



ASSOCIATED COMPLIANCE

FOR A COMMON PURPOSE

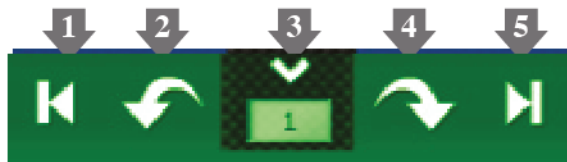
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Incentives – an update on what is permitted

After having reported on this matter in our July Newsletter, we established that the providers involved, having handed out the prize in their first competition, have now launched a second one. There has been no apparent direct action from the FSB so we followed up to have the profile of this and similar activity elevated to an industry-wide understanding.

In our letter we raised the following issues:

“This competition specifically offered a substantial incentive for the sale of financial products by the representatives... in breach of Section 3A of the General Code of Conduct.

... Franchise driven dealers are placed under an enormous amount of pressure to meet certain targets set by the Franchisors... One of these Franchisors has stated, in no uncertain terms, that only the Franchise branded financial product may be sold to clients that purchase a franchise branded vehicle. This requirement must be met even if the dealer has a better product on offer... In addition... dealers need to attain 35% penetration on Franchise Insurance Products to qualify for a Volume Incentive Bonus.

It is our opinion that these incentives create a conflict for the dealers and their staff.

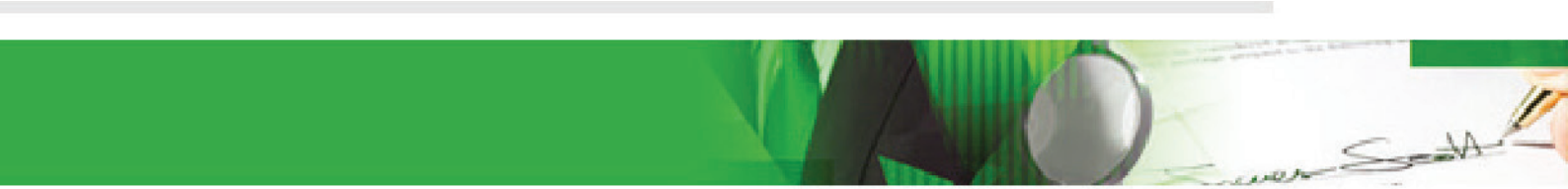
These views are not shared by the administrator... who have informed us that the money used to pay these incentives is received from the Franchisors who are not FSPs.

Given the fact that both the manufacturers/franchisors and the Administrators do not seem to understand the regulations or choose to ignore them and are certainly not implementing a TCF philosophy into their distribution processes we therefore respectfully suggest that the FSB take definitive action on this matter...”



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We were approached by another motor sector client to report on a dealer who would appear to have switched allegiance to another provider of products as the other provider was actively distributing vouchers linked to the sale of their products – in one case apparently for an amount in excess of R30,000! No actual “evidence” could be provided – it would seem such activities aren’t well documented, for obvious reasons, so we’ve been unable to follow up on this matter.

Many see our approach as being overly strict in the application of the regulations and we cannot on the one hand ask our clients to follow the high governance road while others travel the lower road, intentionally or misguidedly. The Regulator is moving into an era of monitoring the conduct of business of the industry and must be seen to take the required actions when such conduct is clearly wrong.

In a similar vein we came across an article on News 24 on 5 August reporting that the SABC is offering free funeral insurance OR a training course to people who pay their TV licences!

An extract of the article stated:

“The SABC announced that SABC TV licence payers now qualify for free funeral cover of R7,500, or a free online training course to “assist with skills development and enriching people’s lives”. A SABC TV licence payer, after having paid a licence, can claim free funeral cover through a website.”

We would be interested to see just how they are achieving this without breaching any regulations. None of our staff knew they had this benefit – do you?



FSP statistics – the latest analysis from Pi Financial Services Intelligence

We have provided details from this company previously and have just received their latest statistics. [Click here](#) to download and view the stats.

If you would like to see more then the contact details are:

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What picture do your annual financial statements create?

