



ASSOCIATED COMPLIANCE

FOR A COMMON PURPOSE

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From AC

Web site

The site is currently undergoing a revamp. The newsletter and compliance manual sections will still be accessible whilst the work is being undertaken.



ASSOCIATED COMPLIANCE

Each client has now been provided with a password to access the manual section of the site rather than all people on the Newsletter mailing list. If anyone would like to review the supplied data just establish who has the password at your office, which you could do by contacting Anke at our offices who has the details.

A development planned for the Newsletter is that issues that we consider important will be posted on the web site each week and consolidated in the month end Newsletter.

2nd level RE exams

We understand that the FSB will be releasing information shortly on the impact of the postponement of the exams on the on-going supervision requirements. It is expected that this will ratify what many have been doing practically for some time i.e. if all other aspects of the supervision requirements have been completed then supervision can fall away. We will obviously keep you posted.

Non insurance products – what details should be provided?

At a recent meeting of the FAIS forum we attend this question was asked. The extract from the minutes is as follows;

The question was asked what details should be provided to clients. Many short term products in particular have “VAP” sections to their policies that are not actually part of the insurance product but provided by independent service providers. There was general



agreement that the client needed to understand that where these sections are not underwritten;

- The contract explaining the benefits provided should be separate from the insurance contract
- The cost should be separated from the insurance costs
- There should be full disclosure of the service providers name/contact details

As with 5.5 (other item in the minutes that stated the IT providers struggle to provide effective solutions at times) the ability of IT providers to be able to achieve this level of disclosure was limited and thus the required results are generally far from those required.

Where you manage these products you need to assess how well you achieve these standards.

Handling premiums deposited in a “joint” insurer/FSP account

This is a common practice, especially for binder holders, be they UMA or broker. A question was recently asked of the FSB if such a practice was seen as requiring the FSP to hold an IGF guarantee, which has not been the case. The response we received was;

“..... our view is that the fact that the insurer itself receives the premiums directly into its bank account is of importance.

A question that we asked was whether the ambit of section 45 extends to situations after the insurer has received the premium due to it. The word “payable” in section 45 of the STIA is defined to include the following: “due”, “debts owned” or “liabilities”. As soon as the insurer receives the premium into its bank account, such premiums are not “payable” / “due” under the policy any longer as it is has been paid. Therefore, if a person deals with the premiums after the insurer has received same, it cannot be stated that such person is dealing with premiums that are “payable” under short-term policies as it has already been paid. We therefore submit that as soon as the insurer receives the premiums “due” to it under the short-term policy, the application of section 45 ceases. For this reasons we are of the view that a person authorised to make payments from the insurer’s bank account, does not fall within the ambit of section 45.

We do however have a concern as the independent intermediary has control over premium monies. It is however not policyholders that are at risk (as they have made payments) but the insurer itself. This is a risk that the insurer has to manage with an appropriate outsourcing agreement”

Whilst we anticipated this answer we were relieved to get confirmation.

TCF and KIDS

The following is an extract of a SAIA circular dealing with a concept under TCF of Key Information Documents (KID).

“As part of the development of the Treating Customer Fairly (TCF) supervisory and regulatory framework, the FSB recently circulated its updated templates of the generic Key Information Documents (KID) for personal lines motor and household content products.

These Key Information Documents (KIDs) are being developed as part of the TCF initiative, for purposes of disclosure at point of sale. The use of the KIDs are anticipated to be compulsory at pre-contractual point of sale stage, and will likely be implemented through Policy Holder Protection Rules (PPR). The main purpose of these KID documents will be to enable consumers at point-of-sale stage to compare products and make an informed decision on the key features of the product.

The FSB have allowed circulation of these documents to the industry for final comment before a sample of product specific KID’s are developed and consumer testing is done thereon”.





The drafts we have seen (householders and motor) are 7 and 8 pages long. It would seem that these will be included in your analysis and record of advice documentation and probably would require an adaptation of your documents to avoid duplication of information. It seems all product categories will be required to have these KIDs. They will be produced by the product providers (insurers & UMA's) and be made available to brokers and clients. One of documents we have seen also suggests that the client must be provided with KIDs for different comparable products so they can make a better decision. As we learn more we will advise you accordingly.

On a similar vein SAIA also provided the following feedback to members:

Standardised Terminology

The matter of Standardised Terminology across the industry for the benefit of consumers is receiving a great deal of attention from the combined efforts of the SAIA Consumer Education Committee and the SAIA TCF Subcommittee.

In addressing the market conduct issues raised by the National Treasury (“NT”), the SAIA TCF subcommittee with input from various other SAIA member committees, the OSTI, and representatives from the IISA, the FIA and SAUMA, has compiled a list consisting of 63 terms which have been identified as potentially ambiguous, which terms are in the process of being redefined with a view of finding a simplified common understanding for the ultimate benefit of consumers.

