

June 2018



ASSOCIATED COMPLIANCE

FOR A COMMON PURPOSE

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### Interactive Newsletter Meetings

We are launching the first of our monthly interactive meetings that will include a presentation of the latest Interactive Newsletter. Each month's presentation is made up of the highlights of the previous two months' newsletters and provides an opportunity to discuss any specific or related topic. These sessions provide 1.5 FAIS CPD hours for all attending provided there is attendance throughout the event. These sessions also aim to provide a platform for all attending to discuss issues of common interest.



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We will be holding a presentation every month in Johannesburg, Durban and Cape Town and quarterly in the other areas we service, subject to demand.

We have sent an invitation to clients, that includes cost and booking details, for the first meetings being held in Johannesburg, Cape Town, Bloemfontein and Kimberley.

### Fit & Proper Regulatory Workshop

We will be re-running this workshop following requests from clients who either missed the first series or wish to have a refresher before they finalise the implementation of the various standards demanded.

There will be a session in Cape Town on 12 July and one at our offices in Johannesburg on 17 July.

Invitations have been sent to clients in each area.

## When is CPD not CPD?

The first month of CPD has been plagued with misinformation and misunderstanding.

Organisations (particularly brokers in need of CPD) are asking questions of their product providers/UMAs as they seem to believe they will be waving a magic wand on the provision of CPD.

Many insurers have previously had their training presentations accredited by a professional body e.g. IISA. This accreditation was based on professional standard CPD requirements, i.e. if you held a professional designation such as Associate or Fellow. This was not based on FAIS CPD standards.

So, what is the difference?

Professional standards usually allow product training as CPD whereas FAIS standards do not allow product training. This creates confusion as those in need of CPD are not asking the right question.

And that question is: “is this professional standards CPD? or FAIS CPD? or both?”

Some insurers, distinct from professional training providers, are not clearly understanding their market and simply advertising their current (professional standards) CPD as their general CPD offering. The gap between the two can be immense, especially if not identified early in the CPD cycle, and the compliance process tells an FSP that their staff’s CPD hours are incomplete as it was product based!

Professional bodies are working together to eliminate the misinformation and achieve a level of consistency that prevents any misunderstanding on advertised CPD events.

In the meantime, please talk to us **BEFORE** enrolling for any CPD event or ensure that the necessary questions are asked of the CPD providers i.e.:

- Does the training meet the FAIS CPD requirements?
- Which professional body has accredited the material?

We are seeing many commercial offerings of CPD starting to get to market, mainly online offerings. We have started to keep a list of providers should clients wish to obtain details.

## Accreditation of CPD providers

While the regulations around CPD do not demand a formal accreditation process for providers, it has become clear that the regulator wishes such a process to be in place.

From discussions we have had with professional bodies, it is clear that their CPD approval process considers the standards of the CPD provider and that there are no onerous additional standards that will need to be brought in to ensure the effectiveness of the various providers.

We have previously been accredited via IISA, our chosen professional body, but will seek to achieve their chosen process for further accreditation.

## Related Training Issues

FSPs are also asking questions of their insurer/UMA suppliers on the provision of product specific training. In many cases in the mistaken belief that all Representatives need to have product specific training.

The recent changes to the FAIS Fit & Proper Regulations require product specific training to be provided to Representatives under supervision as at 1 April 2018.

Insurers (and their UMAs) will have a responsibility from the end of this year to ensure that their broker distribution channels understand and are proficient in the products they deal with. This does not mean they must deliver the training; they will require some level of evidence that Representatives are competent.

The FAIS standard that all Representatives on the licence and not under supervision are deemed competent may or may not be sufficient evidence for providers.

It could be argued that the insurer/UMA is the best delivery mechanism for product specific training, but this is not necessarily the case. Any competent person can deliver the training. Finding competent people is the easy part – formatting and running an assessment is the problem area. We can assist if required; you just need to talk to us.

Various interested parties are working to achieve a standard, in conjunction with the FSCA, when it comes to the assessment criteria for product specific training. We believe this is essential if the desired standard for people operating with the financial services sector is to be achieved.

We have seen various opinions on what is an acceptable pass mark for the required assessments ranging from as low as 50% to as high as 100% (assuming the test is an open book affair).

No set standard will equal no actual standard and may result in selection against insurers and poor consumer outcomes.

