

August 2018



ASSOCIATED COMPLIANCE

FOR A COMMON PURPOSE

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4. Go forward a page
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Contents

Click on text to navigate to the page.

From AC Develop	4
From AC	6
From AC HAS	18
From FSCA	20
From FAIS Ombud	26
Interesting things we have read	27

AC Develop

The recent regulatory changes that have introduced Product Specific training and launched Continuous Professional Development presented us with an opportunity to expand the offerings from AC Develop.

We have designed an e-brochure that will tell you all you need to know. This is already available on our website under services, or you can [click here](#) to download a copy.



There are two aspects to the service:

1. An online platform that provides relevant FPI CPD-accredited information for our clients, and as you will see, in a very cost-effective manner which is driven by the number of Key Individuals and Representatives a client has, rather than a cost per person. The material will focus on:
 - Regulation (well, not surprisingly), with our monthly Newsletter being at the core of this section, which will allow CPD to be earned from reading each issue.
 - HR and soft skills with a focus on the financial sector and FSPs in particular.
 - General financial market news and data.
2. The same online platform will be made available to our clients who see an opportunity to:
 - Provide an online tool for their own company, branded with their own look-and-feel and logo, to deliver CPD and/or Product Specific training to their staff.
 - Provide a similar tool for UMAs, administrators or small insurers, branded with their own look-and-feel and logo, to deliver Product Specific training and CPD material to their broker clients.

In both cases, we can assist to structure the Product Specific training material and related assessments and similarly with the CPD material and the professional body registration thereof.

We see this new offering as adding value to our existing relationships. To ensure that we stay focused on our core activities, we have partnered with Charmaine Koch, who many of you will know from her years at the IISA. She brings a wealth of knowledge to our team on all educational matters, and will be supported in the client contact area by one of our long-standing partners, Bronwynn van Tonder of AC HAS.

Their contact details are:

Charmaine 083 533 7083 charmaine@acdevelop.co.za

Bronwynn 083 200 1689 bronwynn@associatedcompliance.co.za

If you are interested in this service, you can contact one of the ladies directly, submit a request via our website, or speak to your compliance officer.

Restricted Representative mandates

We reported last month that we had updated our draft Section 13 certificate to cater for Tier 2 products and Execution of Sales. We have further enhanced the draft to allow a mandate being provided to be restricted to specific products. We found this was needed as Representatives in the new structure have mandates based on products they have been assessed in and not simply by the old-style license category. You will be able to access this via the AC Manual on our website.



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Tasks in progress

There are several tasks in need of finalisation as we release this Newsletter:

- FSCA FIC survey: Reminders have been sent by the Regulator, so if you haven't received this yet please let us know and we'll ensure that you get the required details. If you have received the survey but haven't completed it yet, please do so as soon as possible.
- FSCA Premium collection survey: As with the FICA survey – if you need it please let us know and if you still need to complete it, please do so as soon as possible.
- Key Individual linking to classes of business: We have supplied all KIs with the latest FSCA application form (suitably amended for this exercise) and asked that they be completed and returned to us so we can facilitate their return to the Regulator by the end of September.

- Representative register updates: We have been looking to update all the KI/Rep registers we manage to ensure that they reflect the home address of the person concerned and not the business address. We have had many returned or we have updated them during our monitoring visits, but we still have a way to go to complete this exercise and would ask that if you have yet to do your updates and return to us, please do so as soon as possible.

And finally:

- The 2018 FSCA annual report: The deadline for submission is fast approaching – 15 September 2018. Where you have yet to return documents to us, expect emails and phone calls chasing these documents.

The separate FIC report (as these questions were removed from the main report) has yet to be released. It may be early next year before we see this report being issued.

Maintenance tasks recently completed

- Representative register updates for 2018 levies: The deadline for completing updates was 31 August 2018. Invoices will be issued based on your register profile as at that date.
- Tier 2 – Accept or Reject: The deadline to accept the “free” offer of the new license categories expired on 31 August 2018. A number of clients did not respond at all, so we have left the new category on their license but not linked to any Representatives – time will tell how the Regulator will deal with this.

