

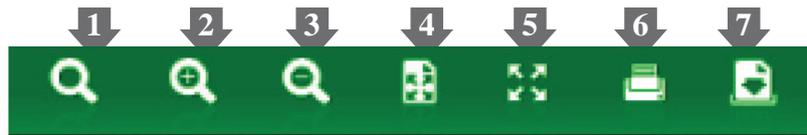


ASSOCIATED COMPLIANCE

FOR A COMMON PURPOSE

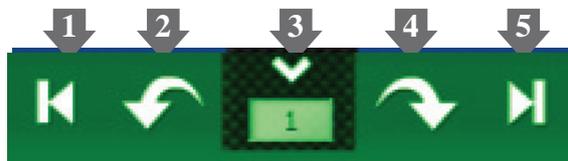
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Alternatively, click and drag on any corner of the pages with your mouse cursor to turn over the pages (just like you would do if you were reading a printed magazine).



Contents

- Click on text to navigate to the page -

From AC

Page 4

From AC HAS

Page 13

From AC Proofed

Page 16

From the FSB

Page 18

Interesting things we have read

Page 25



From AC

AC seminars

We are in the middle of our seminars on the various updated regulations. Participants are being provided with a copy of the relevant presentation along with our Guidance Note on the Fit & Proper and a copy of the PPR gazette.

We will, upon request, provide the same documents to clients who have not been able to attend once the seminars have been completed.

What to expect from AC following our current seminars

For those that have attended the seminars, you will be aware of the level of development we need to undertake to align our previous monitoring process, Guidance Notes and general support structures to ensure you have the maximum pro-active input from us to ensure ongoing compliance with the new regulations, which will include, in so far as they affect you, the PPR and Insurance Act Regulations as well as the upgraded FICA standards. Your compliance officer will work with you at future monitoring visits on these aspects as they roll off the “production line.”

In the meantime, if you have questions please ask.

Insurers and the Application of PPR and Insurance Act Regulations

Activity from insurers in their objective to adhere to the new standards has been very limited - not surprisingly as there is a lot of development work needed.

One insurer who seems to have been very active is Bryte. We have found their approach well thought out and structured.



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Their planned effective date of fee changes on binders from 1 April 2018 may seem brave given that the deadline is 31 December 2018. However, given that switching risk carriers won't be easy - new agreements need due diligence tests and the agreement will likely end up with the same level of fees anyway plus the FSB's oversight (see later article) is possibly why Bryte feel secure in taking this proactive approach.

The Binder activity document Bryte is using to assess binder holders' activities will no doubt drive a matrix that will determine the fees due for each task. We believe brokers need to assess their costs in performing these tasks so they can ultimately see what the true income/loss is per binder once the final fees are paid.

There are a number of FAIS based questions that should be straightforward although there are a couple of standards asked for that are not typical aspects of most FSPs' compliance management programme e.g. corruption prevention, and some that will typically be work in progress e.g. TCF.

One aspect that did surprise us was the management of the collection of broker fees, which as you know has new standards for the broker and responsibilities for the insurer to monitor. The insistence on the insurer having a copy of the written agreement between the broker and "each policyholder" providing confirmation that the "policyholder agrees to the amount and the purpose of the fee" seems impractical, especially in these early days where brokers are struggling to understand what they need to do to comply let alone have implemented yet. We also see this process becoming an administrative burden, more so when all insurers are insisting on their own verification system.

To highlight the practical problems around obtaining "explicit consent" from existing clients, has been highlighted by one of our clients, who introduced a Service Level Agreement over 12 months ago. To date, out of 945 SLAs issued they have received 268 signed documents in those 12 months. Good SLA, good distribution process, poor client response. How will the insurers handle this we wonder?



AC Newsletter, Interactive Newsletter and FAIS CPD

Our Interactive Newsletter currently enjoys an IISA professional standards CPD rating of 1½ hours per presentation and we expect this rating will be maintained within the FSB FAIS standards.

