



ASSOCIATED COMPLIANCE

FOR A COMMON PURPOSE

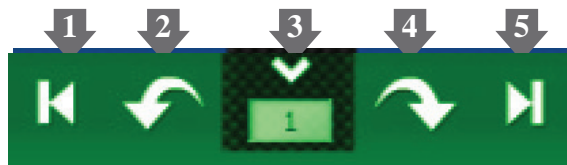
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## FROM AC

### More presentations by the FSB on the latest round of proposed legislation

Last month, the FSB facilitated another workshop with the industry explaining the rationale behind the proposed regulatory changes. They headed this one “*Industry workshop on the proposed amendments to the Regulations and replacement of the PPRs*”.

[Click here](#) to read the FSB Media Press Release.

They told us nothing new, but they did go through the changes ‘one-by-one’ which we found quite useful. Sadly, there are still several unanswered questions but hopefully we’ll get clarity on these in the coming weeks.

The workshop was divided into four parts:

1. Introduction
2. Overview of the approach to the amendments to the Regulations and PPRs
3. Proposed amendments to the Regulations per Part
4. Rule for rule discussion on PPRs.

Parts 3 and 4 are worth reading, so [click here](#) to see the slides.



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## **FSB's feedback on thematic visits conducted on Category I FSPs who do not have a Compliance Officer**

Having visited 99 small FSPs that did not need to appoint a compliance officer, the FSB has now published its findings. The most common trends identified during the onsite visits related to either non-compliance or partial compliance with the following:

1. Risk management
2. Disclosures
3. Agreements with product suppliers
4. Suitability analysis and record of advice
5. Conflict of Interest management
6. Professional Indemnity cover
7. Complaints handling processes
8. Competency requirements, i.e. regulatory examinations and/or qualifications
9. Non-submission of annual compliance reports and/or financial statements.

For a copy of the FSB's publication, [click here](#).



## FICA: Some clarification for the motor industry

This month the Financial Intelligence Centre published a revised Public Compliance Communication No. 07 (PCC07) which reminds motor dealerships of their responsibilities in terms of FICA:

1. Motor vehicle dealers have a duty to register with the Centre in terms of section 43B of the FIC Act;
2. Motor vehicle dealers are required to report cash transactions above the prescribed threshold of R24,999.99 to the Centre, in terms of section 28 of the FIC Act. Cash transactions in the context of motor vehicle dealers include the following:
  - motor vehicle related services provided by the motor vehicle dealer; and
  - buying and selling of motor vehicle parts.
3. Section 29 of the FIC Act requires that any person who carries on a business, is in charge of a business, manages a business, or is employed by a business, must report suspicious or unusual transactions to the Centre. This reporting obligation is applicable to a person who carries on the business of dealing in motor vehicles as defined by FIC.

PCC07 also defines a person who carries on the business of dealing in motor vehicles to be *“any person who is engaged in the business of buying, selling, or exchanging any self-propelled vehicle, including a vehicle having pedals and an engine, or an electric motor as an integral part thereof or attached thereto and which is designed or adapted to be propelled by these means on land, as well as any trailer and caravan.”*

This includes persons dealing in both new and second hand vehicles.

For a copy of the actual communication [click here](#).



## Incentives – Another update

The main function of the FSB is to protect consumers, and high on their agenda is their determination to ensure that insurance sales processes and the way that intermediaries deal with consumers is in the best interests of consumers.

It follows that there are strict rules in place to prevent an intermediary from being incentivised by any person to give preference to a specific supplier over another.

