ASSOCIATED COMPLIANCE

FOR A COMMON PURPOSE

November/December 2016 Edition

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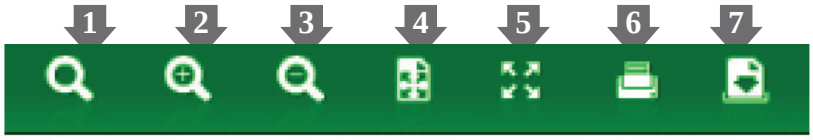

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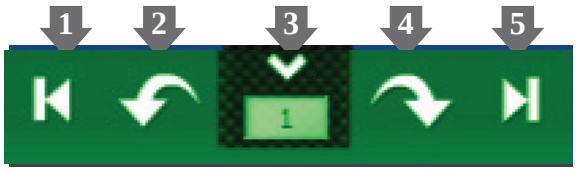

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1 = Go back to cover page
2 = Go back a page
3 = Insert page number to go to the specific page
4 = Go forward a page
5 = Skip to the last page

Alternatively, click and drag on any corner of the pages with your 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 -

Proposed Fit & Proper amendments

In November, we sent out a special Newsletter dealing with all the proposed amendments. Click here to download a copy.

ASSOCIATED COMPLIANCE

FOR A COMMON PURPOSE

FICA Enforcement (the last in our current review of the Financial Intelligence Centre Act legislation)

Some useful information for anyone potentially facing an FIC visit:

- An FIC inspector must present a certificate to prove that they are appointed by the FIC.
- The inspection must be conducted in office hours.
- Reasonable notice of the inspection must be provided, and it must occur at the business premises of the entity.
- In some instances a warrant must be produced.
- Notification of the visit needs not be provided where this would hamper investigations.

The maximum potential penalties are R50 million for legal institutions and R10 million for individuals. These penalties will be aimed at those who wilfully do not comply, and penalties will generally be linked to the severity of the transgressions.

Much of the need for the FIC Amendment Bill was based on findings from inspections; some summarised results of which are listed below:

- There was mass non-registration on the goAML system, particularly in the motor industry. Note that registration on the goAML system was issued as a Directive, and as such is required by law. Linked to this are cases where no individuals were registered as the Money Laundering Control Officers or Cash Reporting Officers on the goAML system.
- Some of the most concerning issues were cases of insufficient client identification and verification being conducted on commercial entities.
- Cases where cash was deposited but no transaction or client verification was done.
- Cases where cash transactions were not reported once clients were sent to the bank to make their deposits (i.e. not conducting dual reporting).
- Inadequate training on company anti-money laundering procedures as well as an understanding of the requirements and procedures of the FIC.
- Linked to the above was a serious lack of understanding of the suspicious transactions applicable to the entities and their business.
- The internal rules have not been adapted to suit the entity or truly implemented (the template problem).
- Money Laundering Control Officer details were not kept up-to-date.
- Sharing of log-ins (a Directive was even issued prohibiting this).

Is your entity guilty of any of these?

All but one of the recent sanctions imposed by the FIC have been issued to Motor Dealers. Clearly there is some sort of issue in this sector that needs addressing and is only going to worsen given the requirements imposed by the proposed amendments.

There is, however, some light at the end of the tunnel: there is a right to appeal any enforcement decision at a cost of R10,000. This amount will be refunded if the appeal is upheld. Rather than appeal we would recommend entities get their FICA programme up-to-date when the Amendment Bill is written into law.

Protection of Personal Information: Article Number 3

Processing Limitations

The Protection of Personal Information Act (POPI) comprises several conditions covering the requirements regarding the processing of personal information. Condition 2 deals with the limitations that apply to the processing of personal information.

Personal information may only be processed lawfully and in a way that doesn't infringe on the privacy of the data subject (person).

Also, personal information may only be processed if it is adequate, relevant and not excessive. You may not collect personal information from someone if the information collected exceeds what is required and is not necessary to achieve the purpose for the processing of such personal information. You are only allowed to process what is required.

When can personal information be processed?

Consent

You may process personal information if the person (or a parent/guardian if it is a child) consents to it.