There can be no doubt that the Financial Services Board is becoming more intrusive. The site visit agendas sent to FSPs which now include a number of items not previously addressed is indicative of this.

We've also noted that the FSB is studying FSP's annual financial returns in greater detail than in the past. In one case, the FSB questioned why there was an expense on the balance sheet for 'advertising' but the annual report stated that no advertising was done during the year.

The days of 'wool pulling' are clearly over, and our recommendation to our clients is to follow the rules of governance, adhere to all Financial Services Laws, treat customers fairly, and ensure your records reflect your activities and that they can stand-up to scrutiny.

It is also clear that the Accounting and Auditing community need to be more aware of FAIS standards and their clients' FAIS profiles to ensure that the reports reflect what the FSPs do.



Mind the gap

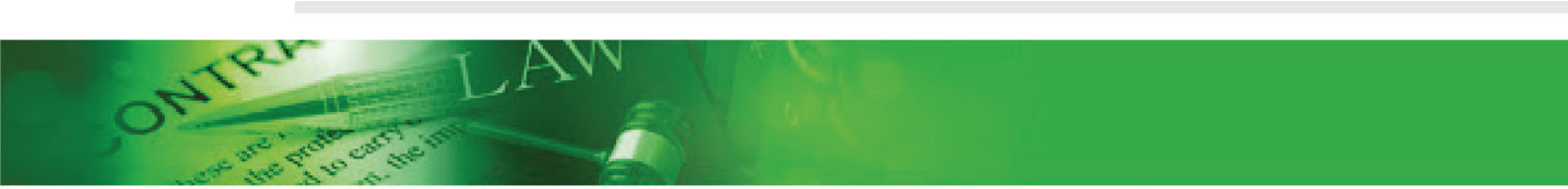
The extent to which the lack of sufficient FICA controls will influence the bottom line of motor dealers is rapidly heading to the astronomical. We've become aware of a number of incidents and it is our opinion that they are as a result of internal controls not being followed or simply being unsound.

Two incidents occurred in the same town in the North West province. The similarities in the circumstances give the impression that syndicates target an area or dealer where they have discovered a deficiency in the application of the relevant controls and processes. The similarities here related to the 'Know Your Client' requirements. In both instances, the original ID and Proof of Residence were not viewed prior to verification. The vehicles were delivered and the responsibility of verification was placed on the shoulders of an untrained salesperson.

The third incident related to a fleet tender received from a government department in which an order was placed for 23 commercial vehicles. The due diligence checks were conducted. However, there was no verification that the tender was valid. The vehicles were delivered to the premises of the government department and a short time later it came to light that this entire transaction was fraudulent. The dealership was facing a potential financial loss of about R8,000,000; however they managed to trace and repossess 13 of the vehicles to reduce the financial loss to an estimated R3,500,000.

It's clear that there are gaps in these FICA procedures and these are very likely not isolated issues. Conducting a due diligence check on a potential or current client must be done on a step-by-step basis and each step is critical.

Motor dealers should conduct a self-assessment on their procedures to assess the weaknesses in these procedures. Then they need to diagnose the non- or low compliant areas to address the cause of the breakdown. This is easier said than done as the requirements are more complicated than perceived. Motor dealers must have due diligence procedures in place for new and existing business relationships established prior to FICA becoming enacted. Re-identification checks on existing clients, Politically Empowered Persons and checks against the latest UN known terrorist list are only a few of the necessary procedures.



Furthermore, all staff need to be trained on these procedures to ensure that they are being diligently followed. Staff members should also be informed of the implications for the group and the individual when failing to follow these procedures. FICA procedures should form part of the client take-on process.

In today's society, being mindful of every client has never been more important.

So what happens after a FAIS Ombud ruling against you?

You pay the penalty – well hopefully PI insurers do – and you should be reflecting on what went wrong and assess your procedures and standards. You do this with your compliance officer of course, to see what can be improved to prevent a recurrence for both your benefit and that of your clients.