Our standard Newsletter does not have a CPD rating as there is no current mechanism to test readers' understanding of the content. We are considering the feasibility of creating a CPD platform within our Newsletter so that this could be a part of your overall CPD strategy going forward. We will keep you posted on developments.

The current workshop presentations we are hosting will have an IISA Professional designation CPD rating. Application has been made but at the time of release of this Newsletter the level of rating had not been confirmed by the IISA.

VAT increase - The practical implications

A 1% increase in VAT is simply a case of increasing the premiums by 1% isn't it? Well not quite.

The time pressure is obviously a big issue as the various IT platforms that drive the short-term industry need adjusting. Certain policies are subject to declarations which will potentially have differing rates within one policy period.

Accounts packages that issue invoices for both premiums and the various fees charged by brokers will need adjusting.

The claims process that will have dates of loss and some repairs at 14% and later issued repair invoices issued at 15%.

And don't forget the impact on sums insured.



There are other situations that need to be managed, not least of which is the need to notify clients of the changes, which if a 30-day period is to be followed would mean notification by end of February, which is simply not practical and generally will not have happened.

For these reasons, SAIA issued a notice to members and to the FIA on their approach to handling these matters and the need to approach National Treasury and SARS to seek some allowance for the short-term industry to better apply the increase over a longer period.

[Click here](#) to download the SAIA communication of 22 February and [here](#) for a draft document issued by KPMG dealing with some of these practical matters. As you will see, further input to the market has been promised and we will keep you in the loop as and when we see these, as we are sure will the insurers.

EU General Data Protection Regulations (GDPR) – Must you Comply?

We attended a webinar in January 2018 presented by Michalsons, titled, “Must I comply with the EU-GDPR?”

The intention of the webinar was to assist with understanding which companies in South Africa will have to comply with the GDPR.

The deadline for compliance with this gold standard for global data protection law is 25 May 2018.

GDPR is a regulation that requires businesses to protect the personal data and privacy of EU citizens for transactions that occur within EU member states.

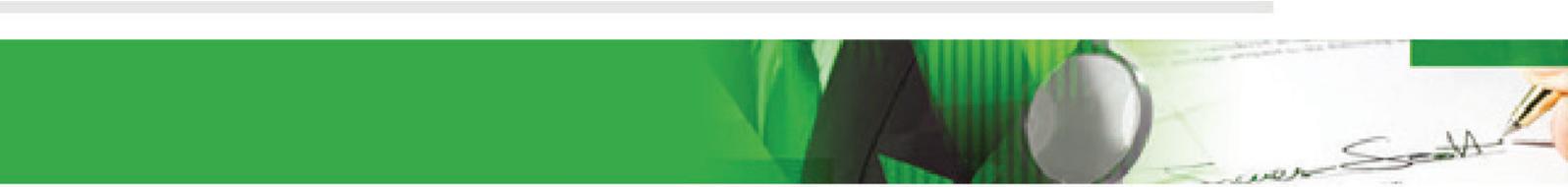


The European Parliament adopted the GDPR in April 2016, replacing an outdated data protection directive from 1995. It carries provisions that require businesses to protect the personal data and privacy of EU citizens for transactions that occur within EU member states. The GDPR also regulates the exportation of personal data outside the EU.

Potential penalties in the form of fines for data security breaches are more severe for responsible parties (data controllers in the EU) than for operators (processors in the EU), for failing to keep personal data appropriately secure.

A two-tiered sanctions regime will apply. Breaches of some provisions by businesses, which law makers have deemed to be most important for data protection, could lead to fines of up to €20 million or 4% of global annual turnover for the preceding financial year, whichever is the greater. For other breaches, the authorities could impose fines on companies of up to €10m or 2% of global annual turnover, whichever is greater.

Any organisation currently holding personal data on EU residents essentially has one of two choices: cease doing business with EU residents (and permanently delete or fully anonymize all currently held personal data), or proactively comply with the requirements of the GDPR. A third option of doing the bare minimum required will heighten the risk of falling foul of the regulation, and increase the likelihood of being subject to significant fines.



