Associated Compliance

FOR A COMMON PURPOSE

June 2016 Edition

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FROM AC

Upgraded Listing on Insurance Gateway

Associated Compliance has recently expanded its relationship with Insurance Gateway which is, in our opinion, one of the leading sources of insurance-related information available.

You will now find us via the Directory Listing with a banner in the Directories for "Compliance and FAIS" in all of the Professional Sections (Short-term, Healthcare, Life, Retirement and Investment).

Click here to view our Banner and Directory Listing in the Short-term Professional's Section.

We will also have an article on our service offerings published each month.

Conduct of Business Returns 2017

We initially discussed the draft 2017 annual report in our March Newsletter and provided more detail in May. We have subsequently completed an addendum to our standard monitoring report that identifies the additional data required based on the current draft. This addendum will be updated as further versions are received from the FSB.

This addendum and its suggested use will be discussed with you at the first monitoring visit of the 2016/17 reporting period and a copy provided with our report.

Payments Association of South Africa (PASA) – are their rules binding on brokers?

Until recently we had never heard of PASA, but we're coming across them and their rules more and more. The latest has been a communication from an insurer to a broker client that stated:

> *"Subsequent to previous communications from the* ***Payments Association of South Africa's (sic) (PASA)*** *on Debit Order Abuse, please find the latest version of the PASA* ***User Debit Order Abuse Rules (UDOA)*** *enclosed.* Click here to download
>
> *As per the attached regulation, together with advising the client of any amended premium, [the insurer] is now also required to obtain confirmation that the broker has informed the relevant client of the change in premium that [the insurer] will be requesting via debit order.*
>
> ***As of immediate effect, when finalising any financial request, we will be requesting that the broker confirm that the client has been notified of same. Note that we will be following up on each and every amendment until we are in receipt of the broker confirmation.***
>
> ***We now await your confirmation that the client has been advised of our intention to debit premium as noted above."***

Subsequent discussions highlighted that a penalty of R1,000 is being threatened where the client has not been advised of changes to premiums. It's not clear who's imposing the penalty, but the insurer is suggesting the broker will have to pay. The applicable legislation that grants this authority is even more unclear. As we understand it, PASA is an association with voluntary membership and was established in conjunction with the Reserve Bank to set standards for banks.

The Conduct of Business Report for 2017 (as referred to above) does have questions for premium collection agencies (as distinct from brokers) and one of those asks if they are members of PASA, but doesn't indicate whether membership is compulsory. Our take

is that the change to the premium collection regulations will mean that membership of, and adherence to the standards of PASA, will be required. We must stress that this is just based on pieces of the puzzle available at the moment.

We approached SAIA to see if there is a specific stance on this matter for SAIA members. They do have a committee in place dealing with this topic, and have undertaken to pass our enquiry on for comment.

As the issue revolves around ensuring that clients understand that their premiums will change following any adjustment to their insurances, this aligns itself to FAIS requirements and TCF intentions. The threat of fines for not doing so does seem a little over the top.

We will keep you posted.

30 June 2016 RE and Qualification Deadlines

We have communicated with clients regarding representatives who have a 30 June deadline. However, please ensure that we receive the proof – failure to do so and/or failure to meet the deadlines will result in a debarment if the rep was not removed from the register prior to the deadline.

From HAS

Are you sure that your HR practices and procedures in your Insurance business are adequately "covered"?

Since Human Resources is an industry-specified function, it's necessary for it to evolve to the same degree as the industry does.

In an overview done by Deloitte on the HR challenges faced in the insurance industry, they described the HR challenge as the ability to deal with complex and quickly evolving

external and internal factors. External factors are listed as increased government regulations, global expansions into emerging countries, shifting customer expectations and integration in the financial services versus the internal factors – product and channel development, infrastructure, workforce planning and management, cost management.

Let's take a look at some of the challenges.

Staffing and competition for personnel

The smaller insurance businesses are competing within the financial services arena, and therefore much larger corporates and banking institutions, for the best and smartest of the same crop of graduates. This requires a far greater effort from the smaller companies to attract the right candidates. In our industry it is HR's responsibility to identify candidates' propensity to violate regulatory requirements. As we know, recruitment errors can be costly in a lot of ways – *is your recruitment adequately covered?*

Development of your employees

With the vast amount of skills, products and offerings in the insurance industry, development of your staff must play a critical role in your company. In an insurance survey done by KPMG, Wei Ng, the author of the article, encourages employers to be the drivers of a symbiotic working relationship with the young, increasingly mobile workforce that demands that work fits into their ever-changing lifestyles. *Give a little, get a little…?*

Technology

Customers and employees literally have access to information at their fingertips and can pose one question on social media and have a thousand responses in an hour. Are your HR protocols and procedures enabling or disabling you from being competitive and forward thinking? Do you know which channels of communication your clients and workforce prefer?

