



ASSOCIATED COMPLIANCE

FOR A COMMON PURPOSE

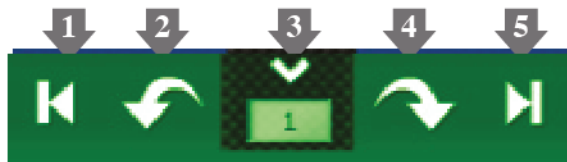
Instructions

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



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- 1 = Go back to cover page
- 2 = Go back a page
- 3 = Insert page number to go to sepcific page
- 4 = Go forward a page
- 5 = Skip to the last page

Alternativeley, click and drag on any corner of the pages with you mouse cursor to turn over the pages (just like you would do if you were reading a printed magazine)



Contents

- Click on text to navigate to the page -

[From AC](#)

Page 4

[From AC HAS](#)

Page 19

[From AC-Proofed](#)

Page 21

[From AC DEVELOP](#)

Page 24

[From the FSB](#)

Page 24

[From the FIC](#)

Page 28

[From the FAIS Ombud](#)

Page 29

[Interesting things we've read](#)

Page 30



From AC

Our latest “home grown” compliance officer

We are pleased to announce that Lindiwe Nkolonzi has now been formally approved by the FSB as our newest compliance officer. Lindiwe has moved up ‘through the ranks’ and we are very proud of the commitment. Her approval is just reward for a lot of hard work. We will set up a supervision plan for her to further develop her knowledge and skills so you may be meeting her soon!



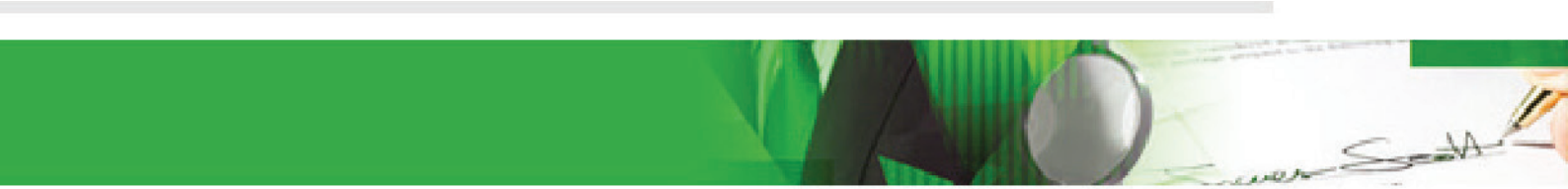
ASSOCIATED COMPLIANCE

FICA and the Motor Industry

There appears to be little doubt that motor dealerships often underrate the important work undertaken by the Financial Intelligence Centre (FIC) and many see the regulatory demands confusing, unnecessary and a burden on their businesses. As a consequence, it isn't surprising that motor dealers' obligations in terms of the Financial Intelligence Centre Act, 38 of 2001 (FICA), have not always been properly addressed or handled in a manner which is acceptable to the FIC. The FIC are quick to point out that no excuses can be ascribed to ignorance as FICA has been with us for 15 years.

Following an exhaustive campaign by the FIC earlier this year, all accountable and reporting institutions including motor dealers were requested to re-register before 22 April 2016. The question is whether motor dealers re-registered correctly or at all. It is of utmost importance for motor dealers that offer a 'credit life' product underwritten by a long-term insurer to register as accountable institutions in this capacity. Any motor dealer that falls within this category should be registered as both a reporting and an accountable institution and realise the impact on its reporting duties. For example, cash threshold transactions and suspicious or unusual transactions must be reported under the banner of the respective institutions. Moreover, these reporting duties are just the beginning of the obligations of motor dealers.

It is essential to keep in mind that FICA was introduced to bring South Africa in line



with similar legislation in other countries, specifically to identify movement of monies which could be derived from unlawful activities. It is common knowledge that the motor industry in South Africa is under economic pressure and as a result has become a soft target for money launderers.

It would be imprudent for motor dealers to think that a cursory glance at a photocopied proof of identity constitutes a sufficient identification and verification procedure. Motor dealers are required to screen all prospective customers and related parties to ensure compliance with sanctions and anti-terrorism regulations. This includes screening against checklists containing details of known terrorists, money launderers, sanctioned entities, politically exposed persons and similar high risk individuals.

High risk clients can only be identified if the motor dealer uses a structured risk rating table which specifically focuses on the product type, business activity, client attributes, source of funds, and jurisdiction of clients, transaction value and type of entity. Controls must be introduced to ensure that the relationship doesn't continue or that funds are not paid away until the requisite customer screening has been conducted.

In regard to financed transactions, some of these functions are fulfilled by the respective banks with whom the dealer places the finance. Whether motor dealers know where their responsibilities end and where those of the banks start is questionable, so it is important to establish what is required from them by these banks.

Another challenge facing business managers is that as accredited National Credit Act card holders, they have differing FICA internal rules to comply with for the banks and the dealership. Naturally this relates to the actual function they are carrying out at the time, but it is imperative for motor dealers to be aware that no entity can contract out of its FICA obligations and the responsibility cannot be placed solely on the shoulders of one party or the other. The agency contract between the dealership and the bank must be well understood by both.

All relevant staff must receive training on these requirements. This refers to all persons who carry on a business, are in charge of a business, manage a business and are employed by a business. It is the responsibility of each to be able to report suspicious or



unusual transactions and in order to comply with this requirement they need to know the procedure, which should be clearly outlined in an internal policy and rules.

In the absence of these procedures and the training thereof, motor dealers will most likely be unable to recognise that a repeat client might not necessarily be a good client.

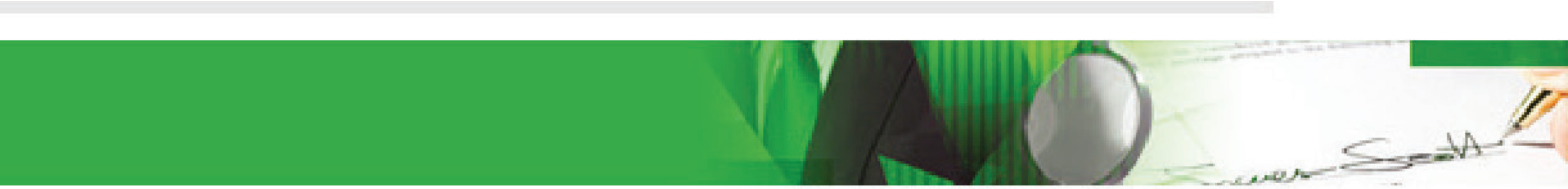
The FIC is no longer merely giving warnings to the motor sector. During the last 18 months, 15 dealerships were penalised by the FIC to the tune of R497,205 with an even greater amount suspended. Of this total, R85,000 was imposed for improper registration with the balance relating to non-compliance with reporting requirements. Motor dealers may think that complying with legislation is expensive, but it is evident from these penalties that non-compliance is proving to be even more so.