Who must comply with the GDPR?

Here are some questions for you to answer. If you answer “yes” to any of the following questions, then you need to comply with the GDPR.

1. Are you established in the European Union?

For you to be established in the EU, the requirement would be that you have “the effective and real exercise of activity through stable relationships.” This could be any legal form such as a branch, division or subsidiary in the union, this amounts to effective and real activity and thus, GDPR would apply. Even minimal activity qualifies you. In addition, if you are established in the EU, it does not matter where you process personal information, you still must comply, even if all the processing activities are undertaken in South Africa.

2. Do you offer goods or services to people in the EU?

Where you offer or envisage offering goods or services even if you are offering free goods and services, in a language used in the EU or in an EU currency, GDPR will apply.

Further questions to ask yourselves are:

- Do you pay search engines to advertise to people in the EU, e.g. Google AdWords or LinkedIn adverts?
- Is your activity international in nature, such as online businesses or online stores?
- Do you have a top-level domain such as .com or .eu?

If the answers to the above are positive, then the GDPR will apply to you.



3. Do you monitor the behaviour of people in the EU?

Where you track people in the EU on the internet, by way of profiling to make decisions about them, analyse or predict their personal preferences, behaviours or attitudes, the GDPR will apply.

4. Are you a Processor (Operator) for a Controller (Responsible party) who must comply?

Remember that the operator (processor) is processing for a responsible party (controller) based in the EU. The operator will be contractually obliged to comply with the GDPR.

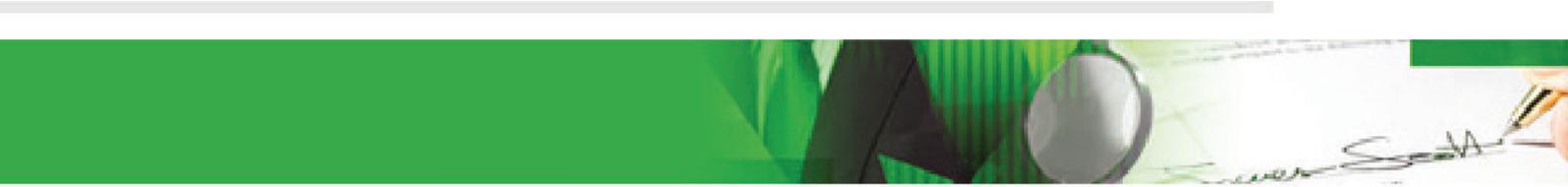
Where you have a major shareholder based in the EU, then you are likely to be contractually obliged to comply with GDPR.

5. Do you have an operator (processor) based in the EU?

Where you have the “effective and real exercise of activity through stable arrangements or relationships” of a processor in the EU and you are the responsible party. This is where you have appointed an operator to process personal information on your behalf in the EU, for example Microsoft Azure, Dropbox or Salesforce which have data centres situated in the EU and you contract them, this would mean that you have the effective and real exercise of the processing activity and a stable arrangement as their controller, GDPR will apply to you and the obviously the operator would have to comply with GDPR.

To conclude, if you offer insurance or provide insurance business to people living in the EU, this would fall under services, and thus GDPR would apply. Your motto should be GDPR first.

We can assist you with your GDPR compliance requirements in preparation for “D-Day” on 25 May 2018.



POPIA, Where Are We?

The effective date has yet to be announced and this could be anything from 12 to 24 months away. Nonetheless, since the Information Regulator was appointed and took office, numerous complaints were lodged with the Regulator.

We attempted to ascertain the nature and source of some 107 complaints lodged by the end of September 2017 (after writing to the Regulator for details on 16 October 2017, we finally received a response in December 2017). The response we received was as follows:

“The Information Regulator (Regulator) acknowledge receipt of your request dated 16 October 2017. The content is noted and will made available to the Members of the Regulator for attention. Further communication will follow in due course.”

Suffice to say, we have not received any further communication. Don't hold your breath, we're not!

