone wants to know what the status is on these proposals. Towards the end of last month at a Discovery Financial Planning summit, the FSB gave feedback on some of the responses it received to the discussion document on the RDR. In support of its proposed time lines, which have not changed since RDR was published, the FSB have the following on their "to do" list between now and the end of 2015:

- Analyse comments received – approximately 70 sets of comment are being collated,
- Carry out additional technical work and consultation on selected proposals,
- Finalise, consult on, and implement the identified priority proposals. This is likely to be staggered during the course of the year, and
- Finalise and communicate a roadmap for the remaining proposals, aligned to Financial Sector Regulation Bill.

An internal FSB RDR implementation project team is being established, with 6 work streams:

- Adviser categorisation,
- Investments,
- Long-term risk,
- Short-term insurance,
- Sales execution & other intermediary services, and

- Low-income market.

Each work stream will sequence its work as per the implementation phases while industry consultation is to be structured along similar lines, with co-ordination through a *Representative Steering Committee*. We have nominated one of our senior members to sit on the Short-term and sales execution & other intermediary services work streams. At the time of publication we had not heard of their acceptance as a member. We will keep you posted.

Other areas that were touched upon by Jonathan Dixon at this summit were:

General comments

"While it is early days in our analysis of the comments that we received on our proposals, it is possible to identify a few common themes.

While there was quite strong general support for the objectives of the review, there were some areas where industry commentators differed on the best way to achieve these objectives.

In particular, decisions on categories of advisers, and the consequences for product supplier accountability, will have knock-on implications for a number of other areas, such as Permissible outsourcing and cross-ownership arrangements.

Some of the concerns voiced also focused on the scale of change that we are proposing and called for a phase-in approach to avoid disruption in the market. I can assure you that we have already clearly acknowledged the need to look carefully at transition measures and to conduct further research on how we phase-in changes over time so as to continue to support the sustainability of advisory businesses.

There were also questions about how RDR will change the distribution landscape in South Africa and whether all these changes will necessarily result in better customer outcomes.

Adviser Categorisation

One of the main themes coming through the industry feedback, has been a concern with the three new adviser categories we outlined. It was pointed out that it may be difficult for customers to differentiate between these categories, and that the labels may not be helpful to customers.

We have therefore started to think about the possibility of drawing a distinction between the different adviser categories used for customer disclosure purposes, versus those used for purpose of regulation of product supplier responsibility.

In particular, the point was made that, if our aim is to help customers understand the nature and scope of advice services that they are receiving, then we need to make sure that whatever labels we attach to this – such as "independent" or "tied" – need to be meaningful to customers.

I am of the view that this is an area where we will find common ground and, in fact, we already agreed on the need to undertake further consumer research in this regard.

Secondly, commentators argued that the key measure of "independence" for regulatory purposes should be limited to freedom from product supplier influence, and that the second criterion, namely a minimum range of products/product suppliers, should be scrapped.

This is an area that we are going to have to explore further, but it is a good starting point that there is a consensus that greater product supplier influence comes with greater accountability for advice.

Permitted outsourcing

Another far-reaching comment is that the prohibition on financial advisers rendering outsourced services on behalf of product suppliers should be limited to independent financial advisers (IFAs), but permitted for multi-tied or tied advisers, on the basis that conflict can be addressed through disclosure and product supplier accountability.

These arguments came particularly from the Collective Investment Services industry, who argued that 3rd party CIS portfolios can be beneficial to clients.

While there is certainly some merit in these arguments, it raises some very fundamental questions around the extent to which we want to entrench a level playing-field between IFAs and tied advisers. While not prejudging the outcome of the deliberations, I will say that I personally think we need to reflect long and hard on what the long-term implications for the financial services landscape may be if we tilt the balance of financial adviser interests towards a tied distribution model.

Implications for financial advisers

- We will expect financial advisers to decide on whether they want to operate on an IFA, multi-tied or tied basis – and then very clearly disclose the nature, scope and cost of their services in all communications with their customers.
- We expect that this will mean that many financial advisers will have to take this opportunity to review their business models – and consider the extent to which it aligns with the interests of customers.
- We believe that the core value proposition of financial advisers is the delivery of professional advice and service – and that the proposed reforms provide the framework and opportunity to build a sustainable financial advice business by demonstrating expertise and value-adding up-front and ongoing advice and service to customers.
- In essence, we expect to see an alignment of remuneration models with client interests, and away from conflicted remuneration models whereby business is directed to the product supplier who is willing to pay the highest incentives.