In addition, you may well find that the Regulator seeks to establish if you are in breach of the regulations, or if it was a simple mistake that led to the Ombud complaint. The FSB can choose to investigate the matter further to establish, amongst other things, if:

- there has been any contraventions of the FAIS Act (one would assume this has already been proven if the Ombud has ruled against you!)
- there are reasons need as to why the requirements of the code were breached.

A negative result from such an investigation could well result in a financial penalty being issued, which would not be covered by the PI insurers!

From AC-Proofed

HOMOPHONES

(From Wikipedia) A homophone is a word that is pronounced the same as another word but differs in meaning, and may differ in spelling. The words may be spelled the same, such as rose (flower) and rose (past tense of 'rise'), or differently, such as carat, caret, and carrot, or to, two, and too.



AC-PROOFED

Write and right is a good example of a pair of homophones. There are thousands of pairs and trios. The list is interminable; the possibilities for mix-ups, endless!

The word homophone comes from the Greek words homos, meaning 'same', and phone, meaning 'sound'. It can be a word that sounds the same as something else — like by (near) and buy (purchase) — or it can be spelled exactly the same way and pronounced differently — like minute (unit of time) and minute (tiny).



It's important to be aware of them to make sure that you're actually saying—and writing—what you mean.

To help you with this, here's a list of some commonly misunderstood words that people often confuse:

Accept | Except

Accept is a verb meaning to receive.

Except is usually a preposition meaning excluding.

I will accept all the packages except that one.



Affect | Effect

Affect is usually a verb meaning to influence.

Effect is usually a noun meaning result. It can also be a verb meaning to bring about.

The drug did not affect the disease, and it had several adverse side effects.

Allowed | Aloud

Allowed means that you are permitted to do something.

Aloud implies that you can hear you doing it because it's audible.

In the library, you're not allowed to speak aloud.

Compliment | Complement

A *compliment* is a flattering remark you might give to a friend or loved one.

Complement refers to the way two things might work together to improve or complete something.

If you want people to compliment your cooking, complement the meal with fine wine.

Lose | Loose

This confusion can easily be avoided if you pronounce the word intended aloud. If it has a voiced Z sound, then it's *lose*. If it has a hissy S sound, then it's *loose*. Here are examples of correct usage: *Julia had a bunch of loose keys. She put them all on a keyring so she wouldn't lose them.*

Here | Hear

Here denotes a specific location and means 'this place, not that place.'

Hear, on the other hand, is what you do with your ears and is also used to show strong agreement in the phrase '*Hear! Hear!*'



Principal | Principle

Principal is a noun meaning the head of a school or an organisation, or first in order of importance.

The principal reason for reading this article is to learn something new.

Principle is a noun meaning a basic truth or law.

The principal taught us many important life principles.

Right | Write | Rite

Right can either refer to direction (the opposite of left), used to show that someone is correct, or is a declaration of something to which you are entitled.

Write is what you do with a pen or keyboard.

Rite refers to a ceremony or ritual—some might even say that learning and discerning homophones is a rite of passage to becoming proficient in English.

Stationary | Stationery

The word *stationary* means not moving or not changing (as in a stationary bike.)

Stationery, with an ‘e,’ is paper that you use for writing letters or notes. It also applies to things like pens, pencils, and similar writing implements. *I like to buy all my stationery at CNA.*

Than | Then

Than is a conjunction used in comparisons. *The pizza is more than I can eat.*

Then is an adverb denoting time. *I laughed, and then ate the whole thing.*

Their | There | They’re

When you want to show that something belongs to others, you say that it’s *theirs*.

The word *there* has two uses: the first is as a way to indicate that something exists (e.g., there is only one way); the second is to describe a place that is not here.

And if more than one person is going to do something, you would say they’re (*they are*).

There are people who never paid attention to their teacher in school. They’re probably wondering what this means.



To | Too | Two

To means ‘headed towards’. *I’m going to play golf.*

Too means ‘also’. *Mark is going too.*

Or before ‘much,’ ‘many,’ ‘few,’ etc. *I’ve now eaten too much pizza.*

Two is a number.

Your | You’re

If something belongs to you, it’s *yours*.

You’re is a way of shortening you are.