For consent to be valid, it must be a voluntary, specific, informed expression of will on the part of the person. In addition, personal information may only be processed for a specific purpose and the person must be advised of the purpose for which it is collected. This means that a blanket consent to the use of the person's personal information would not suffice as valid consent to the use of such personal information.

A person may withdraw his or her consent to the processing of personal information if the withdrawal does not affect the lawfulness of the processing of personal information prior to the withdrawal of the consent, or the processing of personal information meets one of the possible justifications mentioned below.

Justification for the processing of personal information

A common misconception is that personal information may only be processed with the consent of the person for it to be lawful. Consent is only required if no justification exists for the processing. There are instances where the processing of personal information is justified without the consent of the person.

The processing of personal information without consent exists where it:

- is necessary to carry out actions to conclude or perform in terms of a contract to which the person is a party;
- complies with an obligation imposed by law on the responsible party;
- protects a legitimate interest of the person;
- is necessary for the proper performance of a public law duty by a public body; or
- is necessary for pursuing the legitimate interests of the responsible party or a third party to whom the information is supplied.

It is up to the responsible party to prove that either the person consented to the processing, or the processing was justified in terms of one or more of these justifications.

Objections

The person can object to the processing of his or her personal information, unless the processing is required in terms of legislation, where the processing of personal information:

- protects a legitimate interest of the person;
- is necessary for the proper performance of a public law duty by a public body; or
- is necessary for pursuing the legitimate interests of the responsible party or a third party to whom the information is supplied.

A person may object to the processing of his or her personal information for direct marketing purposes other than direct marketing by means of unsolicited emails. Our next article will cover the impact on direct marketing.

The Collection of Personal Information

Personal information must be collected directly from the person to give them some level of control over the personal information provided. There are however exceptions to this rule where:

- personal information is available from a public record or has been deliberately made available to the public by the person;
- the person has consented to the collection of the personal information from another source;
- the collection of the information from another source will not prejudice a legitimate interest of the person;
- compliance would prejudice a lawful purpose for the collection; or
- compliance is not reasonably practicable in the circumstances of the case.

The collection of personal information from another source is necessary under certain circumstances:

- to avoid prejudice to the maintenance of the law by any public body, including the prevention, detection, investigation, prosecution and punishment of offences;
- to comply with an obligation imposed by law or to enforce legislation concerning the collection of revenue as defined in section 1 of the SARS Act, 1997;
- for the conduct of current court proceedings or those that are reasonably contemplated;
- in the interests of national security; or
- to maintain the legitimate interests of the responsible party or of a third party to whom the information was supplied.

Compliance with processing limitations

To be compliant with POPI, businesses will need to determine what personal information they have, what the reason was for collecting it, and what it is currently used for.

Also, they will need to assess the personal information that they currently have to see if it is adequate, relevant or excessive to achieve the purpose for which it was collected.

Where businesses process personal information, they will need to ensure that it is done either with the person's consent which must be specific as to the purpose for which it is required. If the processing is done without consent, businesses must ensure that it is justified.

Where personal information is not collected directly from the person, businesses must ensure that it is collected as per the POPI requirements.

Insurance Bill – Unintended consequences

If all the proposals in the Bill go ahead as currently drafted, there will be a consequence for those FSPs currently writing credit life covers via a short-term insurer.

The short-term industry underwrites simple life insurance business under the heading of 'Accident Insurance'. This is particularly prevalent in the motor industry where credit life covers are granted. In these circumstances, the FSP is most often operating under a short-term personal lines license sub-category 1.2.

The Insurance Bill removes this type of product from short-term insurers. The market argued that carrying this risk is a normal practice in the short-term sector but despite strong opposition the FSB/Treasury is adamant that this amendment will be triggered.

The problem from a FAIS point of view is that FSPs that are registered for license category 1.2 will have to register for sub-category 1.3 (Life B1), at which stage the FSP will need to prove experience as will all Key Individuals and Representatives. It is not likely that the FSB will accept category 1.2 experience as being sufficient for a full category 1.3 licence notwithstanding that the products, irrespective of risk carrier, will be essentially the same.

Even more problematic is the issue of qualifications: with a new category comes the need for qualifications that are acceptable for the new category. While there are qualifications that are approved for both, not all are. Transitional Representatives who only have credits will need full qualifications.