Associated Compliance operates extensively in the motor industry as FAIS compliance officers and as part of our normal service we ensure that FICA governance and controls are properly in place. We automatically include ongoing 'one-on-one' FICA training with the business managers at each compliance visit. Nevertheless, we don't typically reconcile the actual cash deposits with the cash threshold reports lodged with the FIC as this is not inside our mandate, nor do we question the sales staff in terms of suspicious transactions. Our responsibility is to ascertain the extent to which suspicious transactions have been reported.

The full reconciliation service we provide is an additional service and only at the specific request of each motor dealership. The visits we have conducted for this purpose have only illustrated the extent to which motor dealerships are exposed to FIC penalties.

Motor dealers who are struggling to comply with FICA requirements, are uncertain whether they have done so properly, or require FICA monitoring to be conducted on a regular basis to ensure full and proper compliance, are urged to contact us.

It's better to be safe than sorry.



Also see the “From the FIC” article later in this Newsletter for details on upcoming changes to the FIC landscape.

Client presentations update

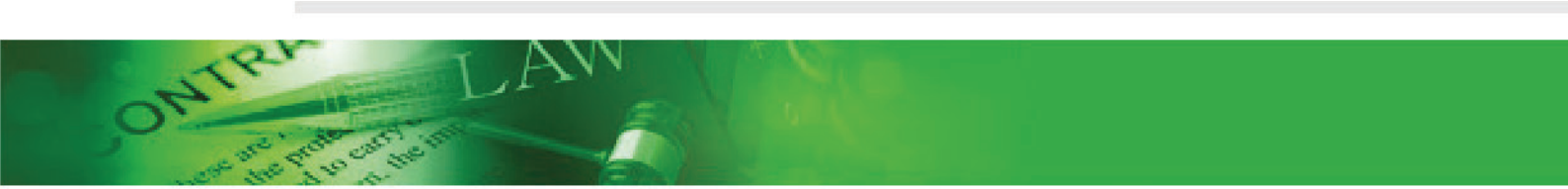
At the end of last year, we announced that during 2016 we would deliver a number of presentations to the Key Individuals of our clients to bring them up-to-date with legislative changes. At that time, we were under the impression (based on information from the FSB) that both the Financial Sector Regulation Act (FSR) and the Insurance Acts (IA) would be enacted in the early part of 2016, and at the latest by June 2016.

Moreover, bearing in mind that the first phase of RDR was to be implemented after consultation with the industry but before enactment of the FSR, implementation of the first phase of the RDR was expected to be in ‘full swing’ by the end of last month.

Our first presentation was in January where we delivered a bespoke presentation to our UMA clients. It was an enormous success, partly due to the fact that we addressed the legislation from a practical point of view as it applies to UMAs but mainly because we provided a clear indication as to how the proposed legislation will affect UMA’s business models in the future. Indeed, we had to deliver this in two separate sessions due to demand.

Our intention was to deliver a similar presentation to our NMI clients in March, but in the first quarter of this year we were informed that the enactment of the FSR and the IA was to be postponed due to other issues facing Parliament that required their more urgent attention. For this reason, we decided to delay our presentation until further clarity was provided by the FSB. In addition, the FSB themselves planned a series of ‘update’ presentations to the industry.

Although it is the same legislation that affects the entire financial services industry, Key Individuals in the motor sector approached us to deliver a legislative update explaining how it will apply specifically to them, particularly the co-operation agreement between the new Conduct Authority and the National Credit Regulator.



Due to demand, we also had to deliver our presentation in two separate sessions, with the same positive response from the motor sector as we received from UMAs. Our presentation was divided into five parts as follows:

1. Current legislation interpretations
2. Legislation ready for implementation
3. RDR Update
4. The FSB's approach to overseeing market conduct
5. Treating customers fairly

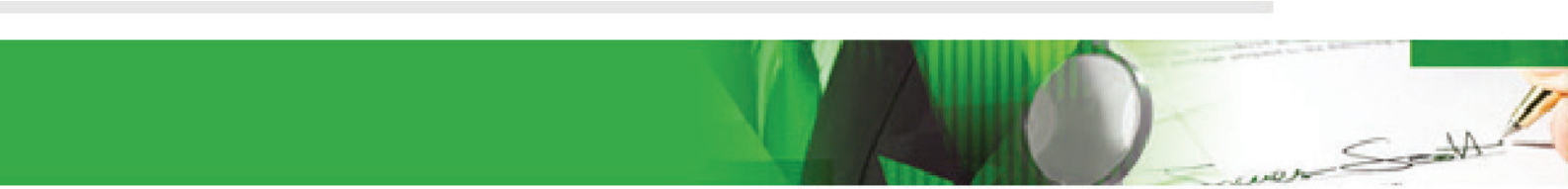
It was encouraging to learn that the handbook we published electronically in May last year entitled "*An F&I's Guide to Treating Customers Fairly*" has not only been widely read, but in one instance has been used by a large dealer group to develop an online training programme for all their F&Is.

A copy of this specific presentation is available to our clients in the News section of our website www.associatedcompliance.co.za. The F&I Guide referred to above can also be found in the News section of the site under the Treating Customer Fairly Workshop of 2014.

2017 FSB Levies

By now many Financial Services Providers (FSPs) will have received notification from the Financial Services Board of the annual levies for 2016/17. As usual these are based on FSPs' registers of Key Individuals and Representatives as at the end of August, so ensure yours is up to date by then. The actual payments are due by 31 October 2016. The method of calculation is unchanged and only the amounts differ (they have naturally increased).

Since the levies were first introduced many FSPs have questioned why there are maximum amounts payable. Surely it makes sense that the fee should simply be commensurate to the number of Representatives as their activities result in sales and income for the FSP and consequently 'financial services risk' to the industry? It is also clear that the FAIS



division is predominantly financed by the collection of annual levies (it's in the Act but try not paying and see how long it takes for your licence to be suspended if you need proof!). This only serves to worsen the perceived imbalance as when greater funds are needed the Regulator has a reduced pool to obtain them from; requiring an unequal spread of costs between 'bigger' and 'smaller' FSPs. The end result is that it is argued that the 'smaller' FSPs pay more than their fair share.

We do hope the Twin Peaks model will include some intelligent restructuring of the financing model for the Financial Services Conduct Authority (FiSCA) to better reflect the cost and influence of the financial services providers they owe a duty to as well as police.

[Click here](#) if you would like a copy of the letter to see how much you're in for this year and remember that manipulation of your register to generate a lower fee is an offence!