- Lastly, the provision of information will become an increasingly important responsibility of intermediaries. Financial advisers will be expected to develop

the necessary systems and capacity to provide product suppliers with key information to monitor TCF outcomes.

Implications for Product Suppliers

- RDR – and our new approach to market conduct regulation more generally – will also have important implications for product suppliers.
- TCF will see a rebalancing of responsibilities. Until now there has been a heavy emphasis on the point-of-sale and advice stage of the product life cycle – through FAIS. This will now be balanced by an increased scrutiny of the way firms develop products; ensuring that products offer value to customers and meet their reasonable expectations.
- Also, product suppliers will have primary responsibility for ensuring that their products are marketed and distributed in a way that does not undermine fair outcomes – including much more rigorous oversight over their chosen distribution channel. It's been far too easy in the past for product providers to blame poor outcomes on intermediaries – it must now be clear that delivery of fair outcomes is a shared responsibility.
- The extent of product supplier responsibility will be tied to the level of influence over the chosen distribution channel, but will include, to varying degrees, the following responsibilities:
  - Checking that advisers have adequate product knowledge
  - Reasonable pre-contracting assessment of TCF delivery capacity
  - Reasonable monitoring of TCF indicators at adviser level, plus appropriate response to mitigate identified risks
  - Identifying high risk activities, with risk mitigation controls in place
  - Complaints management and mitigation processes

Monitoring adherence to fee guidelines, where fees are facilitated.

The major issue of remuneration was also addressed under the headings of;

- Investment product remuneration
- Investment platform remuneration

- Life risk products

Short term Insurance Remuneration”

Click here to download a copy of the full details of Mr. Dixon’s presentation dealing with the remuneration aspects courtesy of Moonstone.

Failed attempt to overturn a debarment decision imposed by the regulator

Rickan Naidoo failed to have his debarment for misrepresenting the need for an insurer to pay him commission when the client had already paid him, overturned. If you care to read the outcome of the appeal CLICK HERE you will see that both the original decision and the appeals court’s decision were very correct. How Mr Naidoo even had the nerve to challenge the original decision is puzzling.

Qualification list

We have many queries with regard to the status of qualifications. So that you can assess these in a proactive way we thought you should know how to access the list from the FSB website:

The list can be downloaded from the FSB website in an excel format.

Go to www.fsb.co.za

Select FAIS

Select Fit and Proper Requirements

Select Qualifications

The third table on this page contains the various different lists and you **click on the list that you want to download.**

Proposed Fit & Proper requirements under the Short and Long-term Insurance acts

The proposed standards were gazetted via Board Notice 113 of May 2015 although the deadline for comments will have closed by the time you read this (1 July).

The proposals deal with requirements for a director, managing executive, public officer, auditor or statutory actuary of an insurer in the following aspects:

- Competency, and
- Integrity.

For significant owners (as defined in Board Notice 158 of 2014) there are additional requirements for:

- Financial standing, and
- Additional integrity aspects for a legal person.

Click here to download the proposed standards.

Exemption from the need for audited financials

Whilst these exemptions, in line with the Companies Act standards, have been available for some time no formal motivation was ever asked for. This has now changed. We have developed a draft exemption request to assist clients with this standard which will be supplied as and when requested. At this stage, surprisingly, no fee is being charged for such application.

One problem we are seeing is that clients are making the decision to have a review undertaken and not getting the FSB approval before hand. Whilst the process is generally a formality to submit your request with or after you have sent your reviewed annual statements is not the correct process and you may well find yourself having to go backwards and get audited statements and only get your exemption the following year. If you want to go this route please talk to us first and well in advance of your year end.

Interesting things we have read

FANews

Survival tactics for the implementation of RDR: Similar to other articles on this subject but the more you read the better you will understand what is needed. Click here to read the full article which continues on their website.

Embracing power in numbers: an article about the formation of an industry body for the IT providers in the insurance space – the iSPF. Click here to read the full article which continues on their website.

No doubt one of the issues this body will need to deal with is the recently agreed are the industry data specification standards and data transfer standards under the best business practice guide recently agreed to by SAIA, SAUMA and the FIA. This will affect how the various IT platforms collate data for transfer to insurers. Click here to download the standard.