## And Class of Business Training?

FSPs (well, their Key Individuals) need to ensure that not only the Representatives under supervision as at 1 April 2018 complete Class of Business training by 31 July 2019, but that Representatives moving into new areas of business understand the new classes. For example: cyber liability is (generally) commercial lines but a Representative who has only done Multimark business to date will need class of business and product specific training.

This is a service an insurer may not be able to assist with because of the requirement that this level of training must be provided by an accredited training provider. Providers are slowly going to market on their offerings in this regard and include the Financial Planning Institute of Southern Africa (FPI), Masthead and Moonstone Business School.

Someone we work with on training matters in the Gauteng area has just released their offering on Class of Business training. It's good old-fashioned classroom style training, which we know appeals to many. They will deliver either at our offices or at yours, numbers and facilities permitting. Here is their official release:

***“Ascension Business Academy (Pty) Ltd is happy to advise that we are able to offer face to face Class of Business training.***

***For combined Commercial Lines / Personal Lines Class of Business training, we offer a two-day workshop at the price of R600 per person per day, minimum 10 delegates per day. This fee includes a test as required by the FSCA.***

***Individuals will also be accommodated and will be added to existing workshops.***

***While cheaper online options are available, the workshops offer a genuine learning experience, with the ability to interact and ask questions.***

***Enquiries may be directed to Gordon Dewar on 082 878 4105 / 011 803 9634.”***

You can also liaise via ourselves.

## **FSCA stops the FPI from Administering Regulatory Exams**

**Click [here](#)** to download the press release. This only tells us that there are alleged irregularities. So, for the time being Moonstone is the only provider of RE exams and will be assisting with the logistics for people registered via FPI.

## **Newly Appointed Representatives**

We have provided a detailed Guidance Note in our HAS manual (available on our website) on this subject, but FSPs will need to have a recruitment policy that identifies training requirements of both new Key Individuals and Representatives.

A new Representative that did personal lines in their previous FSP may well need product specific training as the products at their new FSP are substantially different from their previous FSP even though within the same general licence category of personal lines. Or the Representative may have been doing general commercial lines business and is now expected to do marine insurance – they will need a certain level of Class of Business training as well as product specific training.

## Intermediary Agreements

We have started to see insurers updating agency agreements to deal with the range of responsibilities that both the insurers and the brokers have. Issues such as:

- Fit & Proper maintenance of broker Key Individuals and Representatives
- Complaints management
- Standards on levying client fees by brokers and collection of these fees by insurers
- Quote standards by brokers within Rule 11 of PPR (See AC Newsletter April 2018).

## Broker Fees

We have not seen too much activity, either from our clients or from the market generally on a move to client explicit consent, which may or may not include the use of a client SLA. Insurers will need to be checking on this from January 2019. There is not much time left to decide, plan and implement a solution.

### From AC HAS

Considering the recent Fit & Proper amendments which introduced changes in the competence and other requirements of a Representative and a Key Individual, the questions that come mind are: “What effect does the amendments have on inherent job requirements and terms and conditions of employment, if any?” And: “What does an employer have to do if the Representative and/or Key Individual do not meet the requirements?”



AC HUMAN ASSETS SERVICES

Inherent job requirements are the essential activities of the job: the core duties that must be carried out to fulfil the purpose of a position. They do not refer to all requirements of a job. It therefore refers to those duties that if an employee didn't perform any one of them, they wouldn't really be performing the role.

Terms and conditions of employment refer to those conditions that an employer and employee agree upon for a position. Such terms and conditions include job responsibilities, benefits, working hours, dress codes, remuneration etc.

Changes to legislation often affect job requirements and could affect terms and conditions of employment. The reality is that legislation on all fronts changes on a regular basis and legislative requirements prevail over contracts of employment. Employers need to be aware of and adhere to all these changes on a continuous basis. An employer needs to make provision for such changes in the contract of employment by adding relevant clauses, especially in an industry which is as tightly regulated (such as ours). The employer needs to communicate on a regular basis to all affected staff where changes are imminent or, as we are now seeing, in progress.

In terms of most legislation, as is the case with the Fit & Proper amendments, transitional periods are put in place. Employers must be mindful of these transitional periods and ensure that all affected staff are informed and cognisant of revised, new or additional requirements that may affect their continuous employment.

So, what happens to a Fit & Proper employee that, after due communication, reminders and assistance, is no longer a proper fit? Read Part 2 in the July 2018 newsletter.

Please send an email to:

[bronwynn@associatedcompliance.co.za](mailto:bronwynn@associatedcompliance.co.za) or [has@associatedcompliance.co.za](mailto:has@associatedcompliance.co.za).