These issues were recently raised with the FSB, who acknowledged that this scenario had not been flagged as needing attention. We have submitted a formal request that the FAIS Division flag this matter as needing attention.

Industry stats

The latest analysis of FSP licences and Representative numbers has been released by Simon Drimer of Pi Financial Services Intelligence (www.pifsi.com.sg).

Click here to download the details.

How confidential are your details?

This article started out as a complaint submitted to one of our Motor sector clients.

The complaint started with the following:

> ***"I am most distressed by the fact that I have received a call from '*****' (a Direct insurer) trying to sell me insurance on the proposed car which we have shown an interest in purchasing!***
>
> ***Most concerning this call comes even before we have had any feedback on the finance being accepted or a final quotation on the motor vehicle, how can they get my details so quickly and be so arrogant to phone, I am most upset that they have got my details in this way - cell phone and landline and vehicle details from somewhere and my personal information has been given out in this transaction, POPI (Protection Of Personal Information) protects my personal data and details and I did not give anyone permission to share the information which I provided you with any other service providers wide of the finance application let alone '******'.***
>
> ***I am almost inclined to suggest we cancel the application…"***

Originally it was thought that our client, or someone at the dealership, was passing on information. Upon investigation, it appeared that a credit bureau working with the Direct insurer mined the data they received. This is the response to the customer:

"According to my contact in KZN "****" Head office have done a deal with "******" (the credit bureau) who do ITC checks on behalf of the banks. If a credit check is done on any customer and it is found that they have any of the following triggers then the lead is sent to the outbound call centre who offer a quote.***

The triggers are:

A customer that is currently with "****".***

A customer that was previously with "***"***

A customer that has previously been quoted for some form of Insurance by "****"***

In your case you requested a quote on your house … through * private bank in 2012 with ****** and that is why they contacted you."***

We have alerted the FSB to this practice. If any action is taken, we will provide details of who the players are.

Some other interesting stories we have picked up from the Motor sector

1. A client pre-arranged his finance with a bank by the name of Multicure Bank in Midrand and paid a deposit of R17,665.62. He believed that everything was approved and went to the dealership with his proof of payment, only to find out that this bank does not exist. How a customer can be duped into doing business with a fictitious bank we do not know!
2. In another case the client pre-arranged his finance with a bank using a name very similar to a properly registered bank and paid a R15,000 deposit. He took the proof of payment to the dealership only to find out that the bank did not exist.
3. Apparently, the fraudsters have now found a way to duplicate the new ID cards. Anyone accepting these cards as proof of identity needs to take care. Click here to download a comparison between the real and fraudulent cards we have been provided with by one of our clients.
4. MFC have issued a warning to motor dealerships (November 2016) highlighting a group of people who are using fraudulent bank guaranteed cheques for the purchase of cars. Nothing unusual about that, but this syndicate somehow manages to intercept the calls to the bank made to verify the account and cheque and obviously verify the information. The cheques are accepted, cars are released and a few days later the cheques are rejected by the actual bank.

Reporting cash transactions

A reminder that cash transactions need to be reported to the FIC in terms of the cash threshold requirements and as suspicious transactions.

What will the cost of Twin Peaks be?

A read of the attached document that was submitted as part of the FSR submission to Parliament will be, to say the least, interesting. Click here to download a copy.

Financial Sector Regulation Bill and FAIS

The FSB seems to use the final months of the year to flood us with proposed new and 'triggered' legislation, and this year has been no exception. We still expect more surprises as the year closes, but in the meantime, we have to wrestle with the final amendments to the FSR Bill, the new Insurance Bill, the demarcation (accident and health) updated proposals, the RDR and more than 60 pages of changes to the Fit & Proper requirements.

And we're still trying to get to grips with the Financial Intelligent Centre Amendment Bill which hit our desks about this time last year. We have been informed that the FICA Bill's approval is imminent.

We have been providing updates on all this legislation in our monthly newsletters, and in some cases, have published 'stand-alone' news-releases. In addition, we plan to hold a workshop in the early part of next year where we can debate the effect these changes will have on the way we model our businesses. Please look out for an invitation which we will send out towards the end of January when we have a little more clarity.