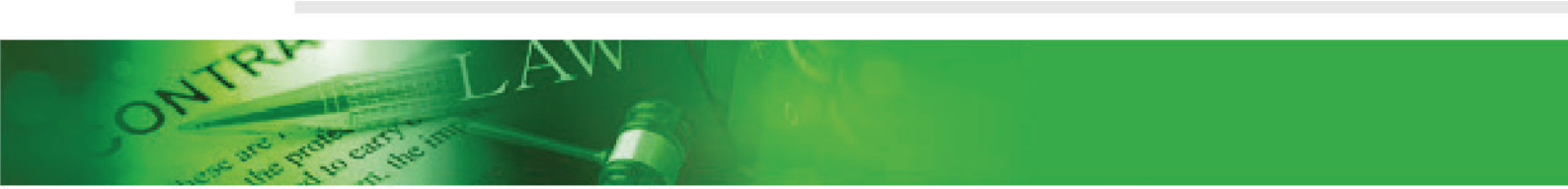
The FAIS General Code of Conduct achieves this by clearly identifying the remuneration that an FSP can earn for providing intermediary services. In summary, this is:

1. Commission, subject to specific caps
2. Fees for outsourced services (such as binders)
3. Fees charged to a client for specific services if agreed to by a client in writing and which may be stopped by the client at any time
4. An additional amount to cover ancillary costs but not to exceed R1,000 per representative per annum.

To avoid any form of circumvention by suppliers, the regulation also states (actual wording):

*“A provider or representative may not avoid, limit or circumvent or attempt to avoid, limit or circumvent compliance through an associate or an arrangement involving an associate with this section.”*

As compliance officers, we have always believed that the various additional incentives such as ‘vouchers’ and ‘points’ provided to motor dealerships and their representatives by suppliers are clearly in breach of these rules and we have been surprised by the FSB’s lack of action taken against those suppliers in the past.



However, the FSB's latest newsletter (Volume 23 dated 3 March 2017) clearly warns suppliers and dealerships alike to refrain from this practice as it will attract regulatory action.

Consequently, it is our suggestion that motor dealerships:

1. Inform their F&Is in writing not to accept any vouchers, points towards valuable considerations, prizes or any other incentive offered or provided by a supplier.
2. Include in the F&Is letters of appointment that contravention could lead to debarment.
3. Inform suppliers that they no longer wish to participate in any incentivised programme and that any attempt by suppliers to incentivise any of its F&Is will be reported to the authorities.

It is the function of compliance officers to identify, assess, measure and report on the regulatory risks assumed by the FSP due to its conducting insurance business, so motor dealerships can expect their compliance officers to monitor this even if they failed to do so in the past.

For a copy of the FSB's latest newsletter, Volume 23 dated 3 March 2017 [click here](#).





## Demarcation exemption application details published

Regular readers of our newsletter will remember that our January newsletter provided information on the ‘Demarcation Regulations’ which, from 1 April 2017, prohibit any person or company from providing any service that could be deemed to be a medical aid. We mentioned that current providers would be given two years to ‘wind up’ their current activities in terms of a transition period.

The actual transition conditions have now been published which include a two-stage application process. First an exemption applicant is required to submit basic information before 31 March 2017. The Council may then grant an exemption on condition that the applicant complies with the second stage requirements within 30 days from the date the exemption is granted.

In the second stage, applicants are required to submit extensive application information, a full list of which has been included in the publication. In addition, the application must include how the applicant will operate in the best interests of the policyholder.

For full details [click here](#).



## Protection of Personal Information Act (POPIA)

If you have not yet read any of these articles we would encourage you to do so as this will provide the information necessary to prepare you for POPIA implementation and will also explain how we can support your desire to be POPIA compliant.

### Openness

Transparency is a well-known concept within the financial services industry with its inclusion in both the FAIS General Code of Conduct and TCF. Furthermore, it is a requirement of POPIA and is addressed in Condition 6 of the Act.

Transparency, otherwise referred to as “openness” places notification obligations on responsible parties as well as requires responsible parties to keep records of all processing activities under their control. This article deals specifically with the notification obligations.