## From FSCA

### 2018 Annual Reports

At the time of release the 2018 report has not been released.

### 2019 Annual Conduct of Business Report

What we do have is the latest draft of what we are now certain will be the format for the 2019 report. We have decided to hold back on providing details of the changes and will rather await the final version before we give you further details.

Our plan, at this stage, is to update the Guidance Notes we provided in 2017 as well as the questionnaire we developed to assist in identifying the additional data collection areas to allow you to ensure you will be able to submit the report this time next year in as prepared a way as possible. Even the Regulator has acknowledged that FSPs will need as much time as possible to prepare for the submission process – so best we all take heed.

### Tier 1 and Tier 2 Products

The FSCA released a document during June on this subject. We must say that it failed to adequately explain what was being done so much so that we had many queries from clients on the subject.

We issued our version a little later to clarify matters, but still had many queries raised.

Rather than restate what was in the detailed letter, we have provided a copy for you. [Click here](#) to download a copy.

If you have any of the following existing licence categories you will have the choice of including their Tier 2 cousins. In our view you really do need to understand the concept and have a specific plan to use the opportunities presented by the new products:

- Short-term personal lines A-I
- Long-term category B1
- Long-term category B2

Please review the attachment as we will be seeking your instructions, before the end of August, on whether you need to retain these new categories. Later additions will still be possible, but at a fee and subject to proof of experience.

## Retail Distribution Review (RDR) Status Update June 2018

This 22-page document provides an update on the RDR. [Click here](#) to download a copy. To be honest it is not an easy read, but does contain the structure of the last major upheaval within financial services.

We have refrained from a detailed comment at this stage as commentary on possible standards has generally been fruitless. So, in the meantime please have a look and talk to us if you have any issues as to the impact on your business.

## Latest FSCA Application Forms

We held a meeting with the FSCA on the queries we raised with the relatively new application forms. It was a useful meeting and we received long-awaited input on the queries we had raised. While it did not solve all the problems, at least we know how best to deal with queries.

We do expect that the forms will be updated to address the issues raised, not only by ourselves, but the timeframes involved are not known.

## Do you use an Accounting Officer?

If so, the FSCA have confirmed that any changes to these need not be notified to the FSCA, and thus no fee paid.

Where you have an auditor and you change these, then the standard profile change process and fee needs to be followed.

## Annual Financial Statements where not audited

A reminder that where you use the non-audited financial statement route, as allowed by the Companies Act and allowed by FAIS if not handling client premiums or funds, then Annexure A needs to be completed and supplied with your annual statements.

[Click here](#) to download this document.

## Annual and Monthly Statements where FSPs do Handle Client Funds or Premiums

Your financial controls need to incorporate the use of the solvency declaration (which we supply with each monitoring report preparation) and when submitting the annual statements this declaration must be signed by the Chief Financial Officer, or a person or equivalent status.

This process must become a standard part of your ongoing management account process.

## FIC Implementation Update

The FSCA (as distinct from the FIC) released an assessment document during June to assess how well Accountable Institutions (AIs) have progressed in implementing standards aligned to the (not so) new FIC amendments. The main issue with the request is that it was sent to all FSPs, so once again we had a string of queries from our non-accountable institution clients as to what they should do.

The deadline for a response was 30 June 2018.

As the format of this questionnaire was good, we intend using it as an ongoing checklist on what to do. As we understand it, the 2018 annual FSCA report will also have a separate report for AIs on similar matters so the pressure is really on the AI to up its game to the new standards.

## Debarment Notifications

Updated paperwork related to notifying the FSCA of debarments was released in June. [Click here](#) to download a copy of the FAIS Notice (17) which includes the new format forms for reporting. These must be added to your debarment procedures and any previous versions removed/deleted.

The new forms also bring with them a revised methodology of the actual reporting. There is now a two-part notification process:

Part 1: Provides initial details of who is being debarred and the category of reason for the debarment and must be submitted within five days of the debarment.

Part 2: Provides for the submission of supporting documentation to the process and must be submitted within 15 days of the debarment.

We are in the process of updating our Guidance Note on the subject for inclusion in the AC Manual on our website.

## From the Prudential Authority

### The New Insurance Acts

The Prudential Authority (PA) has released confirmation that the new Insurance Act will be formally enacted on 1 July 2018. [Click here](#) to download a copy of the formal publication.