After more than two years, it looks like the 'Twin Peaks' Bill (FSR) will finally be passed into law in the early months of 2017. In fact, the FSB seem confident that this is still on track for 1 April 2017. There has been so much publicity on this that there is no need for us to publish how 'Twin Peaks' will work or the extent of the powers that the new conduct authority will enjoy. However, while there are several proposed changes to the FAIS Act, there are some which we believe have not been adequately addressed in publications. These are:

- Some of the new definitions;
- The new section 45.1A and 45.1B; and
- The new section 14.

New Definitions

Among several other amendments and additions, the definition of intermediary service has had certain words deleted, which we have highlighted in red. We are still trying to understand the ramification of these deletions. *Inter alia*, it would appear that they bring a direct insurer into the FAIS or conduct legislation net and should be read in conjunction with the new s45.1A and s45.1B described later in this document.

intermediary service

means, subject to subsection (3)(b), any act other than the furnishing of advice, performed by a person ~~for or on behalf of a client or product supplier =~~

a. the result of which is that a client may enter into, offers to enter into or enters into any transaction in respect of a financial product ~~with a product supplier~~; or

b. with a view to -

   i. buying, selling or otherwise dealing in (whether on a discretionary or non-discretionary basis), managing, administering, keeping in safe custody, maintaining or servicing a financial product ~~purchased by a client from a product supplier or in which the client has invested~~;

   ii. collecting or accounting for premiums or other moneys payable by the client ~~to a product supplier~~ in respect of a financial product; or

   iii. receiving, submitting, ~~or~~ processing or settling the claims of a client ~~against a product supplier~~;

Subsection 4.3 (b)(ii) has also been deleted. This is the section in the FAIS Act that exempted an insurer from having to comply with the conditions imposed on intermediaries – an exemption on which direct insurers have capitalised.

The new sections 45.1A and 45.1B relate directly to this. The first part exempts an insurer from the conditions imposed by the FAIS Act in respect of handling premium and paying claims, but it no longer exempts an insurer from having to comply with the requirements imposed on providers in respect of: *"buying, selling or otherwise dealing in (whether on a discretionary or non-discretionary basis), managing, administering, keeping in safe custody, maintaining or servicing a financial product"*.

Brokers that have been irritated by the exemption that insurers have enjoyed to date will be delighted with this amendment.

Interestingly, the second part (45.1B) categorically states that no part of the exemption will apply to a person to whom the insurer has delegated or outsourced the activity, or any part of the activity where the person is not an employee of the insurer. It follows that UMAs and tied agents will still have to comply with the requirements relating to collection of premium and settling claims. Any thoughts that the FSB might exempt UMAs or tied agents from these requirements will have to be discarded.

Debarment

Changes in the debarment rules come as no surprise. The current wordings are a little vague, and full clarity is now provided. Also, there will now be an appeal mechanism in place although it will be known as a reconsideration of the decision.

Before debarring a person, the FSP will have to:

- Give adequate notice in writing to the person stating its intention to debar the person, the grounds and reasons for the debarment, and any terms attached to the debarment, including, in relation to unconcluded business, any measures stipulated for the protection of the interests of clients.
- Provide the person with a copy of the FSP's written policy and procedure governing the debarment process, and
- Give the person a reasonable opportunity to make a submission in response.

One interesting aspect is the fact that although an employee is expected to know what is in the FSP's debarment policy, this is the first time that it will be a pre-requisite for an FSP to attach a copy to the debarment notification. As compliance officers, we suggest that every FSP should revisit its debarment policy to ensure that it caters for these new conditions, even prior to the implementation of this amendment.

The proposed wording also demands that the FSP considers any response provided by the employee before making a final decision.

Having finally taken a decision to debar the employee, it will be necessary for the FSP to immediately notify the person in writing of:

- The FSP's decision,
- The persons' rights in terms of Chapter 15 of the Financial Sector Regulation Act (Appeals), and
- Any formal requirements in respect of proceedings for the reconsideration of the decision by the Tribunal (in accordance with the FSR Act).