Compliance

Regulatory compliance may seem like an issue primarily confronting an insurance business' legal and product development departments, but HR departments must have a grip on a broad range of employment law issues, aiming to minimise an employer's employment relations risk profile. In the 2014/2015 CCMA annual report, 171,972 cases were referred in this period alone. This amounts to 688 cases per day! Does your HR department have this covered or are you part or are you part of the statistics?

HAS is available to assist you with your Human Resources needs! Email all your HR related queries to HAS@associatedcompliance.co.za.

New HAS e-brochure

Following the release of the additional services in our April Newsletter, we have updated the e-brochure that provides links to each of the service delivery documents. We have also updated the HAS section of the website to allow for a better "Contact us" process specifically for HAS. Click here to download a copy.

FROM AC PROOFED

HOW TO WRITE A SINCERE CORPORATE APOLOGY

So you (or someone in your company) has messed up. Badly. We all make mistakes! Nobody's perfect and it's often easy to forget that companies—even the biggest ones—get it wrong sometimes. Nowadays, because social media makes it easy for us to voice our opinions, mistakes are there for all to see, loud and clear!

1apology \ə•pŏl'ə•jē\ *n.* **1 a :** an acknowledgment expressing regret or asking pardon for a fault or offense **b :** an explanation or excuse **(i'm sorry)**

How do you explain your company's booboo to the public?

The proper thing to do is not to sweep complaints under the carpet, and hope they go away. Instead, you should analyse the complaint, reflect on it, address it and quickly issue a written apology. The perfect apology letter can do more than just mend fences; it can also make an irate client forgive you, and will help clear up any misunderstandings. Apologising in the right way and at the right time can turn a negative into a positive for any company.

Timing

Write the apology letter as soon as you hear of the complaint. Not responding quickly enough can end up requiring two apologies; one for the issue itself and the other for the time it took to respond. The timing issue makes the situation worse and can have more severe implications on your business than the original issue itself.

Apologise!

If the client is furious with you personally, take responsibility for the situation. Without offering excuses, and without emotive language, let them know that you understand that the event and your actions caused them harm.

Actions

Rather than focusing on the damage you've caused, write about things you'll do to fix the situation, and the steps you'll take to prevent it from happening again. Agree with the truth in the complaint and stick to the facts when responding. Be as specific as possible and focus your apology on the particular event.

Blame

Take responsibility for what happened. Don't blame clients in any way.

Length of your letter

Keep your apology letter short and to the point. Flowery language could have a negative effect.

Keep them in the loop

While you're looking into the problem, send an email to say: "Just a quick note to let you know that I'm looking into this matter. I'm sorry to hear that you haven't been getting the service you deserve. I will deal with this urgently, and personally, for you." You might even offer a deadline for a full response; just remember to meet it!

Sincerity

No one wants to read overly dramatic language. Choose your words carefully and express yourself clearly and simply. Above all, be honest.

Tone

Remember that you're trying to repair a damaged relationship. Don't be too defensive because this will add to the problem. Use tact and diplomacy and be sensitive of the complainant's opinions, beliefs, ideas and feelings.

Give the client a choice of possible resolutions

How can you make this right? Negotiate a way that works for both of you. Sometimes just fixing the problem is enough. At other times the client is looking for something else.

Follow-up

After you've written the letter, make some time to apologise in person.

Who should sign the letter?

It's preferable to have a senior executive sign the letter. The client will appreciate him/her taking the time to apologise personally while thanking them for bringing it to their attention.

What will all of this do for your company?

The client's faith in the company will be restored, and might be even stronger than it was before. They're able to put the issue aside and know that should a problem arise in the future it will be quickly resolved. All of this will demonstrate that the company wants to hear both the good and the bad from clients, as a valuable source of information for improving their services.