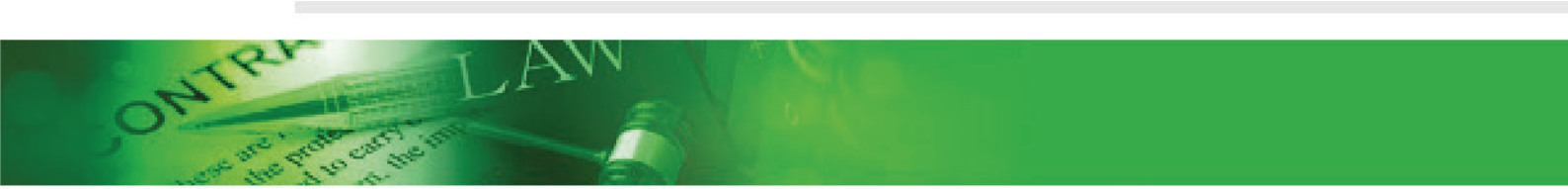
On-site visits by the FSB/FIC

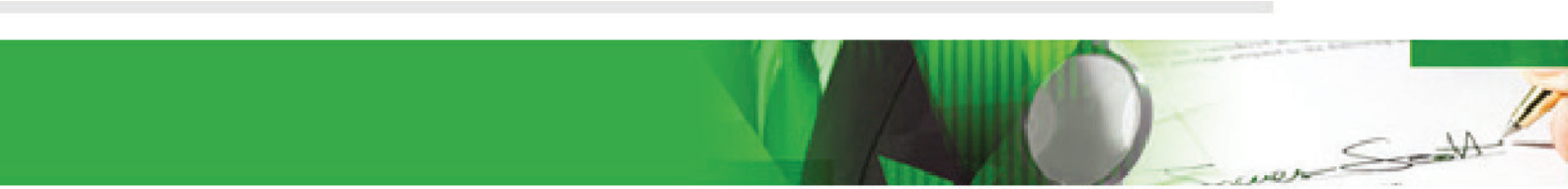
A client of ours has been contacted to set up an on-site visit and we thought we should share the FSB's "wish list" submitted to the FSP to prepare for the meeting. When compared to earlier similar requests we have noted a move to a wider view of the operations of an FSP and not merely checking on compliance with FAIS and FICA. Many of the areas focused on are dealt with in the draft 2017 Conduct of Business Report which tells us that the standards in that report are already being practically applied and presumably finely tuned.

Here is an extract from the request submitted by the FSB:

"To enable the writer to prepare successfully for this visit, the following information and/documentation must be submitted to this Office:

- 1. A description and brief explanation of the financial services rendered to clients including the type of insurance policies that are sold to clients;*
- 2. The current shareholding, directors and auditor information of *****;*
- 3. Updated group and entity organogram including shareholding interest, functional*

- 
- and support structures;*
- 4. Board composition, its sub-committees and/or senior management structures in place;*
 - 5. Strategic and Business plan of *****;*
 - 6. Marketing Strategy of ***** and a list of all marketing material utilised when rendering financial services;*
 - 7. Identify the type and estimated number of clients, where possible per financial product sub category offered and service rendered;*
 - 8. Description of the client take on process;*
 - 9. Description of the claims process;*
 - 10. Description of the client cancellation process;*
 - 11. Description of the client retention process;*
 - 12. A detailed explanation of the flow of funds in respect of premium collection and payment of fees and/or commission;*
 - 13. Risk management plan and an explanation of how the compliance function is incorporated within its enterprise risk management framework;*
 - 14. Current professional indemnity insurance schedule;*
 - 15. Management accounts until June 2016 and advise on the controls implemented by ***** to ensure compliance with the financial soundness requirements;*
 - 16. Compliance monitoring plan and/or framework;*
 - 17. 2015 compliance monitoring report compiled by the compliance officer;*
 - 18. Documentary proof of compliance monitoring visits done by the internal compliance officer, its business units, branches and representatives;*
 - 19. A detailed explanation of the IT infrastructure that is in place (inclusive of back-up controls);*
 - 20. Disaster Recovery Plan and/or Business Continuity Plan;*
 - 21. Treating Customer Fairly Policies and/or procedures implemented at *****;*
 - 22. Latest management letter of the external auditor;*
 - 23. Latest internal audit report;*
 - 24. Representative Register currently maintained by *****;*

- 
25. *Key Individual Register currently maintained by *****;*
 26. *List the exemptions granted by the Registrar of Financial Services Providers to *****;*
 27. *A list of all outsourced functions and the contractual agreements that are in place;*
 28. *A list of all product suppliers and the contractual agreements that are in place;*
 29. *A detailed list of the company policies (inclusive of FAIS policies) that are in place; and*
 30. *Confirmation whether clients' records are kept electronically or on hardcopies and where (advise the detail of its location) are such records kept.*

*Further a search on our records confirms that the following entities are juristic representatives of *****:*

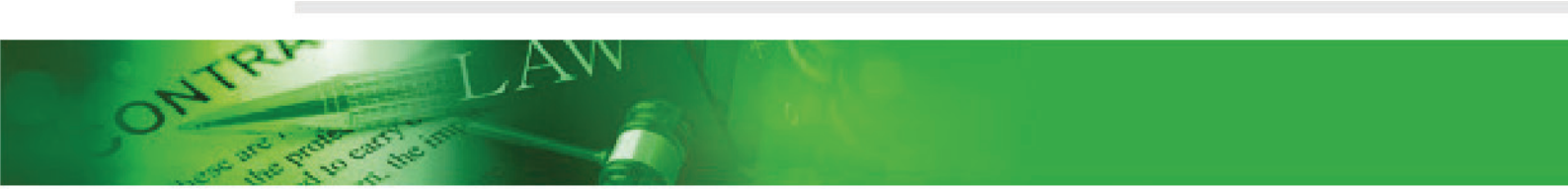
- ****;*

****** is required to:*

- i. provide details of the functions performed by the above entities as juristic representative of *****;*
- ii. furnish copies of the agreements between ***** and the above four entities; and*
- iii. provide details of the principal place of business of the above four entities.”*

As this FSP is also an Accountable Institution here are the focus areas under FICA:

- a. Understanding of the business of ***** and the relationships held with the entities appointed as juristic representatives;*
- b. Registration with the FIC;*
- c. Internal Rules in respect of anti-money laundering/ combating the financing of terrorism;*
- d. Client identification and verification procedures in respect of section 21 & 22 and exemptions if applicable;*

- 
- e. *Reporting procedures in terms of section Section 28, 28A & 29 of the FIC Act;*
 - f. *Training in respect of anti-money laundering/ combating the financing of terrorism viz. compulsory training, refresher training, training modules, training records;*
 - g. *Systems utilised in respect of anti-money laundering/ combating the financing of terrorism and monitoring of these transactions and;*
 - h. *Risk Management Framework in respect of anti- money laundering.*

*In order to ensure that effective planning and a successful inspection take place, it is important that copies of the following documents and the following individual must be submitted to the writer and be available on and/or before **Tuesday 26 July 2016:** (AC comment: two weeks' notice provided)*

- *Internal Rules;*
- *Training Manuals;*
- *2015/2016 FIC Training records maintained by *****;*
- *Any other policy, process and/or procedure implemented to ensure compliance with the applicable FICA legislation; and*
- *The individual at ***** responsible for ensuring compliance with FICA legislation.*

How would you (and could you) prepare if this were your meeting?

