

July 2018



ASSOCIATED COMPLIANCE

FOR A COMMON PURPOSE

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From AC

AC Website (www.associatedcompliance.co.za)

Our new website is now available. We have refreshed the look and feel and updated all necessary information, including all three of our e-brochures:

- AC corporate profile
- AC HAS
- AC-Proofed



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The two online manuals have also been reviewed and updated to align with the latest Fit & Proper standards.

You will need your password to access the manuals. If you need a reminder of yours, send a request to info@associatedcompliance.co.za.

The website contents and both manuals were proofread by AC-Proofed.

Interactive Newsletter presentations for August

The planned dates for August are:

AC Offices Johannesburg: 31 August 2018 at 10:00

AC Pretoria: 7 August 2018 at 10:00 and 24 August 2018 at 13:00

AC Cape Town: We will submit a specific invitation to clients early in August once the venue has been finalised

The fee for AC clients, payable in advance to secure the booking, is R250 excluding VAT. 1½ hours FAIS and Professional Standards CPD.

Class of Business training

Our first one-day classroom-based training offering for this training requirement will be held on the following dates:

AC Offices Johannesburg: 6 August 2018 from 08:30 to 16:00

Cape Town: Venue: To be Confirmed on booking. 10 August 2018 from 08:30 to 16:00

Cost: R800 per person excluding VAT.

Bookings will be on a first paid first booked basis. Bookings and proof of payment confirmation should be sent to info@associatedcompliance.co.za.

This is aimed at Reps who were under supervision on 1 April 2018. While their deadline to complete this training is 31 July 2019, it needs to be considered that Reps remain under supervision until this training has been completed – so the sooner it is done, the sooner supervision may be completed.

Fit & Proper Regulatory Presentation Re-runs

We held a number of these around the country in July, based on demand. Our next one will be in Pretoria on 21 August so if you missed out the first time around or simply want to refresh your understanding of the changes, then book a spot.

Bookings are based on a first paid first booked basis. The cost per person is R400 excluding VAT. Bookings and proof of payment confirmation should be sent to info@associatedcompliance.co.za.

Product Training

The material being supplied by insurers is slowly growing, with at least two of the big insurers (Santam and Bryte) having released their material during July. Santam's is in an online format and Bryte has study material and an assessment per product, with the assessment to be conducted by Bryte – for which a 90% pass mark is required.

We understand that the FSCA are considering a Guidance Note on pass marks but will stop short of setting a specific pass mark.

The Fit & Proper Production Line Continues

In July we finalised:

- **An updated draft Section 13 certificate** (mandate letter) to cater for the new Tier 2 products and Execution of Sales process. If you have already added these to your own or your Reps' profiles, the letters must be updated. This can be accessed via the AC Manual on our website (www.associatedcompliance.co.za) or by request via our offices.
- **Representative Supplementary Information Document:** The recruitment or promotion (to KI and/or Rep status) process is now far more complicated. The need for Class of Business and Product training, even for registered Reps, need to be identified and plans made. The FSCA application paperwork does not extract the required detail to enable the KI or the HR department to establish what their responsibilities for training will be upon employment/promotion as the forms did not test the honesty and integrity aspects, and still don't. As a result, we have reviewed and upgraded our supplementary information forms for both KIs and Reps. We will be supplying these as and when required to ensure we have the required level of information to make informed decisions.
- **Ongoing Conflict of Interest and Honesty and Integrity Assessments:** For some time, we have recommended the need to assess these aspects on an ongoing basis, usually once a year. We have upgraded this document so that it is aligned with the new Fit & Proper standards.

The practical application of standards for both recruitment and ongoing checks on staff have been addressed in a new Guidance Note from AC HAS on this subject and is available from our website (www.associatedcompliance.co.za) or by request via our offices.

What's Next?

The Fit & Proper Board Notice included a requirement to notify the FSCA of the “classes of business” a key individual manages and oversees. This must be completed by 30 September 2018.

The way in which the FSCA would like this information to be supplied is via a fully completed and signed FSP4D form.

Section 4 of the form asks about classes of business overseen. It should be noted that classes of business are not necessarily aligned to license categories. For example, on the life insurance side the class of business is noted as “long-term insurance” yet there are several FAIS license categories that would fall within this class. The two short-term classes do align to the FAIS license category.

Currently, the detail of a KI's license status only refers to their FAIS license status and not oversight of classes. Once this exercise has been completed, this will be amended on the FSCA website.

We will be submitting requests to each client and supplying the required form detailing the sections that require completion in the first week of August.

Tier 2: what did you decide?

We sent our final reminder to clients who had not responded as to whether they needed or wanted the new license categories they 'qualified' for. Not all clients responded by the 31 July deadline. We have taken the stance of leaving the applicable additional categories in place and await the expected query from the FSCA.