There is also a new condition included which states that a debarment action *"must be commenced without undue delay from the date of the financial services provider becoming aware of the reasons for debarment, and not longer than three months from the date that the person ceased to be a representative of the financial services provider."*

It is quite common for an employee who is under investigation to resign, with the result that the FSP cannot complete an investigation and debar the employee within the 15-day time limit currently imposed. While this is addressed by the new wording, it does place additional responsibilities on the FSP because the FSP is expected to continue and complete its investigation in the three months following the termination of the employee's employment, and where necessary take debarment action thereafter.

It is not clear how this will work in practice. We envisage all kinds of problems where a representative leaves one employer and joins another, and three months later a debarment action is taken. Moreover, there is no mention of the action that must be taken by an FSP when the contravention is discovered after the employee leaves the FSP.

Perhaps we will be provided with clarification prior to implementation, but as ever, we will keep our clients apprised of developments as and when we become aware.

FROM AC HAS

By now you will have read the Special Newsletter sent out on 29 November 2016 regarding the proposed amendments to the Fit & Proper requirements for FSPs and Representatives. The proposed amendments have raised several flags in terms of a company's **Human Resources** processes, but we will assist you, if required, to comply with the new requirements seamlessly.

AC HUMAN ASSETS SERVICES

The proposed implementation date for these changes is 1 March 2017, which is not that far in the future. To prevent a repeat of everything that was written in the Special Newsletter, we have summarised our ***HR to-do list***. Click here to download a copy to give to your HR person/team.

Full implementation of the required changes cannot commence until they are finalised. Having said this, much of what has been proposed in the latest draft has already been through the comment mill, and we only expect real changes to the proposals around the Class of Business and Product Training standards as well as the CPD proposals.

Please keep your eye on the monthly newsletter for important updates and new documents added to the HR Manual that will assist you with implementing the new amendments.

HAS is also working on an **Individual Performance Contract** tool where all the necessary and important information for each of your Reps and KIs can be documented and maintained.

If you have any specific questions or suggestions with regards to your HR processes related to the proposed amendments, please send these to bronwynn@associatedcompliance.co.za or has@associatedcompliance.co.za.

Why document layout needs to be consistent

Have you ever opened a document or email from someone which has literally made your eyes bleed? There's loads of colours, text in bold, underlined and in red, blurry images, those silly emoticons, and horrors of all horrors… they've used Comic Sans font!

Part of having a successful brand is having a standard way of communicating (both internal and external). It is what will set you aside from your competition and should be applied consistently across everything you do.

While we all sometimes fantasise about people grabbing one of our documents or emails and cozying up to the fire with a nice glass of red wine to spend some quality time reading what we've written, the reality is quite different. Consistency and formatting is so important because it improves readability and organises information in such a way that it makes the reader's job easier, which can be a great time-saver for busy professionals. Whether you're writing a proposal, a report, or a simple email, structure helps to communicate your message clearly.

This doesn't mean that all your communication must look the same; far from it, but it does mean that you should strive for visual cohesion. Make sure you stick to several standards, which are listed below.

Margins

Give your document some basic structure by setting the margins. The default margins in Word are 1 inch (an easy number to remember if you're using inches) or 2.54cm. Make sure that the page size is set to A4 and not letter so that the line length (the number of words per line) will be right.

Alignment

This is a personal preference. The thing to remember here is that you should be consistent! If you've decided to justify your text, then keep it like that in every document.

Fonts

Choose a company standard font. This should be something simple and easy to read, like Arial and Calibri (friends don't let friends use Comic Sans!), and it's important that the font you choose is available on everyone's PC - if not, it will be changed to the nearest available font because they may not have your fancy font.

In correspondence, it's generally not a good idea to use anything bigger than 12pt (even if your eyesight isn't as good as it used to be). Also, don't change the size of certain text to make a point, or because you feel that the recipient will see that you're trying to tell them something specific. There are other ways to highlight certain things.

Text colour

Letters and emails should only be typed in black. Please don't highlight text in red to make a point. It's just plain rude.

Your logo

First impressions are important, and blurry logos and images will make you look like a rookie. If you've spent the money having a logo created, then make sure you use it correctly.