One high profile person, King Goodwill Zwelithini, complained and this resulted in the release of a media statement on 12 February 2018. The issue at hand, is the alleged unlawful processing of the King's personal information by MiWay Insurance Company.

[Click here](#) to read an extract from the Information Regulators media statement.



“The alleged conduct by MiWay of processing the King’s personal information without his consent or for performing or concluding a contract, to which the King is a party, would mean that, his personal information was unlawfully processed by MiWay for purposes of direct marketing.”

The Regulator has acknowledged the fact that the pertinent sections of POPIA (the conditions for lawfully processing personal information) are not yet operative, so although MiWay cannot be penalised financially, the Regulator will nonetheless “... engage MiWay with regards to the processes and measures they have put in place to comply with the conditions for lawful processing of personal information as prescribed in POPIA.”

MiWay’s reputation will most certainly be affected.

Information Regulator’s Timetable of Activities

- Submission for tabling of the draft regulations to Parliament - February to March 2018.
- Anticipated date of Publication of final Regulations in Government Gazette - First week of April 2018.
- Announcement of processing conditions effective date? No updates.

From AC HAS

With reference to the January 2018 newsletter and raising the possibility of HR dedicated workshops in terms of implementing the Fit & Proper amendments which comes into effect on 1 April 2018, we have started doing some work on this and would like to throw some ideas out there in terms of what we would like to cover during the workshop.



The best place to start is to look at where we need to end. What is it that needs to be in place to be compliant with the amendments by the respective effective dates?

By **1 April 2018**, the FSP needs to:

1. Have identified and linked all Representatives and Key Individuals to a **FAIS Licence(s) and financial product(s)**
 - Does this change anything with regards to the KI / Representatives competency requirements?
 - Are there additional training requirements and if so, how is your company going to go about this?
 - How are you going to inform your employees of this?
 - Have you confirmed the number of required CPD hours?

2. Have incorporated the amended clauses with regards to **Honesty, Integrity and Good Standing** into the business.
 - Have you included and defined the term “good standing”?
 - Have you looked at where this term needs to be included in your HR processes? For example, your Code of Conduct/Disciplinary Code etc.
 - Do you need to do anything different during recruitment?
 - How are you going to monitor this?



By **1 May 2018**, the FSP needs to:

1. Have a **Competence Register** in place for Representatives and Key Individuals with all the necessary information on experience, qualifications, RE exams, Class of Business and Product Specific training and CPD standards.
 - Who is going to keep this record updated?
 - Should this be incorporated in the responsible person's KPAs?

2. Have the new **Competence standards** in place for new appointments of **Representatives**.
 - Do you understand the differences between minimum requirements and product specific and Class of Business training vs CPD training?
 - Can your company offer some training?
 - What are the qualification criteria and who is exempt?
 - Are there transition arrangements?
 - Should this be included in KPAs?
 - What happens if these are not met?

3. Have met with all the **Operational Ability** amendments:
 - Have you included the changes in your recruitment processes?
 - Are you asking the right questions during interviews?
 - Can you prove that you are formally assessing operational ability for your KI/Rep?
 - Do you need to update any of your policies and procedures?



By **1 June 2018**, the FSP needs to:

1. Have implemented, clarified and have a method of recordkeeping for **Continuous Professional Development (CDP)** that starts its first cycle on 1 June.
 - How are you going to identify the training needs?
 - How are you going to keep record of and track the training?
 - Do you need to include this in any other HR processes?
 - What are you going to do if the requirements are not met?

By **1 August 2018**, the FSP needs to:

1. Have the new Competence standards in place for new appointments of **Key Individuals**.
 - Do you understand the differences between minimum requirements and newly introduced training vs CPD training?
 - Can your company offer some training?
 - What are the qualification criteria and who is exempt?
 - Are there transition arrangements?
 - Should this be included in KPAs?
 - What happens if these are not met?

And we are still in the process of thinking! What other questions can you add? What else do we need to think of?

Send an email to:

bronwynn@associatedcompliance.co.za or has@associatedcompliance.co.za.