We will provide more detailed input to clients most affected over the coming weeks' monitoring visits. In the meantime, we encourage all insurer and UMA clients to pay particular attention to the various key aspects highlighted in this document.

## From National Treasury

### The Updated Short- and Long-Term Regulations

These have been released. Of specific interest are the changes to the premium collection regulations. The IGF will still not form part of the new framework but the exact date from which IGF will fall away is not made clear. The proposed changes provide for a 12-month transitional period for certain aspects of the new regulations to allow insurers to agree trading terms with their brokers. [Click here](#) to download a copy of the Notice or [here](#) to download a copy of the High Level Response.

An interesting comment was that the Regulator has always been of the opinion that interest earned by a broker on insurer premiums held should accrue to the insurer. They pointed out that the regulations, at least for now, are not being amended to create this situation, thus an insurer can allow a broker to earn that interest if it is happy to do so.

We understand that the likely effective date of the changes will not be earlier than 1 October 2018, so for now at least the IGF must continue with business as usual.

## From the Compliance Institute of Southern Africa (CISA)

CISA facilitates a number of focus groups, one of which is the Anti-Money Laundering Forum. This forum released a document, written by Gerald Katerere recently entitled:

### FINDING THE BALANCE BETWEEN COMPLIANCE AND BUSINESS OBJECTIVES

For all struggling with the implementation of the amended FICA standards this is a worthwhile read.

[Click here](#) to download.

## From the Ombudsman for Short-term Insurance

The first edition for 2018 of the Ombudsman's Briefcase has been released.

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

## From the Council for Medical Schemes

The following will be of interest to all involved in the medical schemes arena, including those that play on the fringes and would be directly affected by the exemption process referred to:

***“The Council for Medical Schemes has published Circular 25 of 2018 which gives guidance on the new Demarcation Exemption System and the relevant information that affected entities are required to submit.***

***The circular draws your attention to the details of insurers and financial service providers who provide indemnity products that are deemed to be doing the business of a medical scheme and that have been exempted in terms of section 8(h) of the Medical Schemes Act, with effect from 1 April 2017 to 31 March 2019.”***

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

On the subject of the CMS: [click here](#) to download a copy of an article on fraud within the medical schemes environment.

## Interesting things we have read

### INSURANCE GATEWAY

#### **Managing conflicts of interest and the consequent reputational damage for such entities and/or individuals requires some serious attention from society, business and leaders**

Given the move to a market conduct regulatory framework and the concept of good standing, this article perhaps documents what this may well mean in a practical sense.

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

#### **How the GDPR affects South Africa**

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

#### **Two recent FAIS Ombud matters** (summary courtesy of Moonstone)

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

### FA NEWS

#### **Are amendments to the bill questionable?**

An article about the proposed amendments to the Medical Schemes Act that seeks to align to the new National Health Insurance Bill. Some big issues are addressed for both the structure of Medical Aid Schemes themselves as the role of the broker in the sale of medical aids as it proposes that they be removed from the distribution channel completely.

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

### **Whose fault is it?**

An article on a recent FAIS Ombud matter where the broker was found to be at fault. Why? Incorrect security on a car and poor recording of the advice provided to the client on the matter, even though the client changed systems and did not advise the broker. While we may all debate the actual circumstances, the Ombud has ruled and all brokers need to take note. Such a simple matter, well at least it should be, yet nearly 15 years in and brokers still don't follow the standard. The cost? R355,000.

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

### **Authorities flex their muscles**

An article on a recent workshop where, to allay concerns on recent regulatory changes, specifically Twin Peaks and the dual regulators, National Treasury (Treasury), the South African Reserve Bank (SARB) and the Financial Sector Conduct Authority (FSCA) recently held a Twin Peaks Workshop.

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

### **A new playing field with the introduction of the FSCA**

A similar themed article on regulatory changes. This time around the creation and functions of the FSCA.

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

## COVER magazine

**A summary of the recent SAUMA conference.**

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

## Other publications

**Latest data from Pi Financial Services Intelligence**

[Click here](#) to download this latest report that has now been extended to include demographics. We wonder how this is available so soon given the FSCA have only just started to collect data at this level.

**A new way of learning legislation**

You need to have a look at this article. Compliance learning goes to a new level. The GDPR (The European version of POPIA) has been turned into an audio book. Can you imagine listening to this while making dinner, driving to work or more appropriately before you go to bed, as without a doubt this would cure most cases of insomnia.

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

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