If you have retained these new categories remember to:

- Update Rep mandate letters as needed.
- Adjust your competence registers to reflect the new categories.
- Adjust your documented Business Plan (a Fit & Proper requirement) to reflect how these new categories "fit in".
- Adjust work flow standards as required.
- Adjust and/or create analysis and record of advice documents that align to the new categories.

Lloyds and the Need for Agency Agreements

For a very long time, Lloyds have not required an agency agreement to be in place between themselves and their brokers. Due to the new PPR rule on agency agreements, they have now implemented a standard. They have stated that an agreement should be in place and who has authority to draw up these agreements. Lloyds has agreed with the FSCA that a tripartite agreement may be entered into between the Lloyds Lead Underwriter, the Coverholder and the Intermediary (assuming that the Coverholder and Intermediary are different entities). It does not prescribe the standards which poses problems around the increased regulatory oversight demanded from the insurer.

Privacy Policies / Notices and Consent Forms / Clauses – The Differences

Over the last few months, we have had many enquiries relating to consent clauses and privacy policies or notices, and there appears to be some confusion about their use. In the FAIS space the obvious document where this is likely to occur is the FSP's disclosure notice. The lawful basis for processing of personal information is as follows:

- a. **Consent:** the individual has given clear consent for you to process their personal data for a specific purpose.
- b. **Contract:** the processing is necessary for a contract you have with the individual, or because they have asked you to take specific steps before entering into a contract.
- c. **Legal obligation:** the processing is necessary for you to comply with the law (not including contractual obligations).
- d. **Vital interests:** the processing is necessary to protect someone's life.
- e. **Public task:** the processing is necessary for you to perform a task in the public interest or for your official functions, and the task or function has a clear basis in law.
- f. **Legitimate interests:** the processing is necessary for your legitimate interests or the legitimate interests of a third party unless there is a good reason to protect the individual's personal data which overrides those legitimate interests. (This cannot apply if you are a public authority processing data to perform your official tasks.)

At least one of the above must apply whenever you process personal data.

Remember that consent forms are primarily documents in which you are seeking permission to process personal information in a certain manner. The golden rule is that you should avoid making consent to processing a precondition of a service.

Privacy Policy and Privacy Notices

A privacy policy and a privacy notice are artefacts with two distinct purposes.

Privacy Policy

This is an internal statement that governs an organisation or entity's handling practices of personal information. It is directed at the users of the personal information. A privacy policy instructs employees on the collection and the use of the data, as well as any specific rights the data subjects may have.

A privacy policy typically contains sections to address:

- Scope
 - Type of information (electronic, paper, encrypted).
 - Who the policy applies to (employees, contractors, vendors).
- Policy statement
 - Expected behaviour.
 - Consequences of non-compliance.
- Definition of personal information
 - Information classification.
- Protection standards.
- Destruction standards.
- Who to call for questions and concerns.
- An effective date.

It is critical that an organisation is compliant with the clauses of its privacy notice as regulators will hold the organisation accountable for meeting those commitments. The privacy policy will guide employees on how to be compliant with the privacy notice.

A proper privacy policy should facilitate legal and regulatory compliance allowing employees to focus on being “policy compliant”, implicitly making them compliant with laws and regulations. The operational guidance that a privacy policy provides prevents each employee or each department from needing to be conversant with and interpret individual laws.

Privacy Notice

This is a statement made to a data subject that describes how the organisation collects, uses, retains and discloses personal information. A privacy notice is sometimes referred to as a privacy statement, a fair processing statement or sometimes (incorrectly) a privacy policy.

A privacy notice typically discusses:

- When you collect personal information.
- Why you collect personal information.
- What information is collected.
- How you protect the information.
- When you share the information.
- Who to contact
 - Where questions should be directed.
 - How to opt-out / opt-in.
 - What to do if someone thinks there is a problem.
- An effective date.

A good example of this is the Information Regulator’s Privacy Notice. This can be found [here](#).

Protection of Personal Information Act (POPIA) – Practical Strategies for Compliance

This is an IISA FAIS CPD accredited workshop.

The workshop will provide an introduction to understanding POPIA and the conditions, rights and obligations imposed on organisations that collect and process personal information of individuals and/or juristic entities. Topics will include:

- Categories of personal information.
- The five phases of the privacy compliance programme.
- Best practice strategies for complying with the processing conditions, additional rights and obligations of POPIA, such as:
 - privacy notices and/or policies.
 - consent, contractual obligations, legitimate interest (current databases and opt-in or out).
 - security safeguards.
 - data subject access requests.
 - incident (breach) response and plans.
 - outsourced processing of personal information.
- Tools required to undertake gap assessments, data inventory, data mapping and privacy impact assessments.