Incentives – what can be allowed?

We recently came across an incentive being offered in the motor sector by a manufacturer via an administrator FSP and we chose to ask the FSB for input:

*“We have attached an ... Incentive document that is being distributed to all our ***** motor dealers. We have had a look at this document and are concerned that this is (creating) a conflict of interest. Our view is not being shared by ***** (the administrator of the product and incentive) though and we would appreciate your guidance in this regard.”*



We received a comprehensive response as follows:

“The scenario posed to us is a contravention of section 3A of the General Code of Conduct:

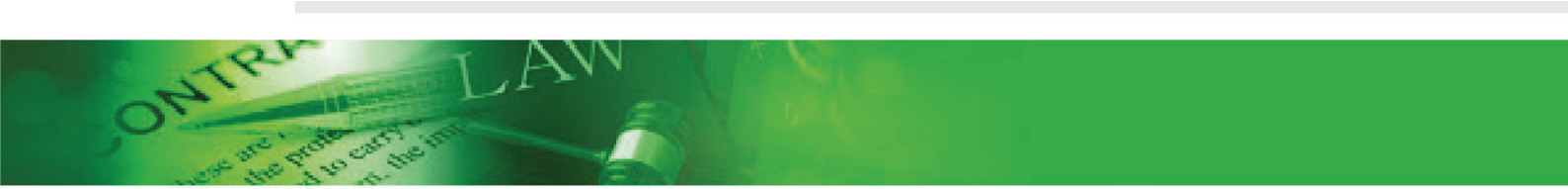
The matter relates to an Incentive programme for Dealer F&I Managers for ***** (a manufacturer) to sell the ***** Approved Extended Warranty Plan. The incentive is as follows:

- The top 4 F&I Managers (sic) (with their partners) with the highest sales penetration (Policies sold and paid divided by New Vehicle Sales and Approved Used Sales) will each win a custom made travel reward to the value of R50 000 (this includes agency and management cost).
- There is also 1 trip for the F&I Manager whose sales penetration for October 2015 to March 2016 compared to January 2015 to July 2015 has most improved.
- Incentive measurement period will be from 01 October 2015 to 31 March 2016.
- Qualifying criteria: sales penetration of at least 25%
- Winners will be announced in April 2016.
- Travel reward valid until 31 December 2016.

Section 3A of the General Code of Conduct:

3A. Financial interest and conflict of interest management policy.—

- 1.a.** A provider or its representatives may only receive or offer the following financial interest from or to a third party—
 - i.** commission authorised under the Long-term Insurance Act, 1998 (Act No. 52 of 1998) or the Short-term Insurance Act, 1998 (Act No. 53 of 1998);
 - iii.** fees authorised under the Long-term Insurance Act, 1998 (Act No. 52 of 1998), the Short-term Insurance Act, 1998 (Act No. 53 of 1998) or the Medical Schemes Act, 1998 (Act No. 131 of 1998), if those fees are reasonably commensurate to a service being rendered;

- 
- vi. subject to any other law, an immaterial financial interest; and
 - vii. a financial interest, not referred to under subparagraph (i) to (vi), for which a consideration, fair value or remuneration that is reasonably commensurate to the value of the financial interest, is paid by that provider or representative at the time of receipt thereof.
- b. A provider may not offer any financial interest to a representative of that provider for—
- i. giving preference to the quantity of business secured for the provider to the exclusion of the quality of the service rendered to clients; or
 - ii. giving preference to a specific product supplier, where a representative may recommend more than one product supplier to a client; or
 - iii. giving preference to a specific product of a product supplier, where a representative may recommend more than one product of that product supplier to a client.

“conflict of interest” means any situation in which a provider or a representative has an actual or potential interest that may, in rendering a financial service to a client—

- a. influence the objective performance of his, her or its obligations to that client; or
- b. prevent a provider or representative from rendering an unbiased and fair financial service to that client, or from acting in the interests of that client, including, but not limited to—
 - i. a financial interest;
 - ii. an ownership interest;
 - iii. any relationship with a third party;

[Definition of “conflict of interest” inserted by BN 58 of 19 April 2010.]

“financial interest” means any cash, cash equivalent, voucher, gift, service, advantage, benefit, discount, domestic or foreign travel, hospitality, accommodation, sponsorship, other incentive or valuable consideration, other than—

- a. an ownership interest;
- b. training, that is not exclusively available to a selected group of providers or



representatives, on—

- i. products and legal matters relating to those products;
- ii. general financial and industry information;
- iii. specialised technological systems of a third party necessary for the rendering of a financial service; but excluding travel and accommodation associated with that training;

[Definition of “financial interest” inserted by BN 58 of 19 April 2010.]

“immaterial financial interest” means any financial interest with a determinable monetary value, the aggregate of which does not exceed R1 000 in any calendar year from the same third party in that calendar year received by—

- a. a provider who is a sole proprietor; or
- b. a representative for that representative’s direct benefit;
- c. a provider, who for its benefit or that of some or all of its representatives, aggregates the immaterial financial interest paid to its representatives;

[Definition of “immaterial financial interest” inserted by BN 58 of 19 April 2010.]

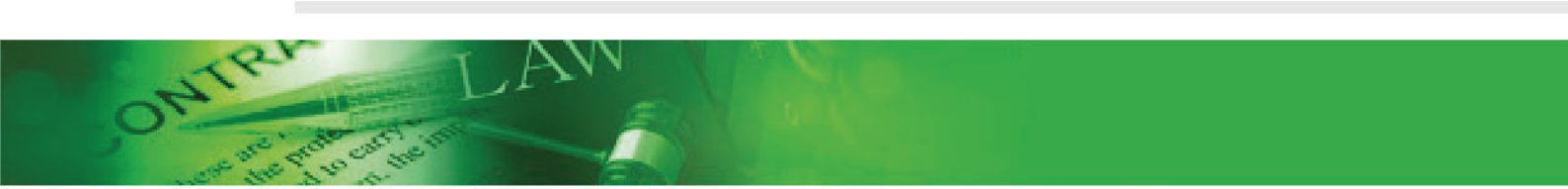
Incentives to consider:

There are two incentives on offer. The first is a custom made travel reward to the value of R50 000 for the top 4 F&I managers and their partners, and there is one trip for the F&I manager whose sales penetration for October 2015 to March 2016 improved the most when compared to January 2015 to July 2015.