From AC Proofed

FAIS and insurance documents, and why you need a professional proofreader

In the January newsletter I highlighted why it is so important to hire a professional proofreader to make sure that your FAIS and insurance documents are correct and show your organisation off in the best possible way.

It is also important that the documents are written in plain language so that there is no chance of any potential ambiguity or misunderstanding. You could also say that the documents are more *user friendly*.

The Broker Appointment letter

Recent changes to legislation mean that the Broker Appointment letter needs to be more of a Service Level Agreement (SLA) than a simple permission to investigate letter. The good news is that this way you could charge a fee provided that your SLA meets certain required conditions.

At the moment, all you have is something like this...

I/We the undersigned hereby request Joe Bloggs & Co. Brokers to investigate the following policies on my/our behalf and request that the noted insurers/brokers provide the requested information.



AC-PROOFED



Short and sweet, and to the point, but unfortunately it is no longer enough. Now you will need to include other things such as:

- Name and FSP number of the intermediary
- Client's name, address and ID or company registration number
- Types of insurances covered by the agreement
- Effective date of the agreement
- Terminology and definitions (in plain English)
- The fact that the intermediary will act with reasonable and proper care, and conduct its business in good faith and with integrity
- What services the intermediary will provide
- What the intermediary cannot be held liable for
- How the intermediary is paid
- What additional fees are charged
- A confidentiality clause
- Intermediary's obligations
- Client's obligations
- The term of the intermediary's appointment
- Termination of the intermediary's appointment
- A place for intermediary and client signatures



Don't forget that document layout is important too. Have you ever filled out your details in a form or letter where there is just not enough space for your name or email address? Bear this in mind when you are asking someone to fill in their details. You are going to have clients who have long surnames and company names.

And, of course, if you are going to put in space for them to write names of policies, don't only put in two lines – they may have more policies than that!

It's time to get in touch with me to find out how I can make your work, and you, look great. (kimh@associatedcompliance.co.za)

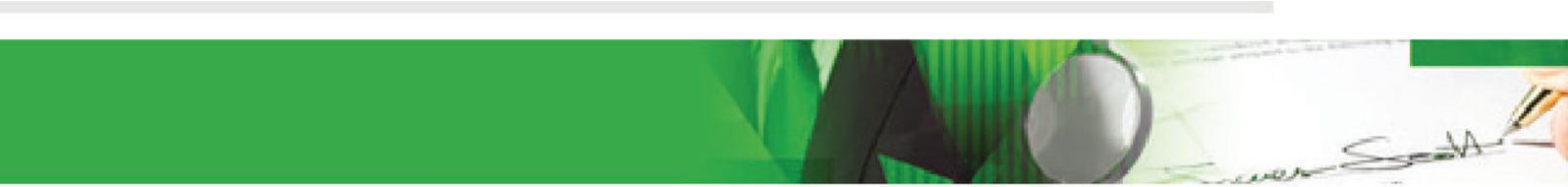
From the FSB

Fit & Proper and the impact on Representatives' supervision standards

The missing piece of the Fit & Proper standards is how the current supervision rules will be amended. We believe these will be available by 1 April 2018, as this the effective date of much of the new regulations. We understand these may provide some degree of “relief” from the need for Class of Business and Product Specific training to be in place prior to being appointed as a Representative. These standards, if they are included, will be a vital part of an FSP's planning in appointing new i.e. not previously appointed, Representatives.

Competency and Representative registers

One of the requirements of the new Fit & Proper standards is that an FSP will need to keep what has been labelled a “competency register” that will be a central record of all competency standards of all Key Individuals and Representatives. This will include all qualifications, Regulatory exams and the new Class of Business and Product training and CPD and all other ongoing training that may be undertaken in the FSP's efforts to ensure on-going competency.



The compliance industry was asked at a recent meeting with the FSB what plans they had for such a register. The FSB also issued a survey on the use of the current Representative register, which currently includes certain aspects of competency information, namely qualifications. The option of separating Representative details from their qualification details to avoid duplication of data we believe is being considered.