Remember that if a client has a good experience with a company, he or she will tell two or three people at most. However, if it was a bad experience, he/she will tell anyone who will listen. The right apology letter will not only help you retain your clients, but may even improve the relationship that you already have with them and potentially increase the loyalty they feel towards your company.

FROM AC DEVELOP

We made mention of this new service earlier this year and had hoped we would be up and running before now, but good things take time to mature – just like red wine!

AC DEVELOP

AC Develop offers services to assist clients in the development of their staff. In conjunction with a range of partners, we will initially be offering Facilitated Training i.e. a classroom environment, on a number of FSB approved Insurance qualifications.

In line with INSETA requirements, one day of training is provided per 10 credits. As all qualifications are broken down into four modules, this means that students write approximately 30 credits per quarter, with three training days per quarter.

The qualifications available are:

- FETC: Short-term Insurance NQF4 SAQA: 49929
- FETC: Long-term Insurance NQF4 SAQA: 49649
- FETC: Retail Insurance NQF4 SAQA: 49835
- FETC: Wealth Management NQF4 SAQA: 57917
- National Certificate: Wealth Management NQF5 SAQA: 57608

The offering is open to:

- Businesses with groups of four or more students.
- Individuals, with new training starting every quarter. The session commencing 1 October 2016 is open for booking, but enquiries can still be made for the quarters commencing 1 January, 1 April and 1 July 2017. Applications for each quarter will close two weeks prior and training will be subject to a minimum of four students signing up. The sessions will be hosted at Associated Compliance's offices OR at any other suitable venue convenient for the group.

We will also offer classroom-based RE1 and RE5 examination preparation courses. Venues will either be at Associated Compliance's offices or another suitable venue convenient for a group.

For the delivery of the RE preparation we have partnered with Gordon Dewar of Ascension Business Academy (Pty) Limited. Prices will be quoted upon application as all offerings can be charged based on the number of delegates attending.

Other options are a full range of development training initiatives on Governance and Director Responsibilities currently being developed in conjunction with the Institute of Directors.

In the near future we will be running "Interactive Newsletter" discussion groups at our offices in Gauteng and, demand permitting, in Durban, Cape Town and Bloemfontein. These groups will discuss practical issues we see when visiting clients. These will be supported by a full presentation that can then be taken back and shared with your colleagues. We have had a client request this format be built into their monitoring programme.

Further detail on this particular offering and related costs will be made available via the Newsletter and our website shortly.

The intention is that these group sessions and the IoD training will be accredited for CPD purposes, initially with the IoD and IISA and later with the FSB once their standards are known.

FROM THE FSB

Can an FSP choose who to appoint as a Key Individual? In our March Newsletter, we wrote about the FSB's initiative to identify all sole owners/directors of smaller FSPs that were not appointed as Key Individuals. Their letter stated that there were no reasons why such a person should not be a Key Individual.

Our view has always been the same and embraced all of the non-corporate FSPs where the structure of the company concerned would dictate if managers or similar positions were actually assisting in running the FSP. However, when it comes to the smaller one

or two office FSP with a few directors/owners each providing financial services, we have never doubted that such persons are running the company and fully fall within the definition of a Key Individual. To remind you a Key Individual is "…any natural person responsible for managing or overseeing, either alone or together with other so responsible persons, the activities of (the FSP) relating to the rendering of any financial service."

A recent case has cast doubt on how the FSB actually interpret this definition in the smaller FSP. The question asked was; (bold comments are our addition)

> ***"I am one of three Directors (and shareholder) two of whom are Key Individuals (I am not). Our compliance officer suggests that I also have to be a Key Individual as my job falls within the definition as described below. By implication, if we were 10 Directors all with similar roles and responsibilities, all 10 would be compelled to be Key Individuals. I disagree as my take on it is that the below definition does not suggest that every "so responsible persons" has to be a Key Individual but rather that a Key Individual must at least fit the description as prescribed in the definition."***

They received the following response from a senior staff member (our highlighting):

> ***"I reviewed the portfolio of your FSP **** and noted the following:***
>
> - ***Three directors as per your confirmation below***
> - ***Two of them being KIs.***
>
> *There are two natural persons who are both directors and KIs, therefore you need not be a KI too,* ***(unless if you want to).*** *It would have been a problem if you were the sole 100% shareholder and only director (one natural person), then you would have been required to be a KI."*

Our issue is that the views of the FSB seem to contradict the actual definition and the focus being placed on the sole director where they clearly state a director should be a Key Individual unless they can show otherwise. Compliance officers need clarity on how to interpret the definition. This is of particular importance given the FSB's stance that such breaches are expected to be reported as irregularities. In addition, the 2016 annual report has the following very specific question:

> ***"have all persons involved in a managing and overseeing function in relation to the rendering of a financial services of the FSP been approved as key individuals?"***

We would have said "No" before but now will say "Yes" for this FSP.