It is not clear whether the dealers and the F&Is are employees of ***** (the manufacturer) or whether they are employees of independent dealers within the ***** (the manufacturer) franchise. As a result, both options will be considered.

It is important to recognise that the overarching principle of conflict of interest is:

“conflict of interest” means any situation in which a provider or a representative has an actual or potential interest that may, in rendering a financial service to a client—

- 
- a. *influence the objective performance of his, her or its obligations to that client; or*
 - b. *prevent a provider or representative from rendering an unbiased and fair financial service to that client, or from acting in the interests of that client,*
 - including, but not limited to—*
 - i. *a financial interest;*
 - ii. *an ownership interest;*
 - iii. *any relationship with a third party;*

[Definition of “conflict of interest” inserted by BN 58 of 19 April 2010.]

The question is thus whether a reasonable person will, when faced with an incentive such as offered by ***** (the manufacturer) not be influenced in the “objective performance of his/her obligations to the client, and render an unbiased service to the client, or act in the best interests of the client. As the incentive is significant (a travel reward of R50 000 or a trip) it is difficult to envisage a situation where a Dealer F&I will remain uninfluenced when faced with a client.

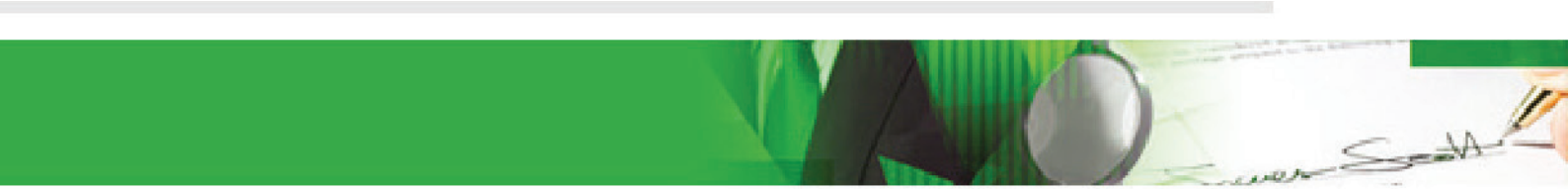
The two options for further consideration are:

Option 1: the Dealer F&I is an employee of *****

A provider is prohibited from offering a financial interest to a representative of that provider (own representative), as per the provisions of section 3A(1)(b).

- b. *A provider may not offer any financial interest to a representative of that provider for—*
 - i. *giving preference to the quantity of business secured for the provider to the exclusion of the quality of the service rendered to clients; or*
 - ii. *giving preference to a specific product supplier, where a representative may recommend more than one product supplier to a client; or*
 - *giving preference to a specific product of a product supplier, where a representative may recommend more than one product of that product supplier to a client.*

A financial interest is defined as:



“financial interest” means any cash, cash equivalent, voucher, gift, service, advantage, benefit, discount, domestic or foreign travel, hospitality, accommodation, sponsorship, other incentive or valuable consideration, other than—

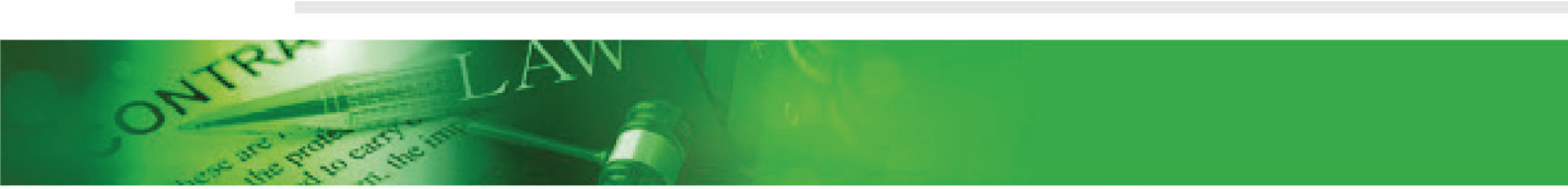
- a. an ownership interest;*
- b. training, that is not exclusively available to a selected group of providers or representatives, on—*
 - i. products and legal matters relating to those products;*
 - ii. general financial and industry information;*
 - iii. specialised technological systems of a third party necessary for the rendering of a financial service; but excluding travel and accommodation associated with that training;*

[Definition of “financial interest” inserted by BN 58 of 19 April 2010.]

When the offered incentive is considered against the prohibition above, and the definition of financial interest, it is clear that the incentive contravenes section 3A(1)(b)(i),(ii) and (iii).

The incentive contravenes it in that:

- There is a clear preference of quantity with no consideration of quality:
- a. “Qualifying criteria: sales penetration of at least 25%”.
 - It encourages the Dealer F&I to give preference to a specific product supplier, where a representative may recommend more than one product supplier to a client;
 - a. It is not clearly stated that the Dealer F&I can recommend more than one product supplier to clients, however the qualifying criteria of “sales penetration of at least 25%, gives rise to the conclusion that the Dealer F&I can recommend more than one product supplier.
 - It encourages the Dealer F&I to give preference to a specific product of a product supplier, where a representative may recommend more than one product of that product supplier to a client.
 - a. It is not clearly stated that the Dealer F&I can recommend more than one product to clients, however the qualifying criteria of “sales penetration of at least 25%, gives rise to the conclusion that the Dealer F&I can recommend more than one product.



It must further be noted that the incentive on offer, i.e. the travel reward of R50 000 or the trip, either of which can be won, is a contravention of the definition of financial interest, which includes domestic or foreign travel.

“financial interest” means any domestic or foreign travel...

Option 2: the Dealer F&I is not a representative of ** (the manufacturer)**

There is a prohibition in section 3A(1)(a) of the General Code that restricts a provider or its representative from offering or receiving financial interests or immaterial financial interests from or to a third party.

1.a. A provider or its representatives may only receive or offer the following financial interest from or to a third party—

The Dealer F&I may thus not receive from ***** (the manufacturer), and “they” may not offer to the Dealer F&I.

Section 3A(1)(a)(vi) and(vii) states:

- vi. subject to any other law, an immaterial financial interest; and*
- vii. a financial interest, not referred to under subparagraph (i) to (vi), for which a consideration, fair value or remuneration that is reasonably commensurate to the value of the financial interest, is paid by that provider or representative at the time of receipt thereof.*

As was discussed under option 1 above, the offering of a travel reward and/or a trip is prohibited in terms of the definition of “financial interest”. The offering of and potential receiving of the travel reward/ trip is thus also prohibited in this instance, as it is offered as an incentive, for which the qualifying criteria is “sales penetration of at least 25%”. The financial interest offered is this not “fair value or remuneration”.