From other related industry discussion involving both SAIA, the FIA and the Compliance Institute, discussions are likely to be sought with the FSB on the structure of the Competency registers so that an industry standard can be achieved rather than individually designed formats that would then need to be adapted to fit the likely ongoing requirement of the FSB to have the registers submitted to them by all FSPs at regular periods throughout the annual FAIS cycle.

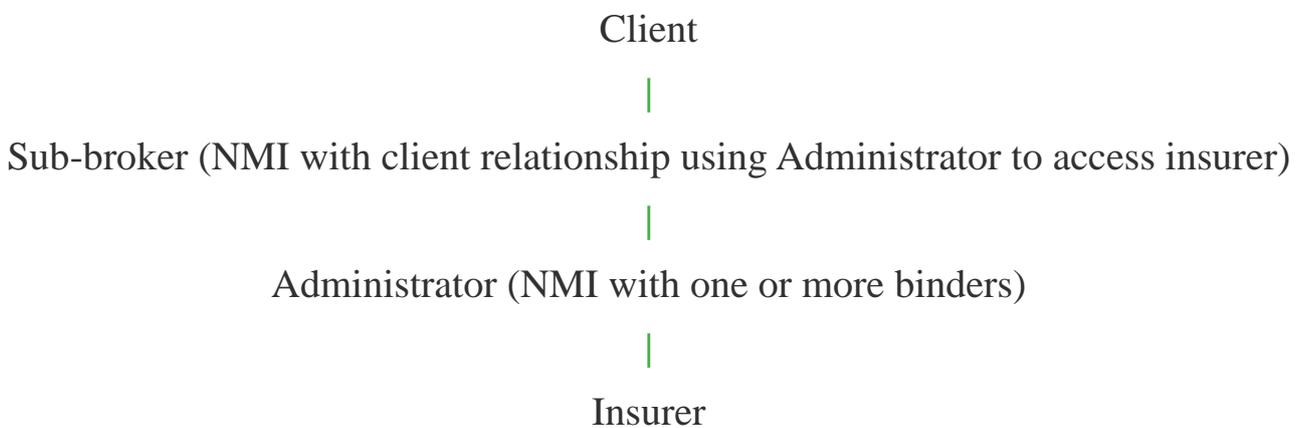
Given this uncertainty on structure, we are reluctant to provide draft formats of registers at this stage notwithstanding that such data needs to be maintained from April this year. Rest assured we will keep you advised of how these discussions progress both with the Newsletter and in specific Fit & Proper communications.



Intermediary agreements Within the Short-term Administrator/ Sub- brokers relationship

With the introduction of the standard within the PPR regulations, insurers and the (ultimate) intermediary must have a direct agency agreement. We asked the question of the FSB as to how this requirement should be practically applied in the administrator model.

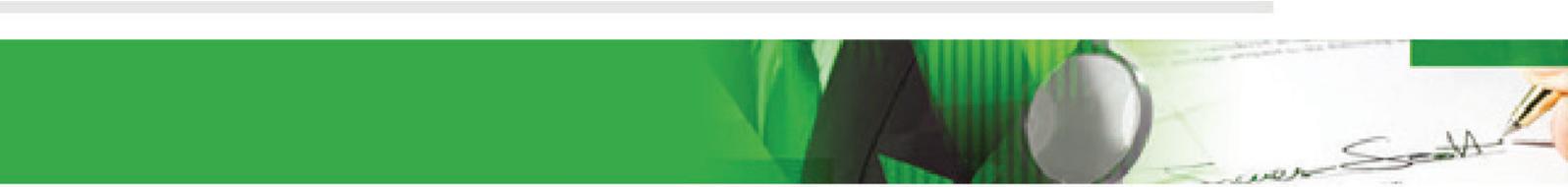
We presented the following distribution scenario to the FSB and asked how the agency agreement requirements should be applied”.



The following is their response:

“With regards to your example... it will depend on whether the so-called “sub-broker” will render services as an intermediary in respect of policies of the insurer or the policyholder.

