



ASSOCIATED COMPLIANCE

FOR A COMMON PURPOSE

Instructions

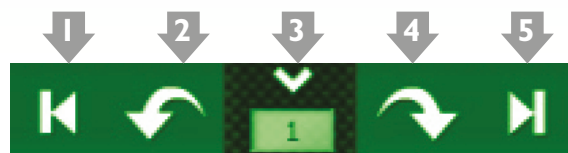
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5. View full screen
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7. Download newsletter



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5. Skip to the last page

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From Associated Compliance

A reminder of our Johannesburg office change of address

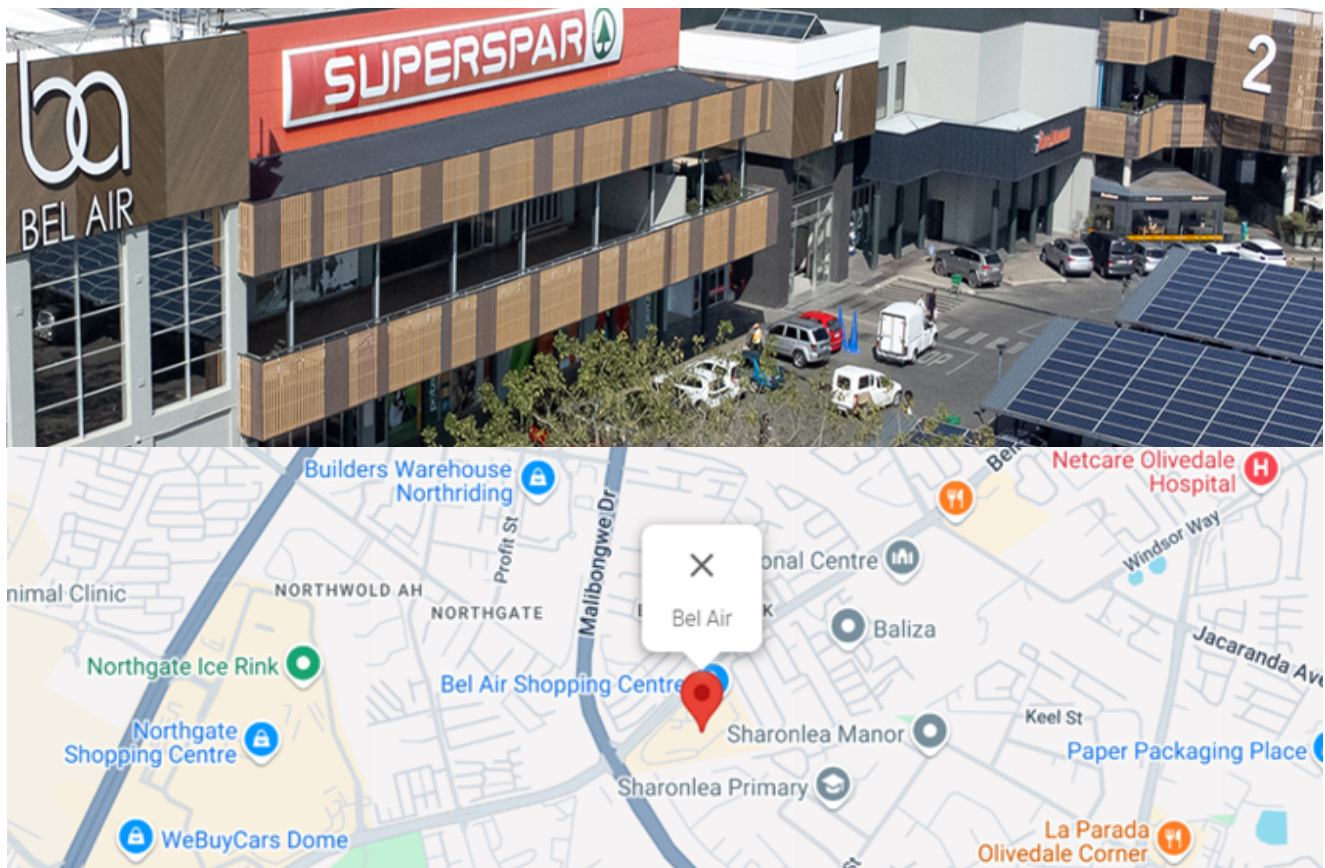
We will have moved to the new office by the time you read this, to the following address,