The prohibition on “immaterial financial interest” must be read together with the definition thereof:

“immaterial financial interest” means any financial interest with a determinable monetary value, the aggregate of which does not exceed R1 000 in any calendar year from the same third party in that calendar year received by—

- a. a provider who is a sole proprietor; or*
- b. a representative for that representative’s direct benefit;*
- c. a provider, who for its benefit or that of some or all of its representatives, aggregates the immaterial financial interest paid to its representatives;*

[Definition of “immaterial financial interest” inserted by BN 58 of 19 April 2010.]

When the two incentives on offer are considered it is clear that they contravene the conditions of “immaterial financial interest” as both incentives exceed the R1000 limit (although the single trip’s value is unspecified it is a reasonable assumption that the value would exceed R1000).”

We are monitoring what actions the FSB will take armed with the details supplied and their opinion.

From AC HAS

Did you know that in 2014 there were more than 70 changes to the *Labour Relations Act, Employment Equity Act and Basic Conditions of Employment Act?*

In the past six months, Associated Compliance - Human Assets Services (HAS), has assisted its clients in meeting their HR objectives and goals and/or

assisting them with problematic HR matters making their lives easier or helping them to focus on the business. Here is a brief summary:



AC HUMAN ASSETS SERVICES

Employment Equity

HAS is currently assisting a client to implement Employment Equity in the business. The business is not a Designated Employer, but expressed the wish to voluntarily comply with the Employment Equity Act. The process entails setting up an Employment Equity Committee; doing an analysis on existing workplace policies and practices to identify barriers and implement Affirmative Action measures; to look at the workplace profile, numerical goals and targets within a set timeframe and to implement procedures and strategies to achieve said goals and targets.

Farcus

by David Waisglass
Gordon Coulthart



"... and now I'd like to discuss new ways to fight our absenteeism problem."

HR Health Check

We have conducted a number of Health Checks which is a high-level assessment of the status of your compliance with legislation and best practices in the human resource arena. It covers the following areas of focus:

- Recruitment and selection
- Basic conditions of employment
- Training and development
- Performance management
- Disciplinary code and procedures
- Remuneration and incentives
- Statutory compliance including the Insurance Industry Regulatory legislation

Disciplinary matters

HAS was able to assist with matters related to abscondment, employment contracts, conflict of interest and restraint of trade.

Policy Reviews

HAS assisted with reviewing a Leave Policy (including Maternity leave), Smoking Policy, Debarment Policy and Health and Safety Policy.

General matters

HAS looked at Terms and Conditions of employment where employees neared retirement, employees moved into Consulting roles, linked Performance Appraisals to FAIS and related legislation specific measures, requirements in terms of training for registered representatives, recruitment and related reference checking during this process.



E-mail all your HR related queries to bronwynn@associatedcompliance.co.za or has@associatedcompliance.co.za so that we can assist you with your day-to-day or ad-hoc HR matters.

FROM AC PROOFED

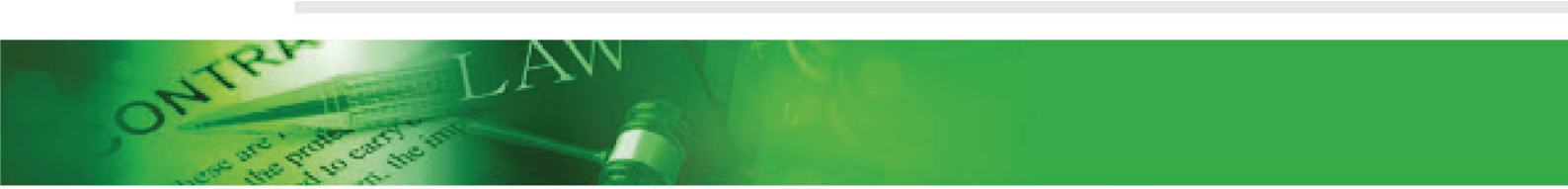
How to write a COMPLIMENT LETTER

*Great job! You're awesome! Keep it up!
Thanks for all that you do. Excellent work.*



AC-PROOFED

How many letters of complaint have you written? Lots, I'm sure! We're very quick to complain when we're not happy about a product or service we've paid for, but sadly not as quick to compliment for a job well done.



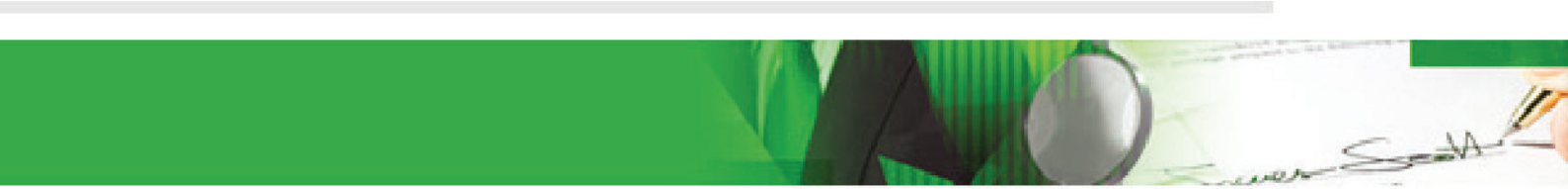
Everyone loves getting compliments. I don't know anyone who doesn't want to be complimented; even those who prefer not to be made a fuss of secretly enjoy being noticed.

If you sincerely appreciate what someone has done for you, or the products their company sells, take the time to express your satisfaction in words. There are many benefits of writing a compliment letter. One of them is to let a staff member know that their good customer service is being valued by its clients. Your letter will make them feel appreciated and is often the best way to motivate someone to do even better!

Here are some tips on how to write a sincere compliment letter.

- Make sure that the tone of the letter is personal and sincere, yet at the same time professional.
- Keep your letter brief but don't forget to say what you like about the person, the service or the product.
- If the compliment letter is meant for a specific person, make sure that you know their full name and job title, and spell their name correctly.
- It is important to be clear. Write specific dates and time of the event and what they did to earn your appreciation. The tone of the letter should be simple and sincere, while flowery language, or fluff, should be avoided. Examples of this include, "We want you to know that we are really impressed with the quality of the products and services your company provides." Also consider, "I want you to know how much we appreciate the outstanding service you have provided us."
- When signing the letter, it is often best to use both your signature and printed name.
- If you can, put your compliment on the company's social media pages (Facebook and Twitter) and Customer Service websites like www.hellopeter.com.

If you're an employer who wants to bring the best out of your staff, be generous with



your compliments. When your people see that you recognise and appreciate their efforts, they'll feel motivated to keep up the great service they provide to your clients. Soon you'll see that your company is operating much better because your people are very motivated.

Here is an example of a compliment letter for great service:

Dear Craig

I'd like to compliment one of your employees, James Bond, for the excellent service I received from him last week. I needed to add a vehicle to my current personal lines insurance policy, and James processed the addition and sent me an amended policy schedule within an hour of me calling him.