There is some residual work still to be done: the FSCA is looking for details of the actual products dealt with where these categories have been requested, but this is not always possible to provide as FSPs are looking to retain the category as an opportunity to develop a market and/or product and not on a specific existing product. Where this is the case, a motivation in this regard is being requested. We are talking to affected clients where necessary.

Oversight of broker standards on the charging of client fees

We are starting to see varying standards from insurers seeking to address their responsibilities in terms of the PPR regulations.

It is still not clear whether an insurer has an obligation to apply PPR rule 12.4.1 where the broker is either collecting their own premiums/fees and/or facilitating this via a debit order collection agency. Our view is that the oversight must be broad-based and not merely in line with PPR limitations, as anything else would achieve distorted standards.

We have discussed this with the FSCA who understand the situation, as they do with similar disparities on issues around:

- The charging of insurer fees.
- Complaints management.
- Advertising standards.
- Quote and renewal standards.

All covered within PPR.

Will we see a broadening of the scope of PPR to cater for these issues? We would certainly support this approach as it does make sense.

Class of Business training and CPD

We have seen a number of certificates issued by different training providers where CPD hours are shown, yet the representatives were completing Class of Business training in a regulatory requirement and not simply for ongoing learning. We therefore feel it necessary to provide clarity on when Class of Business training provides CPD.

We addressed this at a recent meeting at the FSCA and all agreed that the standard is as follows:

- If Class of Business training is done for regulatory purposes, then no CPD can be earned concurrently for the session.
- If Class of Business training is done for ongoing training, development or interest, then CPD would be earned.

At enrolment stage the candidate must make clear their motivation for doing the studies so that later confusion and disappointment on their CPD status does not arise.

Solvency and subordinated loans – the current status:

We reported on this unintended consequence of the new Fit & Proper solvency standards many months ago and have been in touch with the FSCA regularly since then. There is still no finality on the matter, but we have now submitted a list of all our clients affected by this change and other compliance practices and officers have been asked to do the same to assist the FSCA to establish the extent of the problem.

We expect some degree of exemption to be provided, but it is not clear if this will be a blanket exemption or one to be applied for on an individual basis.

We will keep you posted.

Conduct of Business Reports 2019

These are the reports that will replace the current annual reports. The FSCA is still finalising the format. We will only start to provide comment once we have seen the final version, but one snippet we recently picked up will be of interest:

The initial thinking was that this report would be completed and submitted by the FSP themselves, but it seems likely that the compliance officer will be charged with the responsibility of compiling the report. Good news for KIs perhaps? But there will still be a dramatically increased workload around this compilation for the KIs compared to the current annual report.

We will keep you posted on developments.

Monitoring of brokers by insurers: How will this be undertaken?

We simply don't know. Insurers have many responsibilities from Board Notice 159 that requires oversight on binder holders, PPR Regulation, responsibility to oversee Fit & Proper status and product knowledge of their brokers and the standards related to charging of client fees by brokers.

The process will likely start with upgrading of agency agreements to place a contractual responsibility on the broker to provide data and allow access for on-site visits. We have seen activity already along these lines.

Then there will be the collection of the data that will provide some level of assurance to the insurer. Given the amount of work this places on an insurer, it is likely that much of this collection will be done remotely, or as one UMA who has started a process said:

“We do this by way of an off-site audit and review. Our aim is to conduct an audit that is not an inconvenience to yourself”.

What they mean is that they don't have the time or resources to actually go and see everyone.

The data that will be requested includes, but will not be limited to:

- Latest annual FSCA report.
- Complaints register and policy.
- The latest compliance officer monitoring report.
- A copy of a policy schedule (issued by the broker) containing full disclosure notices.
- The latest risk management and business continuity plan.
- Copies of all advertising material (where applicable).
- Competence register.

In a recent example of such a request we have seen aspects such as:

- Your TCF self-assessment form (we assume they are referring to the FSCA form).
- A Fraud and Whistleblowing policy (interesting, given this is not a regulatory requirement).

What was also interesting in the request we refer to above was that it was driven by the UMA and not the insurer, and was specifically referred to as being in respect of Board Notice 159 (i.e. the insurer's responsibility to oversee outsourced services) so it did not include the PPR oversight standards around product knowledge, competency and broker fees.