Headings

Use a font and font size for a major heading so it will inform the reader of the focus of the document. Headers should be big enough so that they are legible, but not too big, and aligned to the left margin. Subheadings should be in a font size smaller than the major heading. If you decide to **Bold** all headings, then keep it consistent throughout. The same goes with underlining and *italicising*.

Lists

Numbered and bulleted lists need to be standard throughout. It is best to align them to the left margin, and ensure that the space between the bullet or number and the text is consistent.

Spacing

This refers to spacing between paragraphs, and before and after lists.

Punctuation and capitalisation

It is important that punctuation is consistent throughout, including such things as the use of single or double quotation marks depending on what is being quoted, and whether items in a list are separated by a comma or not. Capitalisation in headings must be consistent; for example, in this article, only the first letter of a heading is capitalised.

Paragraphs and alignment

Paragraphs help break up the text and keep ideas organised. Define how many spaces you would like between paragraphs, and whether the text should be fully justified or aligned to the left.

It would be a good idea to create a style guide for employees to use which gives instructions for exactly how things should be done, and sometimes even insight into why. Contact AC-Proofed for help with this (kimh@associatedcompliance.co.za).

FSB Regulatory seminar

Despite a considerable amount of information provided by the FSB at the Seminar, there was nothing new. They merely re-affirmed that the new regulation was dawning and will impact the financial services industry in 2017. In fact, it was felt a little 'déjà vu'; mainly a repeat of what they said last year except that they have changed the effective date from 2016 to 2017.

Reading between the lines, the muddy road ahead is becoming a little clearer. Farzana Badat, currently the head of the Insurance Compliance Division (soon to become the Conduct of Business Supervision Division) informed us that there has been a distinctive shift from TCF to 'proactive management of market conduct'.

She confirmed that the new legislation would enable the Conduct Authority to demand structured reporting on conduct risk indicators. She spent quite some time giving examples of the 'principles' involved. The meaning of 'principles-based' regulation as opposed to 'rules-based' regulation is now much clearer. Makgompi Raphasha, head of the Insurance Enforcement Department opened his presentation by pointing out to us that the shift from 'rules' to 'principles' has already begun.

It is interesting to note, when looking back at what happened in the UK, that the same path was taken by the Financial Services Authority before it became the Financial Conduct Authority. They introduced similar TCF outcomes and then published the 11 'Principles', which replaced the 'Rules' in the UK's legislation. They are:

1.	**Integrity:**	A firm must conduct its business with integrity;
2.	**Skill, care and diligence:**	A firm must conduct its business with due skill, care and diligence;
3.	**Management and control:**	A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems;

4.	**Financial prudence:**	A firm must maintain adequate financial resources;
5.	**Market conduct:**	A firm must observe proper standards of market conduct;
6.	**Customers' interests:**	A firm must pay due regard to the interests of its customers and treat them fairly;
7.	**Communications with clients:**	A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading;
8.	**Conflicts of interest:**	A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client;
9.	**Customers, trust relationships:**	A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgement;
10.	**Clients' assets:**	A firm must arrange adequate protection for clients' assets when it is responsible for them;
11.	**Relations with regulators:**	A firm must deal with its regulators in an open and cooperative way, and must disclose to the appropriate regulator anything relating to the firm of which that regulator would reasonably expect notice.

In the UK, breaching a principle makes a firm liable to disciplinary sanctions. In determining whether a principle has been breached, it is necessary to look to the 'standard' as required by the principle in question. Under each of the principles, the onus is on the regulator to show that a firm has been at fault in some way.

What constitutes fault varies between different principles. Under principle 1 (Integrity), for example, the regulator has to demonstrate a lack of integrity in the conduct of a firm's business. Under principle 2 (Skill, care and diligence) a firm would be in breach if it was shown to have failed to act with due skill, care and diligence in the conduct of its business. Similarly, under principle 3 (Management and control) a firm would not be in breach simply because it failed to control or prevent unforeseeable risks; but a breach would occur if the firm had failed to take reasonable care to organise and control its affairs responsibly or effectively.

The important component is the 'standard' as published in respect of each principle. During Jonathan Dixon's presentation, he informed us that what are currently known as board notices and directives will be replaced with 'standards'.

So, the question is: "Will the regulatory environment in South Africa be the same as in the UK?"