It has always been a pleasure dealing with your company, but I wanted to make specific mention of this incident as James' professionalism and friendly manner exceeded my expectations.

Such a commitment to great customer service is to be commended. You can be sure that I will continue to do business with your company for years to come.

Best regards,

There are times when a compliment and a complaint are necessary in the same letter. For instance, your experience in the establishment was outstanding, but one incident might have soured the event. The mention of that incident, well worded, and expressed without emotion, can serve as an opportunity for improvement. Then close with a further positive comment.

If you're on the receiving end of a compliment, the best way to respond is to offer a sincere and simple thanks. Even though some may think it sounds conceited to say it directly, it's important to remember that acknowledging the praise is polite and lets the



person know his or her accolade is appreciated.

Pay compliments. Verbally, as well as in letter form. Comedian and speech writer Robert Orben said, “A compliment is verbal sunshine.” When you compliment people and magnify their strengths, not their weaknesses, you’ll find that two things happen: it will put a smile on your dial, and you’ll make someone else’s day!

FROM AC DEVELOP

We now have a dedicated e-mail address for this new service:

ac-develop@associatedcompliance.co.za

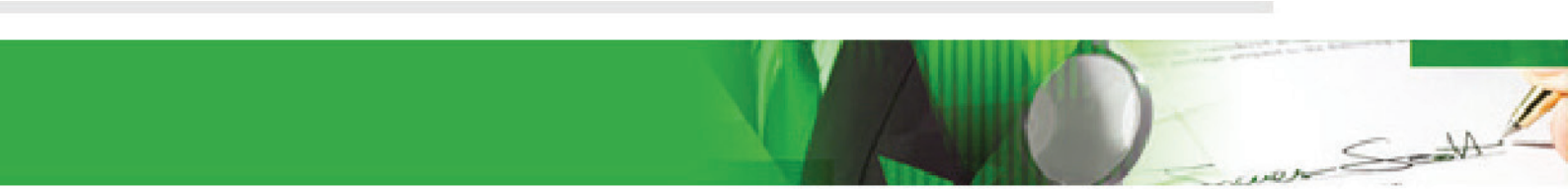
Please submit any enquiries relating to, at this stage, qualification and RE exam training. Our Director training initiatives are taking shape. We are hoping to make the first of these available during September this year so watch this space.

FROM THE FSB

Can an FSP choose who to appoint as a Key Individual?

This is a follow-up to the article we ran last month where we reported on an FSB opinion provided to one of our clients that suggested that this was possible, even if you were a Director running an FSP. Whilst we were somewhat taken aback by the opinion, we accepted it at the time. Since then the FAIS Forum of the Compliance Institute of Southern Africa was provided with feedback to a question posed to the FSB some time ago. The question was:

“Most members were aware that the FSB had embarked upon a process to identify “small” FSP’s where the noted director was not noted as a KI. Some concern was expressed that in applying this view, the FSB had been inconsistent and that some analysts did not seem to be able to explain the rationale behind views being expressed.



It was felt that such a “campaign” and general application on new applications should be supported by an information letter/guidance note clearly setting out the views of the FSB so these can then be consistently supported by the compliance community – both on applications within current licences and new licence applications”.

The response received is as follows”

1. “The FAIS Act in section 1(1) defines a “key individual” as follows:
“key individual”, in relation to an authorised financial services provider, or a representative, carrying on business as -
 - a. a corporate or unincorporated body, a trust or a partnership, means any natural person responsible for managing or overseeing, either alone or together with other so responsible persons, the activities of the body, trust or partnership relating to the rendering of any financial service; or*
 - b. a corporate body or trust consisting of only one natural person as member, director, shareholder or trustee, means any such natural person;”*
2. In terms of paragraph (b) of that definition a financial services provider (FSP) with only one natural person as member, director, shareholder or trustee, must appoint such natural person as a key individual.
3. We identified a number of FSPs which are subject to paragraph (b) referred to above in that they only have/had only one natural person as a member/director/shareholder or trustee. However, that person is/was not appointed as a key individual of the FSP, contrary to the provisions of the FAIS Act.
4. We then issued correspondence to the affected FSPs indicating that that even though the FSP has appointed a key individual as contemplated in paragraph (a) of the definition of ‘key individual’ that such appointment does not mean it does not also have to comply with paragraph (b) of the definition.
5. The definition of key individual does not create a choice for a FSP regarding who it should appoint as a key individual. The definition is instructive and any person that falls within either paragraph (a) or (b) must be appointed as a key individual.
6. In order to ensure compliance with the provisions of the FAIS Act, we afforded the FSPs an opportunity to appoint the sole member/director/shareholder/trustee as a key individual of the FSP before or on 1 October 2016, failing which the Registrar



may take regulatory action.

With regards to new applicants, this office insists that the definition of the KI must be met in line with the KI definition in section 1(1) of the FAIS Act.”

Point 5 is the key part of this response and as you can see it contradicts the input previously provided. Of course we will be addressing with all affected people.

Transitional representatives and becoming a KI. Have the rules changed?

This is a query that was being investigated by the FAIS Forum of the Compliance Institute of Southern Africa. The question asked of the FSB was:

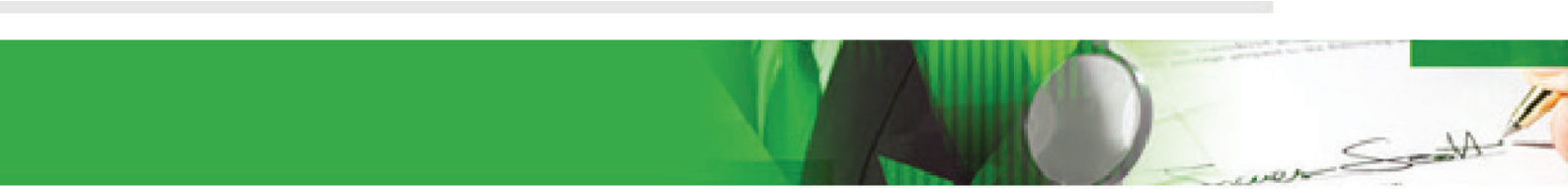
“A member reported that a recent application for a transitional representative (with credits only) to be approved as a KI was rejected due to the lack of an approved qualification. At least one other member reported a similar rejection in recent months.

This is contrary to the previously adopted stance of “once transitional always transitional” i.e. if one were a representative in the transitional period, where the standards for being a KI were the same, then upon application to be a KI in the post-transitional period the credit standing of the said representative would be acceptable. Those present confirmed that they had numerous personal examples of this approach being applied, even with new licences being approved with this approach.

It was suggested that the standards may have changed. If that is the case, the regulator may be requested to provide further clarity on this issue.

A further question was asked that if this was indeed the case then how would a move from one FSP, where the transitional representative had been approved as a KI, needed to move to another FSP as a KI and had to submit the (currently) required full application; and the effect on their status.”