It will therefore go to the level of what the functions of the sub-broker are and on whose behalf these functions will be performed (being an act directed towards entering into, maintaining or servicing a policy or collecting, accounting for or paying premiums or providing administrative services in relation to a policy).



If the sub-broker is rendering services as intermediary on behalf of the insurer, the requirement to have an intermediary agreement between the insurer and the ‘sub-broker’ will apply”.

What that means is that in the typical administrator/sub-broker relationship, the agency agreement needs to be between the (current) sub-broker and the insurer. This relationship can be facilitated by the administrator and signed by them, if the insurer provides the necessary authority to do so. In the majority of the cases we come across, the current relationship exists between the insurer and administrator only so there will need to be a significant restructuring on the current relationships.

A similar situation exists with the Broker/UMA/Insurer contractual relationship if the current agreements exist between the Broker and UMA rather than the Broker and Insurer. Again, the paperwork needed can be facilitated by the UMA, but the contract must be clearly between the Broker and Insurer.



Cancellation of a Binder – What Happens Next?

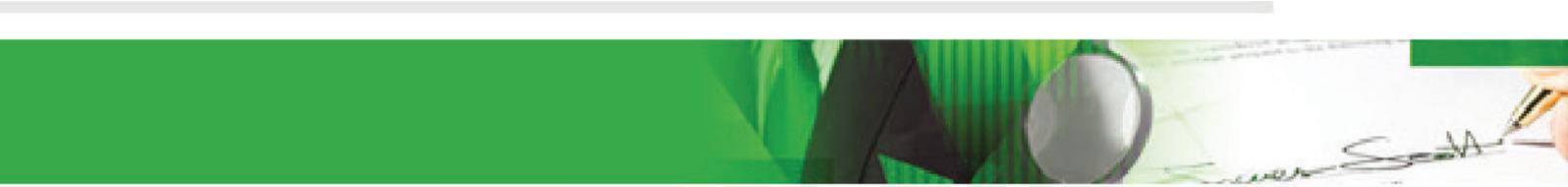
A broker client was recently given notice of cancellation on their binder. Nothing unusual there and a situation that is likely to happen regularly during 2018 as insurers seek to tidy up their binder book.

Once the FSB had been advised of this, as is required in terms of Directive 151, the FSB then approached the broker seeking input on how the process was to be managed. Their questions were as follows:

“In order to ensure that policyholders are not negatively affected by the termination of the binder agreement, this Office requires the following information:

- 3.1. The number and type of policies impacted by the binder termination;
- 3.2. Copies of communication to policyholders informing them of the changes, including confirmation of the date on which the communication was/will be sent;
- 3.3. Confirmation of whether explicit consent was obtained from all policyholders impacted by the binder termination;
- 3.4. If consent was obtained, kindly provide three (3) examples of proof of the consent obtained;
- 3.5. The amount of premiums outstanding and what arrangements have been made in relation to paying it over to the new insurer;
- 3.6. Confirm whether the policyholders were given the option to remain with (current insurer) or move to a different insurer;
- 3.7. Provide details regarding and complaints received from affected policyholders during the termination process and rebroke process; and
- 3.8. Details and copies of all agreements between (current broker) and the new insurer/s of the impacted policies”.

10 working days was allowed for the response.



Fees and Levies 2018

The latest schedule of fees to be applied to FAIS Licences has been released and will become effective from 10 March 2018. [Click here](#) to download a copy.

Draft communication of benefit projections to members of retirement funds

This was released in early February. To quote from the draft document as to its purpose:

“The purpose of this notice is to introduce the requirement that the annual benefit statements retirement funds send to their members must include a projection of the expected retirement benefit, which must be explained in a simple and clear manner.”

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

Updated RE Exam questions

The FSB has announced when the questions in the RE1 and RE5 will be changing because of the updated Fit & Proper requirements that take effect, generally, from 1 April 2018. The circular provides the necessary details, but in simple terms if you are booked to write to until the end of March you will write based on the current regulations. After that you will get questions based on the new regulations.