Data Incidents / Breaches

It's not a question of *if*, but *when* an organisation will experience a security incident.

Over the last year or so, there have been many headline articles relating to data incidents or breaches and the majority of these related to incidents involving electronic records.

But this is not always the case. The BakerHostetler 2016 Data Security Incident Response Report revealed that 13% of the more than 300 incidents that they handled in 2015 involved paper records. An additional 2% of the incidents involved both paper and electronic records.

Earlier this month, one of our clients suffered the data incident / breach double whammy – paper and electronic client records were stolen from the advisor's private residence.

So how prepared are you?

- Do you have an internal response team?
- Have you identified third party vendors and signed contracts with them to engage in the case of a breach?
- Have you identified what your breach notification process would look like and do you have up-to-date contact lists for relevant stakeholders (customers, employees, etc.) to activate quickly in all locations of operation?
- Have you evaluated identity theft protection services to offer to affected parties if you experience a data incident or breach?
- Have you taken an inventory of the types of information you store that could be exposed during a data incident or breach?
- Have you thought about identity theft protection?
- Have you purchased cyber insurance?
- Have you purchased data protection insurance?
- Have you conducted employee training to apply security best practices in the last 12 months?

The bottom line is that you need to ensure that your company's data security safeguards address all threats to personal information regardless of the format in which the information is maintained. The protection of computer systems is of utmost importance, but breach prevention and detection must consider the risks to paper records.

Protection of Personal Information Act (POPIA) and Workplace Information Security

This is an IISA FAIS CPD-accredited workshop which is scheduled to be held in October and December 2018.

Data protection law requires that personal information be held and used securely. News headlines consistently show that organisations are not doing enough to ensure the security of people's personal information, both within the organisation and externally. Effectively protecting personal information within an organisation requires every member of the organisation to do his or her share. All staff must understand and employ the fundamental practices required to protect personal information.

The adage "a chain is only as strong as its weakest link" really reflects how an organisation must approach its privacy programme.

The workshop will provide an overview of POPIA's conditions, rights and obligations imposed on organisations that collect and process personal information of individuals and/or juristic entities, in addition to information security in the workplace.

Topics will include:

- A video on “Data Hygiene”.
- An overview of POPIA, including key terms and definitions of information security.
- Categories of personal information.
- Information security in the workplace topics such as:
 - Protecting and sharing information.
 - Information in the workplace.
 - Working on the move.
 - Staying safe online.
 - Data incidents (breaches) response and plans.
 - Data subject access requests.

Upon completion of the workshop, staff will:

- understand how to manage the personal information you store and process
- reflect on your organisation and the measures that you have in place to protect personal information
- reflect on what they think needs to change in their own behaviour to conform with the organisation’s privacy and data protection programme.

The workshop has been accredited for 3 FAIS CPD hours.

From AC HAS

Employers are often faced with dealing with events that they don't expect or have not necessarily been prepared or educated for in the workplace. One of these events can be the death of an employee. Whether this is as a result of a long-term illness or completely unexpected, it can be very distressing to your employees in the workplace.



AC HUMAN ASSETS SERVICES

It is important for the employer to deal with the emotional, as well as the logistical elements which accompany such an event.

An article posted in *Workopolis* in June 2017, states that a lot is said about an organisation/company on how it deals with the death of an employee. The reality is that an employer has very little time to move from *tragedy* to *strategy*, but it is important for the employer to show discretion, empathy and compassion towards the employee's family. Your other employees, clients and bigger audiences are going to pay attention and remember how meaningful your actions were to all parties involved. Do you have any controls in place for such an event?

Here are a few suggestions of what you should keep in mind when dealing with a death in the workplace. Firstly, it is important to communicate with the family as soon as you can. You need to establish what happened and how much information the family would like to be shared. Any information about the funeral or memorial service and/or any specific requirements is valuable to communicate to the staff.

Communication to your staff should be done timeously and preferably in person. Be aware that some employees may react in different ways and in different intensities (depending on the circumstances around the death). It could be beneficial to have a trauma counsellor on site to assist with this process.