### Notification Duty

POPIA requires that data subjects must be advised when their personal information is collected. In some instances, companies have addressed their notification obligations in a separate “Privacy Policy” which was not a legal requirement in the past. POPIA however now requires the adoption of a Privacy Policy. Privacy and the protection of data subjects’ personal information can also be addressed contractually with data subjects using service level agreements or broker appointment letters for instance.

Data subjects must be advised of the purpose for the collection of their personal information. This notification must include:



- A list of the personal information that is being collected
- Where the personal information is collected especially where the personal information is not collected directly from the data subject which is only permitted under specific circumstances
- The name and address of the responsible party
- Whether the provision of the personal information is voluntary or mandatory
- The consequences of not providing the required personal information such as non-performance in terms of a contract
- Any law that authorises or requires the collection of the personal information
- Whether the personal information will be transferred to a third country or international organisation and the level of protection that the personal information will have there
- Any information “which is necessary, having regard to the specific circumstances in which the information is or is not to be processed, to enable processing in respect of the data subject to be reasonable” such as:
  - The recipient or category of recipients of the personal information
  - The nature or category of the personal information
  - The data subject’s rights to access and rectify the personal information or to object to the processing
  - The data subject’s rights to lodge a complaint with the Information Regulator.



## Notification timeframes

The general principle is that notification must take place before the personal information is collected and not after the fact.

Where personal information is collected directly from the data subject, notification must take place prior to the collection. However, in instances where the personal information is collected from another source, it may not be possible to provide notification prior to the collection. In such instances, notification must take place as soon as reasonably practicable after it has been collected.

If a responsible party has complied with the notification obligation once, it does not have to do so again if the same or similar personal information is collected and the purpose remains the same.



## Exceptions to the notification obligation

- Where the data subject consents to not receiving the notification, a responsible party need not provide such notification. Consent must however be specific and informed. A blanket consent is not sufficient.
- Where non-compliance would not prejudice the legitimate interest of the data subject, notification need not take place.
- Where non-compliance is necessary:
  - to avoid prejudice to the maintenance of the law by a public body
  - to comply with the laws relating to the collection of taxes
  - to conduct proceedings in any court or tribunal
  - or in the interest of national security.
- If compliance with the notification obligation would prejudice a lawful purpose of the collection, the responsible party does not have to comply.
- If compliance is not reasonably practicable in the circumstances of a particular case, the duty does not apply.
- In instances where the information will be de-identified, compliance is not necessary.
- Where the personal information will be used for historical, statistical or research purposes the data subject does not have to be notified.



## Method of Notification

In some instances, compliance with the notification obligation can be achieved in the form of a Privacy Policy to which data subjects are referred, however it may also be appropriate to provide data subjects with specific notifications at the time that the personal information is collected, for instance in a proposal or application form.

In compiling a Privacy Policy that will satisfy the notification obligation requirements, consideration must be given to:

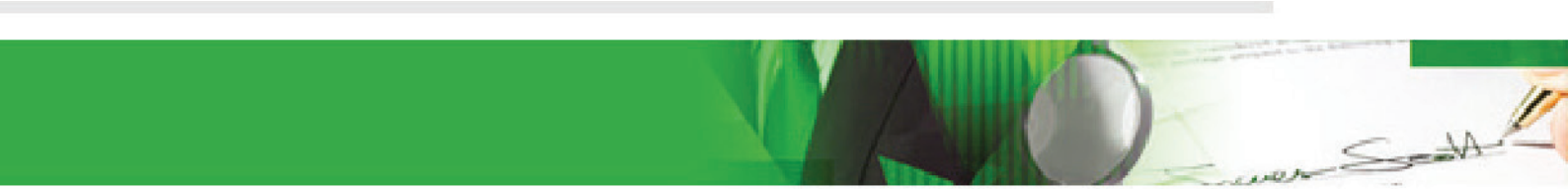
- Who is collecting the personal information?
- What personal information is being collected?
- What is the purpose for which the personal information is being collected?
- Who will the personal information be shared with and why?