After completing the workshop, executives and people such as HR, IT, underwriting, claims, and accounts who are responsible for the processing of personal information (including where these services are outsourced), will know how to establish the scope of the organisation's privacy programme, and implement the privacy programme to achieve and maintain the organisation's privacy compliance obligations.

FAIS CPD hours: 3.9

From AC HAS

Pre and ongoing employment Fit & Proper verification checks

We have received a number of requests regarding guidance and recommendations on conducting verifications checks as well as conducting ongoing checks with regards to honesty, integrity and good standing.

We have written a Guidance Note on Verifications which is available on the HAS Manual on the AC website.

Please let us know if you have any further comments and/or questions with regards to the screening and checks. It will be great if you can also share with us what you do, if it is working for you and any other suggestions that you may have.

Please send emails to:

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



AC HUMAN ASSETS SERVICES

2018 Annual Reports

These reports were issued at the end of June which has resulted in the submission date being amended to 15 September.

The additional questions revolve around the implementation of the new Fit & Proper standards in April and May 2018. Where this has not been completed, the request is for details of how these changes will be addressed and by when it is required as an addendum to the report. Our recommendation is that the Self-Assessment tool we supplied in May be the basis of this feedback. Once completed, it details all areas already in place that meet the required standards, those in need of upgrade, and those not yet in place (primarily the brand new standards such as remuneration policies and outsource policies).

We have drafted the reports on this basis, but will discuss each report specifically when we meet to review the draft.

All questions on FICA, including the questions targeted at non-AIs, i.e. suspicious and unusual transactions, have been removed as a separate report is to be issued. We have not yet been advised when this report will be available.

2018 levies

FSCA released the updated fees and levies for 2018. [Click here](#) to download the full notice that details all fees and levies due.

Here is a summary of the FAIS fees:

Category I or IV FSP – Including both the FSCA and Ombud levy

A base amount of R4 396; and

KI/Rep x R928

Category I or IV FSP (I.1 and/or I.19 only)

A base amount of R4 396 and

KI/Rep x R640

The fees for brokers collecting premiums have also been increased to 0.02056294% of the total gross premiums handled (as per IGF return) subject to a minimum of R152.

All fees are due on or before 31 October 2018.

Survey on premium collection

The FAIS Supervision department is conducting a survey to determine the extent and involvement of FSPs that are collecting premiums in relation to Insurance products (both Long-term and/or Short-term Insurance).

[Click here](#) to take the survey. We will also be sending the FSCA communication via e-mail, which contains the link to the survey.

Whilst this is not being “sold” as being compulsory we would recommend this be undertaken so that the regulator has meaningful data upon which to base any decisions on regulatory changes. The deadline for completion and submission of the survey is 24 August 2018.

Class of Business training exemption

An exemption was issued on 20 July 2018 that was applicable to all license and Key Individual applications submitted to the FSCA prior to 1 August 2018.

This may indicate that the FSCA has a backlog and is providing clarity on the transitional rule in the Board Notice that provides for the period until 31 July 2019 to complete the Class of Business training if “authorised, approved or appointed” prior to the full effective date of the standards i.e. 1 August 2018. So, people could be appointed and have now applied for authorisation but whose application will not have been approved prior to 1 August 2018. We believe the wording is wide enough for this process not to have been an issue, but the FSCA obviously felt otherwise.

What else is needed?

We need the new supervision standards that set out how the need for Class of Business and Product Specific training must be applied post 31 July 2018. At the time of writing we had seen nothing in this regard.

The 31 July 2018 deadline for the completion of Product Specific training for Representatives under supervision as at 1 April 2018 was too optimistic in our view. We did expect an extension of this date, but at the time of writing we had seen nothing in this regard. Managing the situation as a result will be an issue for KIs and Compliance Officers alike.

In the meantime, we have sent reminders to all affected clients to remind them of the obligations to complete this product specific training.

Credit Life: The move from a Short-term to Long-term Insurer

To recap – this issue will require FSPs selling a short-term product to sell a long-term product and demand the commensurate addition of a new FAIS license category and all that goes with such a change, i.e.:

- Experience in the long-term category for KIs.
- Experience in the long-term category for Reps or they need to be under supervision.
- Reps may well need to attain a qualification where they may have previously relied upon credits from the transitional exemptions.
- Product and Class of Business training.

We have always argued that the product, irrespective of the insurance type, is the same and thus the Regulator should recognise this and provide an exemption for this specific scenario. Up until recently, we understood this was being investigated, however during July the FSCA stated:

“We have discussed your query with Ms Caroline da Silva. After consideration of the submissions made, she is of the view that an exemption of general application will not be appropriate and that it will not be in the interests of the public.

However, specific entities may apply for exemptions if reasonable grounds exist to do so.