Regulatory Hurdles to conquer

An article on the effects of further changes and a link to the Reuters Annual cost of compliance survey 2015. Whilst we don't like to give you a stick that you can use to beat us with it is a worthwhile read. Click here to read the full article which continues on our website.

Risk SA

The top reasons your clients' property claims won't get paid out: An article from the PwC insurance industry analysis which whilst appearing obvious to most brokers are never the less useful aspects that all FSPs should make sure they address in their record

of advice **THE TOP REASONS YOUR CLIENT'S PROPERTY CLAIM WON'T GET PAID.** Click here to read more.

Moonstone

Yet another case of misunderstandings around the debarment process;

"The intricacies and confusion around the debarment process were yet again highlighted in a recent case in the Appeal Court."

Background

A representative of a major life office resigned on 31 May 2012 and took up employment with another on 1 June 2012. On this same day, employees of the forensic department of his former employer called on his office and demanded the return of all client files.

On 12 June 2012, the ex-representative met with a forensic investigator and a compliance officer from his previous employer to discuss certain "irregularities" which emerged from their investigations. Later that same day, he was informed that the FSB would be notified that he *"…did not comply with the requirements of the FAIS (Act) for continued appointment as a representative of the life office."*

This was duly done on 13 June 2012. The reason given was that he 'does not comply with personal character qualities of honesty and integrity'.

After failing in his quest to have his debarment lifted, the representative launched an urgent application in the North Gauteng High Court in Pretoria, citing both the life office and the FSB as respondents. The FSB did not oppose the application.

On 18 September 2012, the court issued an interim order that the FSB reinstate the representative on its register, pending the finalization of review proceedings.

On 16 October 2012, the representative launched a review application to have the

debarment and consequential steps set aside.

In response to the application, the life office stated the following:

The Applicant has failed to draw the vital distinction between what is contained in sections 14 and 14A of the FAIS Act.

In effect, the debarment by the Registrar of a person in terms of section 14A of the FAIS Act precludes such person from rendering financial services on behalf of any services provider whereas a debarment in terms of section 14(1) of the FAIS Act precludes the debarred representative only from representing the particular services provider who effects the debarment. (My underlining)

It went on to say that the debarment by the life office did not preclude the Applicant from rendering financial services on behalf of his new employer. That prohibition could only arise from a debarment by the Registrar as contemplated in section 14A of the FAIS Act read together with section 9(2) thereof.

The High Court found that the representative "…had not made out a case for the relief that he seeks against the life office" and accordingly dismissed his application with costs, including the costs occasioned by the urgent application.

The judge concurred with the view expressed by the Life Office that the representative was not prohibited from acting as a representative of another life office.

The FSB appealed successfully against this finding in view of the industry-wide consequences it would have for other representatives previously debarred in terms of s 14(1), who could use this judgment to justify employment by a different provider, despite being debarred.

The Appeal Court was quite abrupt in its finding on the issue:

The court below appears to have misinterpreted the legal effect of a debarment in terms of

s 14(1) in holding that it precludes the representative from acting as such only in respect of the debarring FSP. The absurdity of such an approach is patent. The debarment of the representative by a FSP is evidence that it no longer regards the representative as having either the fitness, propriety or competency requirements. A representative who does not meet those requirements lacks the character qualities of honesty and integrity or lacks competence and thereby poses a risk to the investing public generally. Such a person ought not to be unleashed on an unsuspecting public and it must therefore follow that any representative debarred in terms of s 14(1), must perforce be debarred on an industry-wide basis from rendering financial services to the investing public.

It is of grave concern that both the High Court and a major life office failed to interpret the Act correctly. The many complaints from debarred representatives regarding the process followed by FSPs confirm a dire need for simplified guidelines on the matter"

We see yet another case of contested debarment has come before the High Court in Pietmaritzburg following the debarment of two (former) employees of a bank who allegedly "stole" client details prior to leaving the banks employee. A decision on this matter is awaited.

Fin24.com

Finbond to appear before tribunal for credit life abuses: Click here to get the full article on the alleged abuse and the FSB's market conduct response.

Johannesburg Address:

Ground and First Floor Building B,

RPA Centre,

180 Smit Street,

Fairlands, Johannesburg

Email:

info@associatedcompliance.co.za

Tel:

011 678 2533 and 011 431 1183/4

Fax:

011 678 7731

Layout and design by Dung Beetle Creative Studio - www.dungbeetlecs.co.za