Sound out you are in the sentence. If it works in the sentence it can be written as you’re.

If it sounds awkward, it’s probably supposed to be your.

If you’re happy and you know it, clap your hands.

All these similar-sounding words give our language depth, but they can also give you a big headache! You’re probably already taking some basic precautions by looking up words online and using spell check on every document or letter. Butt dew knot re-lie on Spell Check too fined yore miss-takes! It doesn’t work for those troublesome homophones.

And if you need help, remember that AC-Proofed can assist.

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From AC HAS

The provisions in the FAIS Act regarding the debarment of representatives who no longer comply with the Fit and Proper requirements, has led to a number of queries and disgruntled representatives who have found themselves debarred without valid reasons.

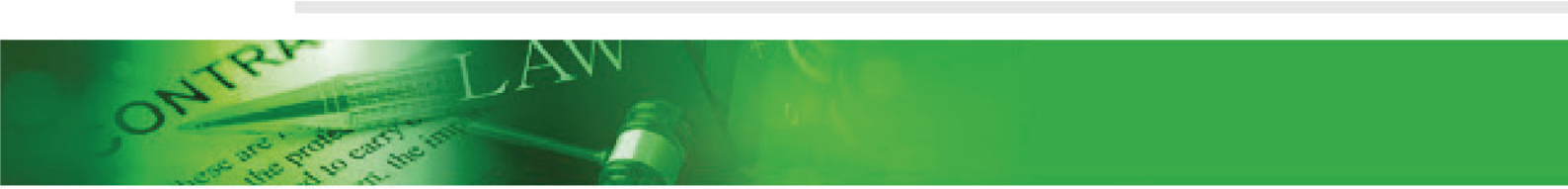


The processes around debarment seem to be unclear and challenging for most FSPs. An aggrieved representative has very little recourse against a debarment by an FSP, apart from making an application at the High Court, which in most cases will be way beyond their means. FSPs who are not clear on what processes must be followed, will therefore rarely experience a comeback from an aggrieved debarred representative.

The FAIS Act makes it very clear that it is the responsibility **of the FSP** to ensure that a representative who no longer complies with the Fit and Proper requirements is prohibited by the FSP from rendering any future financial service and that the representative's name must be removed from the register and that the Registrar must be informed of such debarment. Failure from the FSP to act on any such matter, can result in the FSP being reported to the FSB and may also face penalties.

An FSP should, whether the guidelines (and note that these are only guidelines and not specific debarment procedures) provided by the FSB with regards to debarment include this or not, always ensure that any internal process followed must be **lawful, reasonable and procedurally fair**.

We understand that the Financial Sector Regulation Bill proposes significant changes to Section 14 of the FAIS Act with regards to the procedures around debarment. The proposed changes include that before debarring any person, the FSP will be required to give adequate notice in writing to the representative stating the FSP's intention to debar the person. In this notice, reasons for the debarment must be included. The FSP must then notify the representative of the debarment process that is going to be followed and must give the representative a reasonable opportunity to state their case.



The amended Section 14 will also provide for representatives' right to appeal against such a debarment decision. The FSP, just as an employer, will notify an employee that they may approach the CCMA for an appeal procedure after a disciplinary hearing, and must then notify the debarred representative of their right to an appeal with the Authority of the Tribunal and highlight the appropriate timelines and procedures to be followed.

In light of the absence of more stringent procedures prescribed by the FSB, a recent judgement from the High Court (Reynecke V Odfin Pty Ltd – [click here](#) to download the judgement) emphasises the importance of a lawful, reasonable and procedurally fair process to prevent “malicious debarments.

Until such time that the above proposals and amendments become formalised, we have put together a process flow which we suggest must be followed by all FSPs in the event of a debarment. See **HAS Manual/Section G Statutory Compliance/Financial Advisory and Intermediary Services Act** to access the Debarment Process Flow, the Notice of Intention to Debar and the Notice of Debarment forms.