The answer received:



“There seems to be confusion between the approval – if a person was appointed as a representative and had obtained a skills programme, and is then appointed by another FSP for the same products, the skills programme will still be recognised. If that person however now applies for approval as a KI, then the skills programme is not sufficient, as this a new role, and the person was not authorised for this in the past. The same principle applies as for additional product categories – the person does not have the necessary qualification and must first obtain this.”

Whilst this response was accepted, there were concerns raised on how this would be applied for people who have previously benefited from the misunderstanding, especially when the relicensing process is undertaken which would highlight the affected individuals along with any other previous errors in the licencing process.

Some level of “grandfather” clause would be needed to ensure that people don’t find themselves in the regulatory wilderness if any corrections are made retroactively.

The FSB has been asked to comment on this further. We will keep you posted on developments.

Board of Appeal decision – LA Teixeira

This is an interesting case – and requires careful reading to fully appreciate the significance. There are two key aspects:

- An opinion on what is and is not advice when factual information is provided to a client and the client makes a decision with no guidance from the FSP, and
- The interpretation of the Fit & Proper standards, which the appeal board found were not well applied when they originally decided to debar Ms Teixeira for five years and withdraw her licence in 2015.

We have to admit that we find this case somewhat confusing and are not necessarily in agreement with the findings, but it has now become useful “case law” in the FAIS



arena and will doubtless be referred to in times to come.

[Click here](#) to download the full ruling.

And [here](#) to read Moonstone's summary of the case.

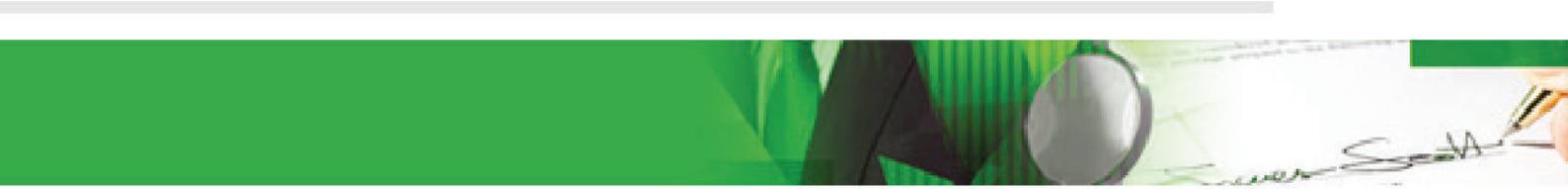
FSP Ellis V Appeal Board

Another case where a debarred representative sought to have their debarment overturned. Debarment matters have never been easy but they seem to be becoming increasingly complicated, especially when appeals are concerned. In this case the appeal was rejected. [Click here](#) to download the ruling.

FROM THE FIC

We recently attended an Anti-Money Laundering forum hosted by the Compliance Institute of Southern Africa and received an update on the new FIC Bill and related timelines from a representative of the FIC, Ms P Naidoo. Some of the key aspects discussed were:

- New FIC Act expected to be Gazetted no sooner than December 2016.
- An issue paper will be issued “in the next few weeks” which will be the start of a consultation process with all affected parties on practical aspects of implementation of the new Act.
- A draft Guidance Note is to be issued by mid-September which will allow for feedback on many aspects of the Bill.
- It was highlighted that it is important to understand that ALL current regulations and exemptions will be repealed when the new Act becomes law. This means that, for example, where an exemption existed on the KYC requirements for certain insurance products these will no longer apply, so a KYC process will be needed going forward.
- Each and every Accountable (AI) and Reporting Institution (RI) will be called



upon to develop their own risk-based approach to the Act's requirements and have these fully documented in a comprehensive Risk Management and Compliance Plan. The highest level of owner/management of an organisation will be fully accountable for this plan.

- The possibility of new entities being added to the schedule of accountable institutions is on the agenda but will only be looked at once the new Act is in force and will be done in a consultative manner.

The risk of requiring each and every organisation to develop their own standards is that there could well be differing standards being presented to the consumer, which would be far from ideal. Some level of industry specific standard would be ideal within which an AI/RI could assess its own risk. Thankfully there are two separate initiatives underway that will be consulting with all role players affected by FICA prior to implementation of the Act that seek to develop these standards via Guidance Notes being developed.

One is being driven by Finmark Trust and the other by a (current) grouping of bank AML risk and compliance people who will be looking to interact with all other role players with the stated intention of creating a South African body similar in structure and intention to the UK's Joint Money Laundering Services Group that will seek to set guidelines and standards for the entire industries affected. We see this as a very positive initiative as it means guidance for the industry by the industry and not the regulator, although they will undoubtedly have a say in their development, thus preventing the creep of regulation by Guidance Note when such documents are issued by a regulator. We will be working with specific groups of clients who wish to get involved in these bodies.

FROM THE FAIS OMBUD

Jeanne Peens V Huis van Oranje Finansiële Dienste Bpk (the first respondent), Barend Petrus Geldenhuys (the second respondent) and Stephanus Johannes van der Walt (the third respondent). A complicated matter – FA News do their best to summarise the matter. [Click here](#) to read the full article which includes an option to download the full determination.

INTERESTING THINGS WE HAVE READ

Insurance Gateway

The FAIS Ombud and the Public's right to approach the Appeal Board: We dealt with the specifics of this case last month but here is an article by Moonstone on the case – worthy of a read:

[Click here](#) to read the article.



VAT and Short-Term Insurance - New Binding General Rulings: A technical article on these new regulations regarding VAT. Of particular interest to insurers and UMAs.

[Click here](#) to read the article.

FA News Magazine June 2016

Insurers V Brokers: Whose client is it anyway? An article with input from Dhevarsha Ramjetan of Webber Wentzel and Christine Rodrigues of Norton Rose Fulbright, arising from a workshop hosted by Moonstone recently, that attempts to deal with this long time thorny issue.

Interesting issues discussed but no definitive answers.

One aspect ignored was the role of the UMA in this dynamic. They may well, and often do, argue that they and not the insurer, “own the client” and when they (or the insurer) choose to part ways the clients go with the UMA – albeit only with the broker's approval. We doubt this issue will ever have totally clarity until we have a major court case to test the various issues addressed in this article.

FA News

THE NON-DISCLOSURE TANGO WITH TCF: An article dealing with a complaint to the Long-term Ombud where the impact of TCF standards came into play.

[Click here](#) to read the full article which continues on our website.



Johannesburg Address:

Ground Floor

Lakeview House

Constantia Office Park

***Corner 14th Avenue and Hendrik
Potgieter Street***

Weltevreden Park

Roodepoort

1709

Email:

info@associatedcompliance.co.za

Tel:

011 678 2533

Fax:

011 475 0096

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