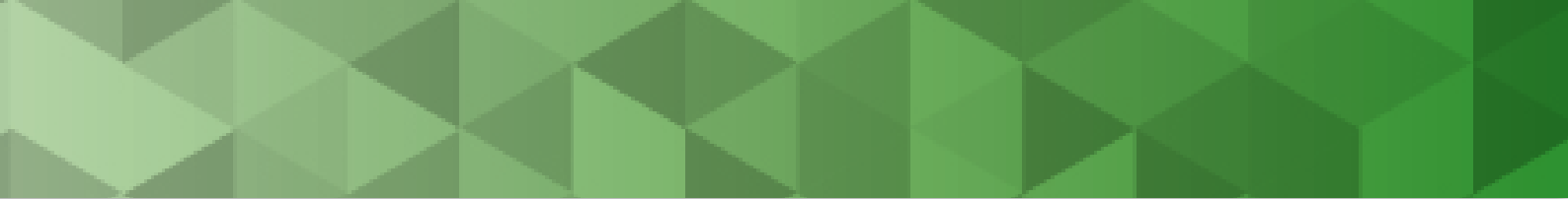
Work Central
1st Floor, Bel Air Shopping Centre
Bellairs Drive
Northriding
Johannesburg
2169



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If you have our physical address noted in your disclosure documentation, this will need updating, either to the above address or our postal address being,

PO Box 9655
Devon Valley
Johannesburg
1715

And yes, the PO Box is still open and being used – occasionally.

Our office contact number remains unaltered at: 011 678 2533.

Fraudulent use of a client's FAIS licence certificate

We were contacted during January by a client who provided details of an unknown person/entity who was fraudulently using their name and FSP licence certificate!

Our client had a 'Trading as' name reflected on their licence, and this had been amended to reflect the perpetrator's name, which looked genuine. They also added their name into the certificate just under the licence number, which is not how the FSCA issue certificates, but to the unsuspecting eye it would look good enough. This was likely a copy lifted from our client's website.

The details of what was happening and how it came to light are detailed in the client's statement which was submitted to the FSCA, along with the falsified licence.

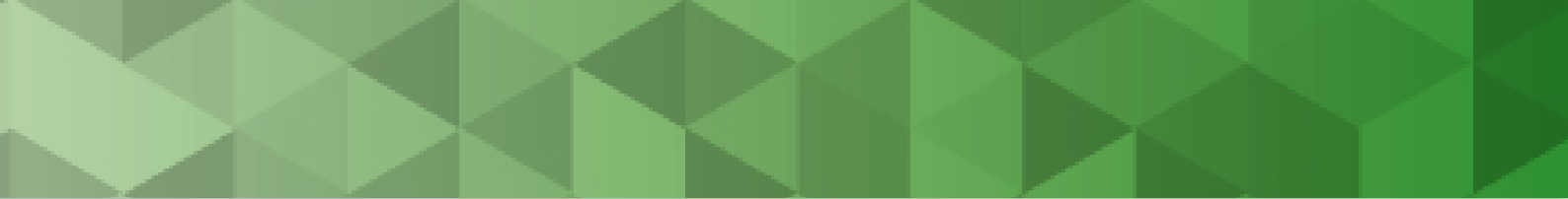
“During the afternoon of January 9th, I was sent a number of WhatsApp messages between one of our underwriters and a third party. The third party had contacted our underwriter to verify whether a company by the name of **World Option Crypto was registered with us and the FSCA, as they had provided a certificate from the FSCA with our name and FSP license number (with their name inserted too) as proof of registration.**

Along with the FSCA certificate, they had provided a Global Business License certificate too as proof of legitimacy. The third party had contacted **World Option Crypto following a Social Media advert promising strong returns on invested capital. The third party requested further information and proof of registration with the various bodies to allow **World Option Crypto** to operate (a copy of the conversation has been received via WhatsApp) following which he received the fraudulent certificates. He then reached out to our underwriter to verify.**

Once we had received a copy of the fraudulent certificate noting **World Options Crypto as an associated company of ****, we contacted our attorneys. Our attorneys suggested we notify the FSCA and lodge a criminal complaint at our local police station.**

We have lodged the criminal complaint with case number **//** and have been informed that Const. *** will be investigating the matter. Const. *** has contacted us and let us know that he has commenced his investigation, but the contact numbers used for **World Options Crypto** have been deregistered. I don’t foresee any further progress being made on the case.**

I believe we are probably one of many FSP’s that have had their license copied and used fraudulently but would like the FSCA to note the complaint and notify the public.”



So, it's unlikely the 'bad guys' will get caught but both the client and AC believed it best to alert as many people as possible to the actual name being used and the process followed.

Certainly, one aspect to be highlighted is that having a copy of your FSP licence certificate on your website with no form of protection from it being cloned, is not such a good idea.

And, on the subject of scams, an article that landed the day after the above article was loaded into the draft *AC Regulatory Review*, had a little more relevance, so here is the link to the *FAnews* article,

Nothing is certain but death, taxes, and Ponzi scams. [Click here](#) to read more ...