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 the FSB

September will be a busy month: We understand the FSB will be keeping us all busy this coming month with a series of draft regulatory changes. These are expected to include;

- Some provision to allow Juristic Representatives to collect premiums into their own bank account.
- Exempting a UMA from the need for PI
- FSP's collecting premiums will no longer need a 19(3) audit nor be subject to the liquid asset requirement.



All of the above are likely to be subject to insurer approval/mandate and their ultimate responsibility.

The UMA one in particular once again will force a closer relationship between the UMA and insurer.

- Amendment to the FAIS advertising standards and complaints management. We expect this is to align with TCF standards. We have been promoting for some time the need to upgrade complaint procedures and recording to align with TCF standards so it is likely our suggestions will now become a requirement.
- Draft 2 of the Fit & Proper amendments (originally published in December 2015) We expect that these will now include the CPD standards along with the product training requirements as the two will inevitably be closely aligned in practice. They may also include the competency requirements for the proposed RDR driven intermediary structures which we further understand will deal with the regulators plans for dealing with people who should be appointed as representatives within the travel agency sector.
- An updated Twin Peaks road map. Hopefully this will give us all some meaningful time lines on the various aspects of this project to assist with planning by all affected parties.

As and when we get the actual detail we will obviously communicate further.

Annual Levies

A reminder that your invoices will be drawn up during September and are due for payment by 31 October 2016. If you have not received yours by the end of September, please let us know so we can follow up with the FSB on your behalf.



The Compliance Institute of Southern Africa's 17th Annual Conference

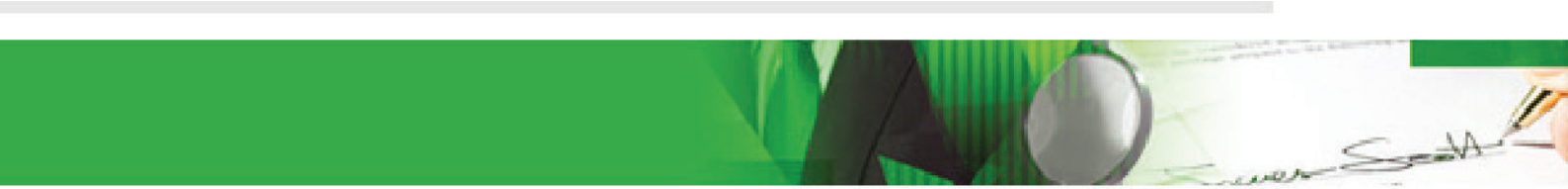
We recently attended the above conference. The following are some of more interesting and useful aspects that were addressed:

Where is FICA Headed?

If you've watched "The Super Rich and Us" on BBC Brit (DStv channel 120) the following statement from one of the presentations will likely not come as a surprise: "the world's money laundering capital is... London." This unfortunate (and purportedly documented) reputation is clearly being addressed under the guidance of the Financial Action Task Force (FATF - an international body mandated to enable the combat of money laundering and related crimes). The United Kingdom and subsequently South African laws are regularly issued and updated. We've already seen a raft of legislation aimed at clamping down on money laundering and related activities with the Financial Intelligence Centre Act, 38 of 2001 (FICA), the Prevention of Organised Crime Act (POCA), 121 of 1998, Protection of Constitutional Democracy Against Terrorist and Related Activities Act (ProCDATARA), 33 of 2004, Prevention and Combating of Corrupt Activities Act (PRECCA), 12 of 2004 and the upcoming revision to FICA being the South African controls.

One of the developments by the UK's Financial Conduct Authority (FCA) is a mechanism titled an 'Unexplained Wealth Order' where individuals are required to prove where their wealth comes from. Admittedly it is a little "guilty until proven innocent." Are we likely to see a similar approach under FICA? Currently there are some legal firms in South Africa that offer 'source of wealth assessments' to suspicious employers but this requires internal structures and vigilance rather than a directive from the Regulator. In addition, investigation and enforcement under FICA is handled by the Financial Services Board who are some months (or years) away from becoming the Financial Sector Conduct Authority where we imagine this type of activity will definitely be part of their focus.

We have already begun gearing up our FICA monitoring processes to match the proposed changes, so be prepared.