The "Free" Insurance Debate

In our March Newsletter we reported on a client who had been called to task over offering "free" insurance when purchasing a car from them. If you recall, the FSP was undertaking to pay the clients' chosen insurers the cost of the insurance for a period of time rather than enticing the client to take their own insurance offering.

The FSP responded highlighting the standards they have in place to control advertisements and the staff member responsible for the offending advert had breached these standards and that disciplinary action was being taken against them.

The FSB responded recently as follows:

> ***"We will be closing our file in this matter. However, we will retain records of this matter and are unlikely to take a favourable approach if there is a recurrence of a similar non-compliance in future."***

So, for this FSP the problem is over, but not quite the clarity on such a campaign we hoped for. We would caution all FSPs to take care when embarking on similar campaigns and ensure that you communicate with us fully beforehand.

The "Five-Year Rule" – More Clarity

The issue of how to apply the "five-year rule" is a thorn in many clients' side when employing previously registered representatives, often to find when adding them to registers that there are unexpected supervision requirements.

A recent case prompted us to get input from the FSB once again. We asked:

> ***"Our understanding is that the 5-year rule is one that applies to experience only. Thus before such a person re-joins the representative arena they must have:***
>
> 1. ***The RE5. If they did not complete it prior to exiting the industry/need to be a rep then the original deadline date as dictated by their DOFA would apply i.e. they need it before they can be added again***
>
> 2. ***The qualification OR credit competency requirement that applied in their specific transitional time period."***

And the response:

> ***"Your understanding of the 5-year rule is 100% correct."***

So, when recruiting potential staff who have had a break from the industry and/or have not been in a representative position for some time, first ask us to do a full Date of First Appointment check so you have the necessary information to make the decision.

RE Exemptions for UMAs when Representatives Change Employer

A recent case involving two of our clients highlighted the need to take care when assessing a prospective employee.

In this case staff were being moved from an FSP operating as a UMA who had previously applied for and had obtained the RE5 exemption available to them as representatives of a UMA. Their new employer was an FSP operating as a broker and thus their exemption was no longer applicable resulting in it being impossible to add them as representatives until such time as they had successfully completed the RE exam.

A similar situation will arise where RE5 exemptions were applied to staff based on simplistic products or having only been registered for funeral business.

When recruiting staff who operated in these areas, it is important to fully investigate their past profiles before appointing.

Appeal Board Ruling – Qmala/Swanepoel/Coetzee

This matter dealt with the non-disclosure of an FPI disciplinary matter against the prospective Key Individual in a new licence application. The original decision was a four-year ban which was appealed.

The appeal board rejected all three grounds for the appeal and even indicated that the original period of four years was actually too low. The FPI ban from their organisation was for 10 years but as the Registrar's office cannot appeal its own decision the four-year ban remains. Click here to download the full ruling.

FROM THE FIC

Re-registration process

We reported last month on the typical errors that had been identified in this process. A further one has subsequently come to light: it involves the need for an institution that is both a Reporting and an Accountable Institution to register as both.

The responsibilities of each institution type have typically been followed by those that are both; it seems the need to actually register as both may have been overlooked. We have already addressed this aspect with all affected FSPs.

FROM THE FAIS OMBUD

A recent case where the change of insurer by the UMA was not communicated to the client by the broker. The broker's allegation that this was material to the repudiation was rejected by the Ombud on the basis that the repudiation was common to all motor policies and would have resulted in a repudiation irrespective of the insurer.

Despite the broker failing to advise the client and obtain consent for the move (something the client alleged he would not have consented to), this was not seen as enough to override the issue of a common market-wide exclusion. This is an interesting view given that interpretation of a common policy term often differs greatly from one insurer to the next and consequently affects the advice a broker gives to their client. In this particular change of insurer, we are aware of brokers who elected not to move clients because of the perceived stricter application of terms and conditions.