## Special Notification Requirements for Directories

A directory is a printed or electronic record of people referred to as “subscribers” who have contracted with an electronic communications provider that is available to the public. POPIA requires that responsible parties that provide directories (e.g. Telkom’s telephone directories) must:

- Tell the subscribers about the purpose of the directory
- Warn the subscribers about what their personal information might be used for
- Make it free and easy for the subscriber to object to the personal information being used, or for the subscriber to verify the personal information or withdraw some or all of the personal information.

Companies will need to formulate the most effective means of ensuring that the notification obligation is achieved in accordance with the POPIA requirements.



As POPIA grants data subjects the right to demand the identify of all third parties or categories of third parties who have access to their personal information, companies that share personal information with third parties must ensure that they are able to satisfy this notification obligation.

If compliance with the notification obligation has been achieved, data subjects should not be surprised as to the purpose for which their personal information is being used.

### **An interesting corollary to POPIA**

[This article](#) by John Giles on the new Cyber Bill and how it cross references to POPIA is well worth a read. It is both informative and entertaining in style.

[Click here](#) to read more about Cyber Crime.

## FROM AC HAS

Both honesty and integrity are to be held in high regard for success in every aspect of life, including your profession. The FSB places the appropriate amount of emphasis on these two aspects that must be complied with by financial service providers. So much so, that the FSB has added a third aspect, namely “good standing” in the amendments.



AC HUMAN ASSETS SERVICES

We should be familiar with these terms, but do we still remember what they stand for?

### **Honesty**

Not only the refusal to lie, but honesty is the quality, condition or characteristic of being fair, truthful and morally upright.

### **Integrity**

The quality of possessing and steadfastly adhering to high moral principles. Comes from the Latin word *integer* meaning entire, whole, complete. Integrity means following moral convictions and doing the right things in all circumstances.

### **Good standing**

Means the status of a company of a profession who is not suspended or disbarred, and is registered with a proper authority and has paid all the required fees and submitted the required paperwork for the profession/industry/membership etc.

(Corporate behaviour)

The status of a person who is known to be of good character and to be trustworthy.

(Personal behaviour)

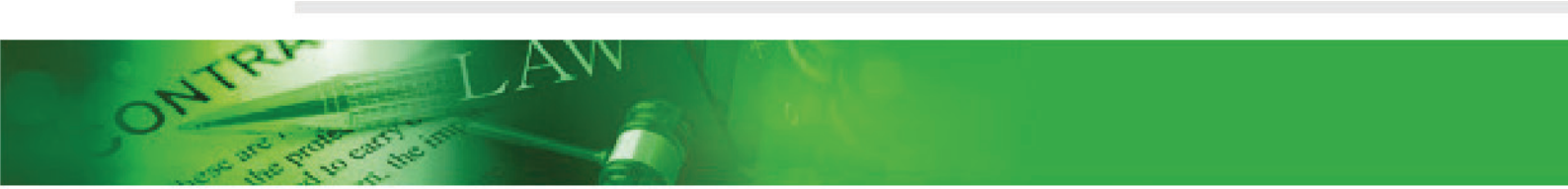
*Refer to the AC Special Newsletter for details of the changes in Honesty, Integrity and Good Standing.*



Some of the HR implications that come to mind for these changes and additions are:

**Possible HR implications with regards to honesty, integrity and good standing:**

Recruitment processes	<p>Include behavioural interview questions in your interview guide (that need to be asked to all candidates fairly and consistently) that probe different types of scenarios and situations. This type of questioning uses the premise that the most accurate predictor of future performance is past performance in similar situations. Look at the sample Interview Guide that is in the HR Manual on our website. It can be found under: Recruitment and Selection/Sample Interview Guide.</p> <p>Include a Consent Form in your interview pack which your candidate needs to sign to acknowledge and agree to certain checks being done as part of the recruitment process. Credit checks need to be conducted as a representative's inability to manage their personal financial obligations can be seen as a "fit and proper" matter. Pending actions/events are also included in the amendments. Look at the sample Consent Form that has been placed in the HR Manual on our website. It can be found under: Recruitment and Selection/Sample Consent Form.</p> <p>You then need to include this verification step in your recruitment process if you are not currently doing so. Ensure that you do independent qualification checks, DOFA checks as well as testing honesty and integrity during reference checks. Make sure that your candidate has agreed to who you can contact for reference checks. Look at the sample Reference Check form that is in the HR Manual on our website. It can be found under: Recruitment and Selection/Sample Reference Check Form.</p>
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<p>Contract of Appointment</p>	<p>Ensure that your contract of employment includes the FAIS clauses that cover all elements of FAIS, and therefore Honesty and Integrity. Look at the sample Contract of Employment that is in the HR Manual on our website. It can be found under: Basic Conditions of Employment/Sample Contract of Employment.</p>
<p>Code of Conduct/ Disciplinary Code</p>	<p>It is recommended that your disciplinary code/policy explicitly includes the phrases “honesty”, “integrity” and now also “good standing”. Make sure that your employees are very aware that these are requirements of employment and for the representatives and key individuals, inherent job requirements. If you have a penalty guideline, include this as well. Remember to update your debarment documentation to include “good standing”.</p> <p>Include the extensive list provided of incidents that indicate where a person is dishonest, lacks integrity and is not in good standing – see point number 9 on page 13 of the Draft Board Notice.</p> <p>You can include a brief statement in your Code of Conduct as well.</p>
<p>Key Performance Areas</p>	<p>Key Performance Areas must include technical skill requirements as well as soft skill/behavioural requirements. For all registered representatives and Key Individuals, honesty, integrity and being in good standing must form part of the KPAs.</p>
<p>Frequency of checks</p>	<p>It is advisable to include a Consent Form in your induction/orientation packs that allows the employer to do verification checks on a regular basis (not just during the recruitment process) – at least annually. For existing employees, this form can be given to sign once the amendments have been formalised. See sample Honesty and Integrity and good standing form that is in the HR Manual on our website. It can be found under: Statutory Compliance/Honesty, Integrity and good standing/Confirmation of verification checks.</p>



*"Honesty is the best policy, Fernbaugh, but it's not company policy."*

If you have any other challenges that we have not included, please let me know so that we can assist and/or share the information.

Should you have any specific questions with regard to any other HR matters, please send these to [bronwyn@associatedcompliance.co.za](mailto:bronwyn@associatedcompliance.co.za) or [has@associatedcompliance.co.za](mailto:has@associatedcompliance.co.za).

## FROM AC-PROOFED

### Why Grammar and Spelling Matters in Your Social Media Marketing

Let's face it, social media is not just for those teeny boppers who wear their pants too low, and post selfies like there's no tomorrow! Social media is one of the best ways to market your brand or sell a product. If you are tech-savvy, or if you can afford to employ a social media expert, you must make sure that all your posts are free of spelling mistakes and grammatical errors.



AC-PROOFED

Correct spelling and grammar is vital because it says something about your company and you as a professional. Also, if you have errors in your content, your readers may misunderstand your message.

All of what you're about to read applies to all forms of social media marketing: writing a blog post, Tweeting, Instagramming, Snapchat messaging (apparently the new craze), adding posts to Facebook, or something as old-fashioned as a sign or billboard.

#### What do typos do to your message?

Picture the scene... you're selling motorcycle insurance and your post says: "We *except* all ages of drivers" when it should say "We *accept* all ages of drivers" – quite the contradiction, don't you think?



## Why care about grammar in marketing?

If there's a typo in your message, any potential customers' trust in you and your product will plummet. If you're not careful, these people may be worried that all your work is equally sloppy. After all, if you didn't bother to check for grammar and spelling errors, how can they be sure you'll deliver on other elements of your company's promise?