How often should you do a formal check on your KI & Reps Fit & proper status?

At a recent FSB inspection at one of our Cape Town clients the analyst indicated that F&P declarations should be obtained on a quarterly basis for all KI's and reps. There is no specific mention of the frequency an FSP should check in the Regulations but we do recommend that an FSP should complete a formal check on all KI's, Reps and Directors at least annually. Ideally this should be linked to a formal HR based performance appraisal process. We do have a document that would assist in this process – either go to the manual section of our website or send us a request.



Marketing with purchased client lists – what can go wrong

A client recently decided to do some marketing using a purchased client listing and sent e-mails advertising a product. Only when one client complained did they contact us for advice – Lesson number 1. The second lesson was only establishing the source of the data after the complaint – as the client demanded to know where his details had come from and the broker only knew their first leg i.e. who they purchased it from – in fact that person had bought from another “supplier” who in turn had obtained it from a data base from the National Credit Regulator (although we have our doubts as to the legitimacy of that source). Lesson 3 was not giving the client the option to opt out of the mailing campaign.

The client was obviously a step above most clients as he was well aware of the requirements of the Electronic Communications and Transactions Act that states, amongst other things;

Unsolicited goods, services or communications

(1) Any person who sends unsolicited commercial communications to consumers, must provide the consumer

- (a) with the option to cancel his or her subscription to the mailing list of that person; and
- (b) with the identifying particulars of the source from which that person obtained the consumer’s personal information, on request of the consumer.

From the FSB

New Deputy Executive officer for FAIS

It has been announced that Caroline da Silva has been appointed to this position with effect from 1st August. Many of you will know of Caroline from her time at Santam and M&F. It will be interesting to see how her knowledge of life on “the other side of the legislation” will affect the thinking and functioning of the FAIS division – will this be a blessing or a curse.



Information letter 3/2013 – Binder regulations: Guidance on activities that constitute binder functions, activities that are incidental to binder functions and remuneration payable as a binder fee.

This letter was released on the 1st July along with a summary of the comments received from the market place on the draft letter.

So what changes?

The FSB would argue that nothing should change if insurers had understood and followed the regulations as intended in the first place but the reality is that this was not universally done and even those insurers, who in our opinion, were the “best” at their implementation may well need to do some fine tuning of their agreements.

Further clarity has been provided on all the key binder functions as well as the fee models that should be adopted. A specific format has been provided by the FSB for reporting purposes (Annexure B to the letter) and we expect that this format will find its way into insurer agreements as well. We also expect that the terminology used throughout the letter will be used in agreements to avoid any future misunderstandings. It also states that further work will be done by the FSB on the fee aspect during the balance of the year so expect more possible limitations on fee structures next year, especially if the FSB believe the insurers continue to pay fees that are not commensurate with services undertaken.

Probably the most significant part is the clarity on what functions are binder functions and what activities are “incidental” to a binder function. Why is this significant? Well no fees can be paid for these incidental activities. So where an insurer has been paying, as an outsource fee, for aspects such as (and we will use the terminology used in the letter);

- Issuing of policy wording to policyholder (this is referred to as “printing of policy wordings, policy schedules and the mailing thereof or the electronic dispatching of the policy wording and/or policy schedule to policyholders”)
- Keeping of records of all policy holder information for policies entered into, varied or renewed.
- Updating the insurers data with policy holder details

- 
- Maintaining an appropriate policy management system

A binder holder may not receive an additional fee from an insurer for the performance of these incidental activities i.e. an outsource fee over and above a binder fee. Where these functions have been noted in the binder agreement itself we don't see that there will be any changes other than maybe the consolidation of the fees into one fee per individual binder function.

It will be interesting to see how the insurers respond to this. Will the binder fee be adjusted upwards to cater for the loss of the outsource fee? Or will the additional fee simply fall away?

So what is the situation when a broker has no binder but performs any incidental activity for an insurer?

Well the insurer will continue to have an Outsource agreement and will be remunerated accordingly. Interestingly there is a footnote in the letter (12) that refers confirms the registrar agrees that “issuing of policies” does not constitute the rendering of services as an intermediary in either the short or long term acts but he does see the costs of performing this service as being “insignificant” and expects the remuneration to be accordingly aligned. We believe there will be a lot of emphasis by insurers here on what is defined as issuing a policy (see first bullet point above) as this does not include the loading of data which is noted as separate incidental activities, which has to be assumed at this stage, allows for an additional fee which is not necessarily seen as insignificant. This will be interesting given the large volume of brokers who perform such functions.