INTERESTING THINGS WE HAVE READ

Insurance Gateway

Ombudsman reports decrease in complaints against SA short-term insurers

An article from the OSTI describing a decrease in the complaints handled. In their and SAIA's opinion attributable to TCF principles being implemented at insurers. Have a look at the results and see whether you agree. Click here to read more.

FA News

Hitting the High Notes of Customer Satisfaction: An article on the recently published South African Customer Satisfaction Index and makes some commentary on why Outsurance has fallen from grace (well, somewhat) having lost ground to Santam - who also won a separate accolade at the FIA awards as best personal lines insurer.

Click here to read the full article.

Increased Protection for Consumers: An article dealing with some of the stats from the recently published report from the Long-term Insurance Ombud.

Click here to read the full article.

Click here to read a related article on this report from Business Day.

Can TCF Really Transform the Industry? An article dealing with poor performance from a life perspective that would indicate that the practical aspects of TCF have yet to be fully embraced. Click here to read more.

Moonstone

Why Pyramid and Ponzi schemes are doomed to fail. A media release by the Actuarial Society of South Africa. It is amazing to understand why people still fall for the "too good to be true" schemes – but they do. The link to the release courtesy of Moonstone. Click here to read more.

POPI and the FAIS General Code of Conduct: This is an article based on the recent FAIS Newsletter. We have reproduced in full as it is interesting and noteworthy for all brokers looking to move books of business:

> *"An article in FAIS Newsletter 20 titled **Bulk transfers by FSPs** and Insurers contains a section under the sub-heading: Protection of Personal Information Act:*

Furthermore the FSPs are required to comply with Protection of Personal Information ("POPI") Act, which demands identifying Personal Information and taking reasonable measures to protect the data. This will likely reduce the risk of data breaches and the associated public relations and legal ramifications for the organisation.

The purpose of the POPI Act is to ensure that all South African institutions conduct themselves in a responsible manner when collecting, processing, storing and sharing another entity's personal information by holding them accountable should they abuse or compromise your personal information in any way.

Section 12c of the General Code states that a provider, excluding a representative, must, without limiting the generality of section 11, structure the internal control procedures concerned so as to provide reasonable assurance that all applicable laws are complied with. Therefore non-compliance with POPI will result in the FSP's failure to comply with the provisions of the FAIS Act.

The article concludes:

FSPs who do not comply with the requirements of the General Code will be in contravention of the FAIS Act and regulatory action will ensue.

Furthermore non-compliance with the POPI Act could expose the Responsible Party to a penalty of a fine and / or imprisonment of up to 12 months. In certain cases the penalty for non-compliance could be a fine and / or imprisonment of up 10 years.

A bright-eyed and bushy-tailed Moonstone reader commented on this as follows:

I'm a little confused by an aspect of the FAIS Newsletter about the bulk transfers.

It refers to POPI as if it is in force and enforceable. As I understand it, the Act is promulgated, but not in force. While it may be good business practice to be fastidiously protecting client's information, the requirements as set out in the Act are not yet a legal requirement.

Assuming that insurer/underwriting manager and policy does not change, the implications for Brokers who wish to merge their businesses with other Brokers or to sell their books to other Brokers are extremely onerous.

We referred the matter to the FSB who responded as follows:

The reference to POPI in the article is not properly captured as it gives the impression that the Act is already in operation. The sanctions will only apply after the effective date of the POPI Act. We will rectify the article.

I have noted the concerns of the reader with regards to the onerous implications for brokers when merging or selling their books but it is a requirement that clients must be informed and give consent to the move to another broker.

Data Security

This issue will play an extremely important role under Twin Peaks as part of the Market Conduct Regulator's intention of acting in a pro-active and pre-emptive manner to avoid risk exposure for clients. We advise readers to familiarise themselves with the contents of POPI and start gearing their businesses in this direction in anticipation of the appointment by the Regulator.

Keeping clients informed

The FSB recently conducted investigations into allegations of the moving of books of policies between brokers and/or between insurers without the consent and/or knowledge of policyholders. According to the findings, in most cases the policyholders were merely notified of the movement of their policies without being provided with the option of whether to move or not. In many instances, no consent was obtained from the policyholders prior to the transfers. In other cases, policyholders did not receive any notifications nor did they provide consent to transfer their policies.

Onerous as it is, the law is the law, and has to be obeyed."

Be warned - it will not be long before the FSB take action on these transfers!

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