Who is responsible for keeping clients informed about Insurance Product Changes?

An article we picked up on from *FAnews*, which is an important reminder on the significance of the broker, tracking and communicating policy changes to clients.

The article from Mathilda Meyer of Masthead, details the problems and possible solutions which should at least kick-start your thinking.

The reference to brokers and TCF, which stated,

“Under Treating Customers Fairly (TCF) Outcomes, they are required to provide clear, honest, and diligent advice, including promptly communicating any changes made by product providers”

This is technically not correct as, *TCF Rule I of PPR (Policyholder Protection Rules)* is an insurer responsibility not a broker responsibility, unless of course the broker is also a binder holder and thus assumes many of the responsibilities of the insurer in that role as their agent.

And if you wanted to get even more technical, PPR only applies to Personal Lines policies and small Commercial policies – but that’s a discussion for another day.

Insurers often try to **“export”** this responsibility to the broker via the T&Cs of the Agency Agreement.

Don’t get us wrong – the communication of Insurance Product Changes and advising the clients, accordingly, is a standard demanded within FAIS and must be followed, but there should be a good relationship with the insurer/UMA in place which ensures this happens, with the insurer/UMA following primarily PPR Rule II, Disclosure, which provides for standards on both mid-year and renewal stage changes.

And let’s not forget the policy wording...

This document should set out the communication standard demanded of the insurer where there are changes or new terms required, which include both the timelines for notification and to whom those changes should be communicated. This is often the insured at the last known/recorded address.

This has its own issues with a poor or non-existent postal system thus forcing insurers to use electronic addresses, i.e., e-mails and/or leaning on the broker to help them.

In some cases, brokers almost insist on an insurer not communicating with their clients, which may mean the insurer is in breach of its own wording.

But in both these scenarios what if the broker makes a mistake and the change does not get delivered to the client and then a claim is reported, where that change is key. What then?

But generally, the broker must try and manage these varying scenarios, because if something does go wrong, they are going to be involved somewhere along the PI chain.

[Click here](#) to read the full article and test your preparedness for handling such changes.

[Click here](#) for the latest RE prep guides: REI RE5 Prep Guide - 14 January 2025

From AC HAS

2025 kicks off with the newly published Draft Code of Good Practice on Dismissal. This draft code aims to provide employers with clearer guidelines, enhanced flexibility, and emphasises the focus on fair labour practices.

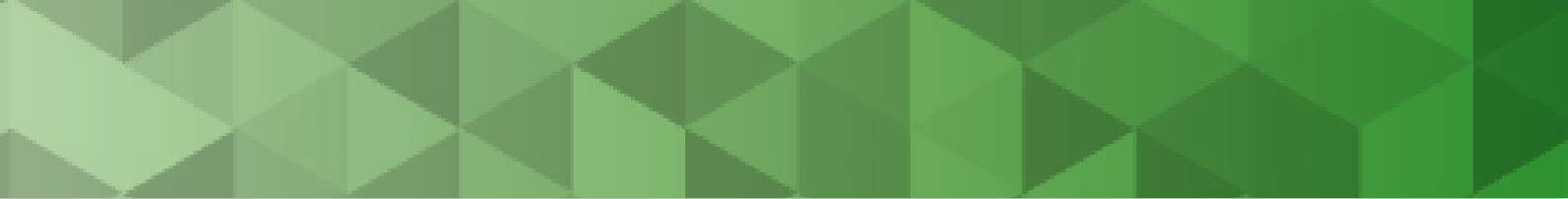
The code consolidates and includes updates on the provisions which were previously found in different pieces of the labour legislation such as Schedule 8 and Section 189 of the Labour Relations Act. The amendments represent a fundamental shift in approach – from rigid procedural requirements to a more principle-based approach that can be adapted to suit different business circumstances and practical implementation. The code is trying to strike a good balance between protecting employee rights and recognising business operational realities.



AC HUMAN ASSETS SERVICES

Some key changes are:

1. Small business relief: The code now explicitly recognises practical constraints that small business face and relieves small business from the cumbersome procedural requirements by acknowledging the limited HR resources that they have. (Small businesses refer to businesses with between 10 – 50 permanent employees.)
2. Streamlined procedures: Rigid timeframes, such as the 48-hour notice requirement for Disciplinary enquiries etc., have been removed and replaced with “**reasonable**” standards. This will give employers a bit more flexibility with the procedural requirements if fairness is maintained.
3. Enhanced legal protection: a more structured framework for documentation and decision making will provide employers with a stronger defence against unfair dismissal claims. Clear documentation with detailed records up to and including the dismissal process; following a consistent and fair process; making decisions based on objective criteria and evidence; giving employees a fair chance to present their side and defending themselves and adhering to labour laws and regulations in each case will assist employers to justify their actions in the event of a dismissal.
4. Progressive discipline framework puts the emphasis on correction over punishment. Clear guidelines for implementing graduated responses before reaching the dismissal phase.
5. Operational requirements: clearer guidance on the consultation requirements and selection criteria to reduce procedural uncertainty.
6. Flexible probation management: clearer frameworks to evaluate employees during probation.