Probably not exactly. Nevertheless, based on the presentations delivered by the FSB, there can be no doubt that our future regulation will be very similar. In our opinion, a prudent approach for firms here would be to adopt the principles listed above and ready themselves for the future.

Jo-Ann Ferreira briefly presented a paper on the legislative reforms which mine the road ahead. We have covered every one of these in our various newsletters over the past few months.

We did hear that the new PPR rules (long- and short-term) will be published for comment in the early part of 2017 and that they would also apply to short-term commercial lines policyholders subject to certain thresholds. There can be no doubt that unlike the present rules, these will directly relate to the 'principles' and will likely embed most, if not all, the TCF outcomes.

Although an overview of what we can expect to see in the new PPR was provided, we'll wait for publication of the documents before commenting on the impact these will have on our industry.

Leanne Jackson presented an update on the RDR, but there was nothing included that we have not addressed in previous newsletters. She did mention that there would be a full written update provided to the industry before the close of the year and this we are looking forward to reading. Under the Christmas Tree no doubt.

The various presentations, all under the general banner of update can be downloaded here:

- Conduct of Business Supervisory
- General Regulatory framework
- Overview of amendments to the Regulations and PPRs
- Prudential Supervisory
- Twin Peaks
- Enforcement
- RDR

Conduct of Financial Institutions Bill

This Bill, the successor to FAIS as we currently understand it, is now well underway with the FSB drafting it. It seems that the compulsory nature of and at what level registration is needed of the current FAIS compliance officer, will be addressed in this Bill.

What's in a name?

We recently had cause to ask the FSB for guidance on the licencing standards for FSPs that use:

- Trading as names, and
- Multi-lingual versions of the registered name (e.g. ABC Brokers and ABC Makelaars)

We were advised that ALL trading names need to be registered in terms of the Companies Act requirements, that the FAIS licence must mirror these registered names, and that no other variations of the registered/licenced names can be used. This may well mean that both, for example, the English and Afrikaans variants of a broker's name should be registered with both CIPC and the FSB to allow the flexibility an FSP may require in its trading.

Over the next monitoring cycle, we will be checking to ensure that these standards are in place.

Is it time for Immaterial to be made a little more material?

The Compliance Institute FAIS Forum recently enquired as to whether the current R1,000 limit was being considered for an inflationary increase. The response was that there had been no formal request for the limit to be increased from the market place. It has subsequently come to light that the FIA are about to make just such a submission. We will keep you posted on developments.

Conduct of Business Report 2017

We have given you the summary of the proposed report that was originally planned for 2017. We were told just two weeks ago that it seemed likely that this report will not see the light of day in 2017 as originally planned, because the FSB need to ensure that all the recently released (and about to be released) legislative changes are incorporated into this format. But never say never as the FSB have now (6/12) released a 2nd draft and invited further input by 28/2/2017. This may well indicate that this format is very much back on the 2017 reporting agenda, although to be fair their covering letter does not state this. If in fact the new format is not used in 2017 we wonder whether or not the old-style report will be dusted off and used again, or there will be some attempt to make it more meaningful as a stepping stone to the new standard.

We will be assessing the changes in this 2nd draft to establish whether any of the many comments we submitted on draft one have been taken on board. We will provide more detailed feedback on the new draft in our Newsletter of January 2017.

FROM THE FAIS OMBUD

The 2015/16 report has recently been released. Click here to download a copy.

The settlements and statistics sections will be of the most interest to many but we found The Ombud's Operational Report of particular significance.

There is also some reference to why there are often long delays in settling matters – something we have often commented on in the past.

A review if the report was done by FANews.

Click here to read the full article which continues on our website.

FROM THE PENSION FUNDS ADJUDICATOR

The 2015/16 report has recently been released. Click here to download a copy.

The following article from FANews provides some detail on one of the subjects addressed in the report, namely the level of complaints.

Click here to read the full article which continues on our website.

FROM THE INSTITUTE OF DIRECTORS

The IoD launched King IV on 1 November at an event we attended. The launch focused on some 'back slapping' for all involved and a good few chirps about the political elite from almost all the speakers inferring how the following of a Code, such as King, would help them all keep on the straight and narrow. From what we have so far gleaned from the new Code, it will assist many organisations to set their own standards within what is clearly a code of international quality and relevance.