A formal statement can be released to clients, customers and/or colleagues in other locations. This will include high-level information about the passing of your employee and any contingency measures that have to be put in place. While no employer hopes to deal with this often, it is important to be consistent and to treat each death with similar gravity.

The employer will, at the same time, have to deal with the logistical and administrative elements of this event. Where an employer offers Group Life, funeral or similar cover, these processes will have to be actioned and executed. Several certified copies of the death certificate will be required. Also, appointments, meetings and email communication will have to be dealt with. The employer may want to ask the family how they would like to handle the packing and delivery of any of the employee's personal belongings.

You are welcome to contact me should you have any additional questions related to this topic. You can also refer to the *Guidance Note: Death of an employee* which will be released in the HAS Manual in the near future.

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

Draft Supervision Standards

A consultation paper was released on 31 July with a submission deadline of 31 August.

[Click here](#) to download a copy, but some of the highlights include:

- **Date of first appointment (DOFA):** This has been linked to a particular category and the maximum six-year period for supervision would run from each DOFA date. The proposal is that there will only be one DOFA date, i.e. the date on which you were first appointed for any category. Subsequent categories added will not amend nor provide new DOFA dates, so the original maximum six-year period for working under supervision applies even if new categories are added within that six years.

There are allowances for extended periods for Representatives initially appointed only for Tier 2 products who subsequently move into a Tier 1 product.

This change will require more planning on development and recruitment.

- **The periods allowed for qualifications and RE exams:** for several years the supervision period end date was always 30 June following expiry of the required timelines, i.e. six years and two years respectively.

This provided for longer periods of time for some Representatives to achieve the goals, depending on when in the year they were appointed. It is proposed that these periods will be literally applied, i.e. a Rep appointed on 1 September 2018 will have an RE deadline of 31 August 2020 and not 30 June 2021 as it currently applies. Our experience is that FSPs have not manipulated appointments to maximise the timeframes provided, so it's just a case of effective planning to achieve the required deadline.

A new standard proposed is that a Representative must enrol for the qualification within two years of their DOFA. This is to ensure that there is sufficient time to complete the qualification within the six-year period, and the need for exemption applications due to not having completed the qualification will be reduced.

Representatives already in the system will not be affected and their current deadlines remain.

- **Class of Business:** The plan is that Representatives will be allowed six months from their DOFA to complete this.
- **Product Specific Training:** This must be completed before Representative activity – no time periods will be allowed.
- **CPD:** Starts once the Class of Business, RE and qualification have been completed.
- **Supervision standards:** On the one hand the draft proposes a more flexible approach to supervision in that direct and ongoing supervision standards are to be removed and replaced with an approach that sets supervision standards based on:
 - The nature scale and complexity of the financial services.
 - The Representative's assessed level of competency.
 - The risk to clients and the FSP.

On the other hand, the draft proposes a far more structured supervision agreement, which means some thought must be put into what is being done to achieve what the agreement sets out to achieve. A common problem has been that agreements do not align practically with a Representative's need for development.

A similar approach is to be applied to the FSP and supervisor to ensure they have both the operational ability to actually have Representatives under supervision, and the supervisors themselves have the skills and operational ability to supervise.

- **Entry level requirements:** These are generally the same for all categories, but a new standard is to be allowed for people only appointed to perform Execution of Sales who will need a Grade 10 (or equivalent) as their entry level educational standard.
- **Specific Representative:** This new category of Representative is proposed to cater for Representatives appointed only to transact in Tier 2 products OR only perform Execution of Sales on Tier 1 products.

As a result of the supervision standards not yet being in place, a further exemption has been given for new Representative appointments from 1 August onwards. It allows for such Representatives to complete their Class of Business training by 31 January 2019.

It is important to note that this extension applies to Class of Business training only. New Representatives now need to complete Product Specific training BEFORE they can act as a Representative.