In order to apply for exemption, a detailed explanation / motivation of why the exemption should be considered and, where applicable, evidence in support of the motivation must be provided. The attached Form 13 must also be completed.

The application must also be accompanied by proof of payment of the prescribed fee (R7 333.00) that is payable in respect of the application.”

There are different bank accounts that may be used for the payment of the fees. Ayanda Mgagula (012 367 7155) or Kefilwe Mushi (012 428 8193) in the Finance Department can be contacted to obtain the banking details.

The application and all supporting documents together with the proof of payment must be submitted simultaneously to FAIS.exemptions@fsc.co.za.

The fee payable would be;

- R1,505 for the license category being granted to the FSP plus

The exemption fee of R7,333 per person for;

- The lack of experience for the KI and/or Representative.
- The lack of qualification that may be an issue for one or more person with an FSP.

Cell Captives and Regulation Amendment

Despite an earlier communication from the FSCA that further regulatory change was not needed for cell captive insurers, they and the Prudential Authority released a communication that sets out the proposed changes in both the prudential and conduct of business legislative framework.

If you are already in this space or plan on doing so, this is a must read.

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

The FSCA released the draft Conduct Standard for public comment which sets out requirements for the conduct of cell captive insurance business in relation to third party risks.

[Click here](#) to download the draft Conduct Standard and [here](#) for the related statement. There is also a comments document that we can supply if needed. The deadline for submission of comments is 31 August 2018 – rather tight given the complexity of the subject.

Removal and/or amendments to Key Individuals, directors, and shareholders: What detail must be provided?

Recent requested amendments in these areas have prompted the FSCA to demand a far higher level of detail than in the past. For example, the removal of a Key Individual will require actual reasons as to the removal. A simple “resigned” notification is no longer acceptable. Similar detail is being asked for director and shareholder changes.

We can understand that such amendments could be linked to ‘negative’ aspects of the operations of the FSP that the FSCA would like to know about. They have always done so with the departure of an auditor or the compliance officer.

Do you use an accounting officer?

We reported last month that where these are used, any changes need not be notified to the FSCA and no fees paid. It seems we did not correctly relate the standard.

No fees are needed, but FSPs do need to advise the FSCA of any changes.

Our apologies for the mis-information.

Short-term Insurance Sector and AI status

We attended the CISA AML forum in July and were advised by the FIC representative that as he understood it, the situation was 50/50 as to whether the sector would fall properly under the Anti-Money Laundering net. One aspect being looked at was the new Insurance Act; specifically the changed terminology of non-life versus short-term needs to be better understood.

The FIA representative present provided further input. He advised that a working group, comprising SAIA, FIA, Crime Bureau, the Prudential Authority, the FSCA and the FIC had been formed. This group would look at two initial key issues:

1. What data is the FIC looking to obtain from the short-term industry? And once provided by the FIC, the extent to which this data could be supplied without AI status could be assessed.
2. What risks are seen to exist in the AML context within the short-term industry? Having seen the presentation at the AML forum on trade-based money laundering, it may well be that the marine/transit insurance sector may have a role to play more so than others.

Interesting things we have read

A-Proofed

The latest offering from Kim Hatchuel, the lady behind our AC-Proofed service.

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

Insurance Gateway

A series of articles from Donald Dinnie, Group CEO of Natmed Medical Defence, Chalcid, National Medical Financial Services. Good technical material for Insurers, UMA's and brokers alike.

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

Financial Sector transformation talks: An article by Vivienne Pearson of SAIA.

This will affect us all in one way or another so best you keep abreast of how the discussions are going.

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

Health Market Inquiry Report – Recommendations on Brokers.

An article by Janine Geldenhuys, Moonstone. If you are active in this field you need to keep up to date with developments

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

FA News

Is the future of Gap Cover under threat?

This is a useful read if you are covered by such a policy or distribute them.

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

Is TCF serving its purpose?

An article from Jonathan Faurie questioning whether TCF is working.

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

COVER

The PoPI legacy system headache in SA Yet more background to this subject.

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

Remember we have an effective training and assessment process that helps you through the work needed. Contact chenj@associatedcompliance.co.za if you need any insights or help.

Banks flout TCF and credit life regulations.

A hard-hitting article by Nkazi Sokhulu, Chief Executive Officer and Co-Founder of Yalu (www.yalu.co.za), a digital insurance provider.

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

Business Brief

Corporate data policies need urgent scrutiny!

Another POPI focused article.

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

Johannesburg Address:

Ground Floor

Lakeview House

Constantia Office Park

Corner 14th Avenue and Hendrik Potgieter
Street

Weltevreden Park

Roodepoort

1709

Email:

info@associatedcompliance.co.za

Tel:

011 678 2533

Fax:

011 475 0096

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www.dungbeetlecs.co.za



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