[Click here](#) to download the circular.



Workshops for RE exams for previously disadvantaged communities

To quote from a recent communication:

“The FAIS Division of the FSB has identified a need to provide Regulatory Examination Workshops for persons / FSPs from previously disadvantaged communities and/or backgrounds.

The workshops entail FAIS preparatory level 1 regulatory examinations to be provided in various provinces to previously disadvantaged communities. As a pilot project, the workshops will only accommodate to a total of 140 delegates (35 delegates per session in each province), this includes key individuals, sole proprietors and representatives who had attempted to write the examinations without success.

The workshops will be held on the following dates and venues;

- 1. 1-2 March 2018 - Pretoria*
- 2. 8-9 March 2018 - Polokwane*
- 3. 15-16 March 2018- Durban*
- 4. 22-23 March 2018- Cape Town*

These dates filled up quickly, but we felt it was worthy of inclusion for information. It’s interesting that there aren’t many areas included. We suspect these will be addressed if this pilot project is a success.

Latest details of withdrawn, suspended and re-instated licences issues late January 2018

[Click here](#) to read the Media Release - Update on licenses for financial services providers 14 Nov 2017 - 18 Dec 2018.

Interesting things we have read

Insurance Gateway

Draft Determination on Equivalence of Reward and Tied Advisers: A Moonstone article that will be of interest to all either already a Tied agent and perhaps more importantly for those considering this as an option in the post RDR period.

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

New insurance rules offer more protection, less bias: An article on the impact of the new binder caps from Moneyweb. For those brokers with binders - do you see this the same way?

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

Insurance Act 2017: A short article by Patrick Bracher of Norton Rose on the passing into law the new Act. It also has a link to a copy of the Act.

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

FANews

FSB puts its foot down: An article on the equivalence of reward situation within the long-term sector. We wonder if a similar situation is on the horizon in the short-term sector if the tied agent model becomes a reality there? [Click here](#) to read the full article which continues on our website.

A Report on a Short-term Ombud matter: This illustrates the need for the broker to be highly aware of the circumstances of their clients. This could have easily been a FAIS Ombud case. [Click here](#) to read the full article which continues on our website.





Cyber Liability and Why it Should be on a Broker's Needs Analysis: An article that deals with the exposures around this class of business and highlights why a broker needs to be alert to these. [Click here](#) to read the full article which continues on our website.

And [click here](#) to read a related article from COVER magazine.

COVER

UK regulator gets tough on a broker and its CEO: [Click here](#) to download the article.

Risk SA

Retirement fund reform: An article dealing with the changes the FSB was instructed to proceed with following the February budget.

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

And finally

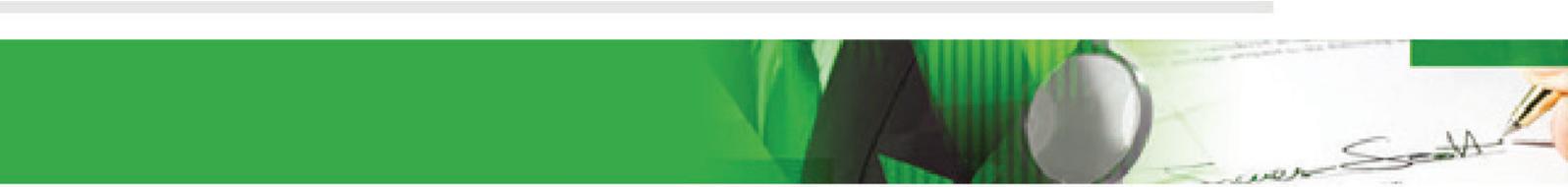
Good Things Guy: Much of what we write and report on is often seen as “bad news” or “depressing”, so when we came across this site (after hearing an interview with the creator Brent Lindeque), we thought it would be nice to include it in our Newsletter.

The purpose of the site is, in its own words:

“...in order to only promote good news, inspirational stories and promote only positive, upbeat media.”

... don't we all need that from time to time.

[Click here](#) to visit their website.



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