A further significant clarification applies to insurers who have chosen to provide a binder to one FSP and an outsource agreement to another FSP for incidental services related to the same binder work where both are paid a fee will no longer be allowed to do so. We have seen this structure in the UMA space where the UMA has the binder and one of their brokers has a separate outsource agreement with the insurer thus allowing both entities to receive a fee. Provided the binder agreement allows sub delegation then the binder holder will now have to arrange to sub delegate to the other broker and pay the fees from their own binder fee. The insurer will not be allowed to provide any additional remuneration where this structure exists.



Insurers have a period of 90 days from the issuing of the letter to make the required adjustments to the agreements.

A copy of the information letter is available from the FSB website www.fsb.co.za

Qualification codes

The FSB are now expecting the use of a specific code for all qualifications when processing profile changes, specifically those for Representatives. Whilst the list of approved qualifications we have does provide that code there are some qualifications where we may need your assistance in providing the code, which would be available from the institution through which the qualification was obtained.

Key Individual's and licence categories

In response to an enquiry to the FSB on why KI's are sometimes linked to a licence category and in others not we received the following explanation;

Key Individual's can be classified into three categories

1. The first category will be a KI that is responsible to manage and oversee the business and act as a representative. In this case a link to licence categories is compulsory.
2. The second one will be a KI that manage the business and manage and oversee the representative. A link to licence categories it is also compulsory in this scenario.



3. The last one will be a KI that manage and oversee the business or part of a business. In this situation a link to licence categories it is not required.

We will be adding additional questions to our KI supplementary questionnaire to ensure we get the correct classification of KI before processing.

Specific (S), Specific (SP) and Generic (G) – can a previously applied rating be amended?

This is proving to be a practical problem and the matter was taken up with the FSB to see if there has been / will be any resolution to the matter. Their response;

“This is proving to be a practical issue due to the time lines that make the same qualifications S then G. The IISA did submit a motivation to FSB in August last year but there has been no formal response to date although there have been various intimations to that the effect that the effects are unfair”

So no resolution but at least there is an acknowledgement of the issue.

Treating Customers Fairly

The FSB have agreed to a meeting with the FAIS compliance officer forum to discuss our role, as seen by the FSB, in the roll out and on-going monitoring of this initiative/legislation. The meeting will take place in September following which we will provide feedback as to the expectations of the FSB and what services we can offer to you in that regard.





Interesting things we have read

Insurance Gateway June 2013:

Unintended consequences in the Protection of Personal Information Bill. [Read More](#)

And more on POPI

Risksawired 19 July

POPI in a time of cyber crime. [Read more](#)

The hurdles of complying with plain language legal requirements. [Read more](#)

STRIDE brochure

This was included in a number of industry magazines and is well worth a read for anyone with a binder/outsourcing agreement that has a need to ensure transfer of data to insurers.

Weaving customer fairness into the fabric of the Distribution network.

A brochure again included as a supplement to industry magazines, by Deloitte on TCF. A useful guide.

FA News magazine June 2013

To Debar or not to debar – an article by Cornea Matthee of Centriq. The first of a two part article on the subject of debarment.

FANews newsletter

24 June: ARE IFAS READY FOR INCREASED REGULATION, CHANGING CLIENT BEHAVIOUR? More on the earnings debate. [Read more](#)



1 July: SARS GENERAL RULING URGES SHORT TERM INSURERS TO TAKE A HOLISTIC VIEW OF THE INDUSTRY. More detail on the effects of the changes implemented by SARS on insurance transactions. [Read more](#)

15 July: SHIFTING DEADLINES AND LONG-OVERDUE DISCUSSION PAPERS IMPACT HEAVILY ON FINANCIAL ADVISORS. A very good article on the issue of over regulation from the perspective of the FIA – well worth a read and we suspect many would be in agreement. [Read here](#)

The FSB has responded to the article. [Read here](#)

17 July: INDUSTRY TO MOVE TO SINGLE VEHICLE PLEASURE BY 2015
A good read for those involved in the pension arena. [Read here](#)

CoverConnect 18 July

10 years on ...The Financial Sector Code launched - [Read more](#) and [Learn more](#)

And finally – courtesy of a broker clients newsletter

An insurance broker opened the door of his BMW, when suddenly a car came along and hit the door, ripping it off completely. When the police arrived at the scene, the insurance broker was complaining bitterly about the damage to his precious BMW. “Officer, look what they’ve done to my Beeeemer!!!” he whined. “You insurance brokers are so materialistic, you make me sick!!!” retorted the officer. “You’re so worried about your stupid BMW, that you didn’t even notice that your left arm was ripped off!” “Oh no!” replied the insurance broker, finally noticing the bloody left shoulder where his arm once was. “Where’s my Rolex????!!!”



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