The million-dollar question is how to stop making typos! How can you succeed where others have failed? Short of becoming a superhuman grammar and spelling guru whose fingers never strike a wrong key, you can do these things:

**Be aware of your bad habits and avoid them.** I know... easier said than done. But if you know you have trouble with who's vs. whose or affect vs. effect (for example), pay extra attention to that particular problem. Maybe it would be a good idea to stick a Post-It note on your desk to remind you.

**Re-read what you wrote. Out loud.** Seriously. It sounds simple, but if you take a few minutes to read your message, you might be surprised at the little things you catch.

**Hire a proofreader (here's where I come in).** It's always helpful to put your money where your typos are. Paying attention and enlisting others to pay attention for you can work wonders.

Some errors are more errant than others. Here are a few that you may be making, and other areas where you want to put your best word forward.

### Switching, dropping or adding letters

These errors are easy to spot for a casual observer. Unfortunately, if you've been working on the message for a while, you may either be working on autopilot, or you completely missed it!



## Using quotation marks for emphasis

You'll see this more often on billboards than in social media marketing, but it doesn't mean that you should fall into the same trap. In fact, when quotation marks are used and there's not an actual quotation involved, it usually means irony or sarcasm. Make this mistake, and you imply the opposite of what's being said, or you sound like you're making fun of what you're saying.

## Using the wrong word

Whether this comes from not knowing the correct word, getting similar-sounding words mixed up (remember my article on homophones), or writing while you're not concentrating, it can lead to some funny outcomes. It can also be bad news for your company.

## Apostrophes

Where do I start? This must be the most misused punctuation mark ever!

Apostrophes create possessives and contractions. If you're writing the plural form of a word, keep apostrophes out of the picture. Otherwise, your message will look silly.

Then there's the its vs. it's dilemma, another big problem. Its solution is simple, however: all you need to remember is that it's means it is or it has, and its is the possessive form of it.

Keeping your content error-free will make you more believable and you'll get to keep your customers, and perhaps even earn some new ones. And if you need a little extra help, AC-Proofed has your back!

Contact me at [ac-proofed@associatedcompliance.co.za](mailto:ac-proofed@associatedcompliance.co.za) or 083 657 3377.



## FROM THE FIA

During March the FIA published its feedback to the various regulators on the draft PPR, the draft Short- and Long-term Insurance Act Regulations as well as the proposed Conduct of Business Report (to replace the current annual FAIS compliance report).

The covering mail used to communicate with members best described the FIA's stance. [Click here](#) to download a copy.

The various submissions can be downloaded from the following links:

[Draft replacement Policyholder Protection Rule \(PPR\) – Long-Term and Short-Term: Comment to the Financial Services Board, 1 March 2017](#)

[Proposed amendments to regulations under S70 of the Short-Term Insurance Act; Comment to National Treasury, 1 March 2017](#)

[Proposed amendments to regulations under S72 of the Long-Term Insurance Act; Comment to National Treasury, 1 March 2017](#)

[Proposed FAIS Conduct of Business Report \(CoBR\): Comment to the Financial Services Board, 28 February 2017](#)

The FIA also held their FIA and COVER Short-Term Insurance Broking Summit on 17 March 2017 enjoyed by a full house of brokers (both FIA members and non-members) as well as other representatives from the short-term insurance industry.

While there were several speakers addressing the changes necessary to accommodate future trends in the insurance industry, the keynote address was given by Prof. Nick Binedell who said that the goal of business was to create value, while all stakeholders in South Africa should focus on creating shared prosperity.

A synopsis has been provided by the FIA, [click here](#) for access.