We have received copies of recent presentations regarding the FICA Amendment Bill which can be [downloaded here](#). December is the target date for enacting the revised legislation.

We also noticed that it seems likely that any entity doing KYC verification for another Accountable Institution (AI) must also be an AI. Currently this is not always the case as many Reporting Institutions often do this (vis. the motor sector). Whilst the reclassification of Short-term insurance FSPs into AIs may solve this, there may well be a gap as this reclassification will happen after the new Act goes live. We will endeavour to establish whether this is correct and keep you posted.

Conduct of Business Report 2017

- The FSB is close to completing the review of the feedback.
- The FSB have done some changes around phrasing and wording but essentially the structure remains as per the draft.
- Apparently the profile of the FSP will drive the question set to be asked. We are not sure if this will be done prior to an FSP being provided with a report to complete or as part of an on-line process.
- The varying structures of FSPs means that the annexures will be created entirely by them. It appears as though the annexures we have already provided in our preparation tool may well suffice.
- The surprising news was that the new report may only be ready for use in “early 2018”. Its use may well be linked to a revised reporting period structure which may spread out the process to allow for better analysis of the data. We will be continuing to make our clients aware of the new format, question sets and suggested preparation work needed. Many of you will already have been provided with our preparation tool. We encourage you to become familiar with the detail it contains. As we get confirmation of the introduction date we will plan client workshops to further assist with the required preparations needed.



POPI Commencement

A commencement date of the Regulations under the Protection of Personal Information Act, 4 of 2013 (POPI) is much closer given that there is a clear front runner for the position of Information Regulator (we're told it's Pansy Tlakula).

There will most likely be a grace period for implementation and there will be lobbying for the implementation date to be 24 May 2017 as this will coincide with the deadline under the European Union's 'General Data Protection Law.'

In terms of the POPI requirements the main (and obvious) issue is that custodians of personal information must take their duty of due care incredibly seriously to avoid penalties. Particularly when you realise there doesn't need to be any prejudice suffered by any person, just the breach to occur for substantial penalties to be issued.

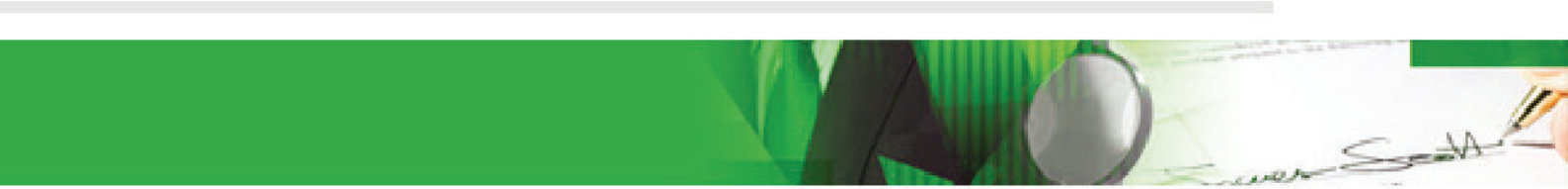
It was also made clear that comprehensive training is one of the most important aspects to be undertaken as part of the implementation of POPI controls. In fact, the presenters could not emphasise this enough and we concur; more often than not, it is an understanding of what is required rather than a library of documents that really serves to meet the legislation's objectives.

Our POPI monitoring tool is nearing completion in anticipation of the 'launch date'.

King IV update

The King good governance models are widely noted as the world's first stakeholder inclusive governance model and are treated as guidelines for similar documents all over the world. The current iteration will be released on 1 November, the formal launch of which we will be attending.

This fourth version has distilled the current 75 principles into just 16. As with current regulations they have been drawn up on an 'outcomes basis' and the principles are to be implemented on an "Apply and Explain" basis. This means that the principles must be applied in whatever proportional degree is relevant to organisations and an explanation as to how this is done must be provided.



Compliance with the Code will remain as voluntary (unless the entity is registered on the JSE). However, there have been cases where the High Courts have made rulings referencing the King Codes, essentially making the principles part of the common law. It is also increasingly being seen that elements of the Code are becoming part of contract law as entities realise the benefits to include the principles.