With the new Fit & Proper standards requiring a governance framework, FSPs would do well to understand King IV as this has to be the basis and adapted to each level of organisation in line with the new proportionate approach of the regulations. We will certainly be using these standards as the basis upon which we advise ourselves and our clients.

Unfortunately, the IoD will not allow us to make the copy of the Code. Hard copies can be obtained via the Lexis Nexis online store. Click here to access the store.

There is a web version on the IOD website. Click here to access the web version.

The best option is to use the App. There is a cost but the functionality obtained is well worth it.

Download the King IV mobile application

Android - Only available on the GALAXY APP store with the pictured icon and not on the GOOGLE PLAY store

IOS – Available on the App Store

FROM NATIONAL TREASURY

The long-awaited regulations on the demarcation debate have reached the Draft regulation stage. There are two versions, one being short-term insurance and the second long-term insurance.

The key aspects of this are:

- Medical Expense Shortfalls (GAP covers) will be allowed – subject to certain criteria which, amongst other things, is an annual Rand based cap of R150,000,
- Non-medical expense cover (Hospital plans) will be allowed, again subject to certain criteria which include a per day limit of R3,000 or a maximum lump sum payment of R20,000 per annum. They will not be allowed to provide benefits that fully or partially indemnify against medical expenses.
- Insurers will not be allowed to continue to provide Primary healthcare insurance policies. These types of benefits will have to be provided in accordance with the Medical Schemes Act.
- There will be a sliding scale of commissions payable for Gap, Hospital and the new HIV, Aids category (see below), which will all have to be underwritten on a group basis, on the monthly premiums payable, which will be as low as 5% for monthly premiums over R1,200.
- New products have been defined within the Accident & Health short-term category, that include:
  - HIV, Aids, TB, Malaria testing and treatment,
  - International travel insurance, and
  - Medical emergency evacuation or transport.

The need for and impact of these new sub-categories is not evident within the draft regulations.

There are no references to the medical expense covers provided under conventional Personal Accident & Sickness policies but we have to assume at this stage that they will be allowed subject to the R150,000 annual aggregate limit, but only in excess of any medical aid benefit. We will be seeking confirmation of this.

The Regulations will, if the parliamentary process goes according to plan, come into effect on 1 April 2017. All new health policies (LTIA) and accident and health (STIA) policies written after the Regulations come into operation must comply with the requirements set out in the Regulations. Existing health policies (LTIA) will be expected to align to the Regulations as and when such contracts are varied or renewed after the Regulations come into operation. Existing accident and health policies (STIA) will be expected to align to the Regulations by 1 January 2018.

Click here to download the Media Statement, here for the Short-term Act amendment and here for the Long-term Act amendment.

To read a further review by FANews on the subject:

Click here to read the full article which continues on our website.

INTERESTING THINGS WE HAVE READ

Insurance Gateway

Two well written comments from industry players published by Moonstone. One on the FSR Bill and the other on the Proposed Fit & Proper amendments.

Click here to read the article.

FAIS – Enforcement Committee penalties seemingly inconsistent

A summary of a recent enforcement case by Moonstone, where the fines applied for accepting over R5 million of premium through an entity that was not registered as an FSP and where there was no insurer that would appear, in comparison to other fines given, way too low. Have a read and make up your own mind.

Click here to read the article.

RDR, FAIS and Robo-advice: An Appropriate Advice Solution?

An article by Juanita Moolman, a Partner at Webber Wentzel's Financial Regulatory Practice, on the concept of Robo advice now introduced in the proposed amendments to the Fit & Proper standards.

Click here to the article.

Representatives can also be at risk.

An article from Moonstone. **All** Representatives should read this one. Click here to download a copy of the article.

FA News Magazine: October 2016

Who really owns the client? This long-debated question takes on a new twist with the introduction of the big data line item into the debate.

FANews

DO YOUR HOMEWORK

An article on a recent FAIS Ombud determination involving the investment of retirement monies.

Click here to read the full article which continues on our website.

COVER

A special edition was released that included a download of the IISA's 50th Anniversary magazine.

Click here to view the IISA History Magazine.

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