Debarment and CCMA

We recently had a situation with a client who was holding back on the debarment process demanded by FAIS due to a referral of the matter to the CCMA. We submitted an enquiry to FSCA to seek some guidance. We asked:

***“We’re aware of the timeframes involved in processing a representative debarment, i.e. five days for the initial notification and 15 days for the balance of the required information. However a client has queried that from an HR and labour law perspective they think it wise to follow a process whereby if the representative is dismissed and notified of their debarment, they rather wait 30 days pending a CCMA case, and thereafter if their decision to dismiss is not overturned they should only then process the debarment.*”**

Our opinion is that the FAIS requirements prevail and overrule the above, and that a debarment can be lifted if the circumstances warrant it, however we’d like your thoughts on this please.”

The feedback we received was what we would have expected:

“We would prefer that the FSP concerned adheres to the timelines indicated in the Act.

Remember that the FSP must debar a representative who is not fit and proper and this requirement is mandatory.

The debarment should not be conflated with the labour matter even though one enquiry is held.

In other words, the FSP may debar without necessarily dismissing an employee and vice versa.

Even in circumstances where the CCMA overrules the decision of the employer to dismiss an employee, that won't necessarily mean that it can order the FSP or FSCA to reinstate, as it does not have a jurisdiction to do so.

Failure to comply with FAIS may lead to an action being taken against the FSP, the result of which is that a fine may be imposed.”

Please ensure that all staff who could be involved in debarment matters take note of this.

RE study material

The updated material that has addressed the Fit & Proper regulatory changes has been released. [Click here](#) to download a copy.

Credit Life and the need for exemption application

We have written about this topic several times. It revolves around the move of Credit Life covers from Short- to Long-term Insurers and the impact on FAIS license categories for those selling this product as the need for a possible qualification, as the Representative may only have had credits previously and would need to gain experience in the new life category. These practical problems were discussed with the Regulator who has responded saying that individual Representative or KI exemption applications are needed at a cost of R7,333 per application. In addition, Product Specific training is needed.

For those FSPs with numerous Reps, the overall cost of this could be considerable.

From the FAIS Ombud

Latest Newsletter

This was released during August. [Click here](#) to download. The usual collection of matters dealt with what should be a learning process for all other FSPs.

Client forced to invest in unlisted shares

[Click here](#) to download this recent ruling.

Interesting things we have read

AC-Proofed

The latest words of wisdom from Kim Hatchuel, AC's resident purveyor of all things word-related.

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

Insurance Gateway

FAIS Ombud ruling

The latest in a long series of determinations involving the Sharemax debacle, but the errors of the broker concerned can still be a learning process for others.

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

Of interest to FSPs in the medical malpractice arena

Natmed Medical Defence (Pty) Ltd, a leading South African medical malpractice insurance broker, has released the first issue of Natmed's Medical Defence Review:

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

Another publication from Natmed is a glossary of medical negligence and insurance terms

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

New study highlights how cell captive structure can help transform the insurance market

Interesting that this and a related report that has been issued brings together a number of regulatory issues such as Microinsurance, Cell Captives and Tier 2 products (our input rather than the author's) as a possible delivery mechanism and allows transformation and new market access.

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

A related article from Risk Africa on Microinsurance:

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

FAnews

Poor claims handling... a price to pay

An article on a decision by the Long-term Ombud on compensation to be paid to an insured for poor service in a claims process. The views of the insurer and those of the Ombud and client are at opposite ends of the scale. With TCF and market conduct in place, is this kind of issue not one for the Conduct Authority to look at so that the insurer learns the error of its ways? Or, is it business as usual for the insurer concerned?

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

Another article on the case, via Insurance Gateway, from Meropa Communications

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

Are your customers genuinely satisfied? On a similar theme, an article on customer service.

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

COVER

Brokers will still be relevant under NHI

We wrote recently about the views of government that brokers are not needed to distribute medical aid cover. This article, published in Fin24, counters that view.

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

Business Brief

Ethics. Have we lost hope?

While ethics is not a specific regulatory requirement, as is Governance and TCF, we would like to think that ethics within the financial sector is surely the bedrock of good standing within the Fit & Proper structures.

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

Implementing your compliance function

Given the title, we just had to read this one.

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

And a related article from Juta CompliNEWS on Analysing and evaluation compliance risk.

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

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