## FROM THE IISA

### CPD online

It is now possible to access selected IISA events via COVER. We quote the COVER Newsletter dated 9 March 2017:

*COVER and the IISA have a longstanding relationship and we have been looking for a way to bridge the distance gap for our readers/viewers and IISA members who are unable to attend the highly relevant IISA insurance forums.*

*These forums can now be purchased to view online. The IISA will select which forums are appropriate for online viewing. Attendees/viewers who have logged in and purchased the course will gain the appropriate amount of IISA CPD hours after completing questionnaires at the end of each video.*

*This kind of initiative will greatly assist people in need of CPD, be it for Professional standards or the soon to be implemented FAIS standards, access credible CPD events no matter where you are in the country.*

On the subject of CPD, we have approached the IISA to have all its presentations, including the Interactive Newsletter, accredited by the IISA in preparation for the FAIS CPD standards. All our workshops and presentations will carry a formal CPD rating. We will keep you posted on this process.



## INTERESTING THINGS WE HAVE READ

### Insurance Gateway



#### **An article from Advocate Dube Tshidi**

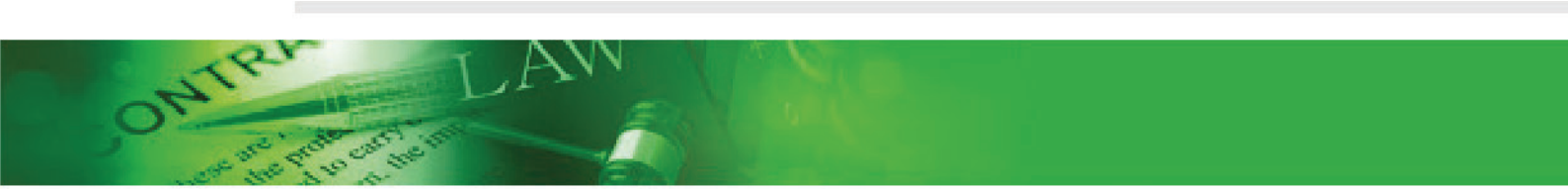
We don't see many publications from Advocate Dube Tshidi, Executive Officer at FSB - it is the operational management of the FSB that usually presents 'opinion' to the industry. This article published in Insurance Gateway explains how excited we all should be due to the imminent implementation of 'Twin Peaks'.

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

In the same article, he talks about inevitable change in a world that is rapidly becoming largely digitised which he believes could lead to a negative impact on the culture of service delivery and consumption, an area on which the FSB is taking considerable notice.

Perhaps coincidentally linked is an article by Rahima Cassim, Fund Manager at Ashburton Investments, who believes that there has been an incremental shift in the balance of power from the insurers to the insured and that against this backdrop insurers must better navigate the shifting technological landscape and deliver superior customer service and product innovation.

[Click here](#) to read his article:



And continuing on this theme, Deloitte has issued a call-to-action for companies to completely reconsider their organisational structure, talent and HR strategies to keep pace with digital disruption. In Deloitte’s largest and most extensive Global Human Capital Trends survey to date, the hallmark study – in its fifth year – reveals that leaders are turning to new organisation models, which highlight the networked nature of today’s world of work. “Technology is advancing at an unprecedented rate and these innovations have completely transformed the way we live, work and communicate, both globally and here in South Africa” said Trevor Page, Director Human Capital at Deloitte Consulting.

For full details of the 2017 Deloitte Global Human Capital Trends, [click here](#).

### **Ongoing solvency requirement**

From inception of the FAIS Act, compliance officers have been faced with the difficulty of monitoring an FSP’s solvency. It became even more difficult when the first Fit and Proper requirements were introduced in 2008 when an actual definition of ‘solvency’ was introduced. An FSP must always remain solvent and a compliance officer is expected to report any deviation as an irregularity.

Alan Holton has written an article on this which can be read by [clicking here](#).

### **FANews**

#### **The industry is not filled with charlatans:**

An article on the first consumer aimed event where the FSB and National Treasury participated was held on 3 March. Useful to know what your clients are being told about regulatory change.

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

#### **A Grand Seduction:**

An article on the latest FAIS Ombud determination. Do the regulations stop unsavoury activities by so called FSPs and do they stop clients making stupid decisions? Have a read and see what you think.

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



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