Let's see what happens when it's released in just a few months.

From the IISA

Training schedule

The training currently being provided by the IISA is growing both in quantity and quality. [Click here](#) to download a copy of their "Training Schedule: August-November 2016." It contains details of the CPD hours (for IISA professional members) each provides. If the CPD standards are about to be released, accessing these facilities will be vital to managing FAIS CPD standards.

SAUMA Professional designation

An exciting discussion is underway regarding the possibility of creating, with the help of SAUMA, a professional designation within the IISA structures, specifically for the underwriter and even more so for the underwriter within a UMA. We will continue to watch this one with interest but it does of course lead to the question of "What about the claims technician/negotiator?"

Don't know the history of the IISA?

2016 sees the 50th anniversary of the IISA. To mark this event, they have released a publication under the heading of "Towards World Class Skills." This is a worthwhile read for both those that have been around as long as the Institute has and for the more junior person who has probably heard of the IISA but has no real knowledge of how it all began. Copies are available from the IISA offices.

Interesting things we have read

From Insurance Gateway

[Click here](#) to download the full August Newsletter from Insurance Gateway but here are some articles that stood out for us.



Insurance Gateway EZine - [Click here](#) to download the August edition of this handy summary of industry articles

The Retail Distribution Review: don't relax your grip now

An article by Cornea Matthee of Centriq that highlights the need to be ready for the RDR changes and not to wait until they are actually upon us.

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

Also see the article from Moonstone below that has a similar message.

Then have a read of the FANews article on change and risk – not about RDR but related.

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

Another FANews article a little closer to the need to adapt to the challenges of RDR changes.

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

Some good articles from Paul Kruger of Moonstone picked up by Insurance Gateway:



The Retail Distribution Review: Objects in the rear view mirror

A short article on RDR matters. You'll see that once again the issue of the need to change the complaints management process is a "now" issue not a "when" issue.

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

FAIS: Remorse as mitigation in debarment cases

An article comparing various debarment appeals that were, to a large extent, based on the remorse of the representative – and why some won or others failed.

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

Cost Estimates of Twin Peaks

The release by Treasury of the estimated costs of the Twin Peaks structure as compared to the current costs – would you be surprised to see that it is higher? But there are logical reasons – [Click here](#) read on to see why.

And one we picked up wide of Insurance Gateway:

Compliance Becomes a Boardroom issue

The intro to this article by Tyler Nunnally and Paul Resnik of Finametrica reads as follows:

“...a principles-based regulatory system changes the compliance burden on financial services firms. This change is profound. It changes the way compliance is implemented, from an operational level right through to the boardroom. Directors must be aware that “new-world” compliance places their businesses at heightened financial, legal and reputational risks.”

Given the move to principals-based supervision, these are wise words. Just because you may not have a Board don't assume the principals do not apply to you.

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



FANews

The Good, The Bad and The Big Data Sherriff

An article on data featuring a number of comments from the FSB. We've been saying that the need for accurate and extensive data by insurers will eventually lead them to insist that their outsource providers—including their UMAs—must use either the insurer chosen platform or utilise the insurer's own IT platform.

Read the full article – and maybe send it to your IT platform suppliers – they have some work to do.

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

From the South African Insurance Crime:

Their July Newsletter can be downloaded [here](#).

Short Term Insurance in South Africa

A new book by Gareth Stokes (of FIA) and Liz Still. Whilst we have not actually read this as yet we have had rave reviews from those that have. It deals with all aspects of the industry and will be an invaluable source of data for those wanting or needing to know more about the sector.

The book is published by S&S Analytica of Waverley Johannesburg.

From the Ombudsman for Short-term insurance

The latest edition of the Ombud's Briefcase was released recently – always worth a read. One article in particular is of interest, especially for the direct marketers. A decision by the Short-term Ombud on a matter that could just as easily have been referred to the FAIS Ombud.

[Click here](#) to download a copy.

In addition, the Ombud had a press release dealing with the handling of short-term premium payments. [Click here](#) to download a copy.



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