The above amendments will have significant implications for companies in that it will reduce the risk of operational/procedural challenges in dismissal cases, dispute resolution processes will be more efficient, companies will have better protection as a result of the enhanced documentation requirements and greater flexibility to handle disciplinary procedures that will fit in with your business.

Discipline in the workplace is evolving. There is a shift to move away from treating discipline in the **“criminal justice model”** to a more decriminalised approach. Every single disciplinary case does not necessarily imply that every employee has the right to a formal enquiry/hearing. The employee is only entitled to state a case in response to an allegation of misconduct. This does not necessarily mean or imply a formal enquiry, but that there should be dialogue and an opportunity for reflection on the allegation.

Where an employee's misconduct is common cause or not in dispute, a less formal process will also suffice. The employer will invite the employee to make representation (in writing or orally) – which is reasonable and fair, but the law does not prescribe that an elaborate disciplinary hearing must be conducted for each instance of misconduct.

Employers are reminded that the workplace does not form part of the criminal justice system, and that boardrooms are not courtrooms and employees are not lawyers. We merely need to ensure that a reasonable and fair process is followed and that the balance of (and not ‘beyond reasonable doubt’) is upheld. Therefore, that something is more likely than not, to be true.

From the FIC and matters AML

Publication of the Draft General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill, 2024 for Public Comment

This proposed piece of legislation, issued on the 13th of December 2024, aims to close the gaps in several pieces of legislation that affect South Africa's *grey listing status*, which is likely to be reviewed in the 2026/27 period.

The proposed changes affect,

- the Financial Intelligence Centre Act, 2001.
- the Financial Sector Regulation Act, 2017.
- the Companies Act, 2008: and
- the Nonprofit Organisations Act, 1997:

Herewith a high-level overview of the proposed changes,

The Companies Act

- This amendment requires the Companies and Intellectual Property Commission (CIPC) to deregister a company (or close corporation) if it fails to submit a securities register or beneficial interest register annually, as prescribed in section 33 of the Act.
- The CIPC will be empowered to impose administrative fines on companies that fail to comply with the submission requirements for the securities or beneficial interest registers.

- The CIPC will be authorised to impose fines for non-compliance with issued compliance notices under section 171(8).
- A new provision allows individuals subject to administrative fines to apply to the Companies Tribunal for a review.

The Financial Sector Regulation Act

- A proposed, reworded definition of **“making a financial investment.”**
- New services regulation: This provision will expand the regulation of financial products and services to include new arrangements and technologies that may pose money laundering or terrorist financing risks.
- Licensing financial institutions: These amendments empower the responsible authority to license financial institutions offering new or emerging financial products, regardless of other existing licensing requirements.
- Additional powers for regulators
 - > Section 131 proposes to empower financial sector regulators to obtain information from significant owners or beneficial owners.
 - > Section 135 will empower financial sector regulators to institute an investigation if the regulator suspects that a financial sector law has been contravened, may be in the process of being contravened, or may be about to be contravened.
 - > An amendment to section 166S (9) will exclude transactions concluded under a **“master agreement”** as defined in the Insolvency Act from the application of section 166 S (7) of the FSRA.

Amendments to the Financial Intelligence Centre Act

The proposals include significant updates to FICA, including:

- Expansion of the ‘authorised officer’ definition. This change will include the Public Procurement Office in the definition of **“authorised officer.”**
- Expanded sanctions monitoring.
- The amendment expands the requirement for the Director of the FIC to give notice of sanctioned entities to include an entity identified by the National Director of Public Prosecutions (NDPP) in respect of which a High Court has made an order pursuant to section 23 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, as well as a variation, rescission, or setting aside of an order published by the NDPP.
- Reporting obligations for Accountable Institutions.
 - > A reporting obligation on accountable institutions that have in their possession or under their control, property owned or controlled by or on behalf of, or at the direction of, a person or entity sanctioned by the UN Security Council.
- **New technologies:** Amendments will require accountable institutions to consider the risk that new delivery mechanisms or new or developing technologies may involve or facilitate money laundering activities, the financing of terrorist and related activities, or proliferation-financing activities.
- **Non-compliance penalties:** The Bill introduces penalties for accountable institutions that engage in business relationships or single transactions with anonymous or fictitious clients in violation of FICA.

- Section 51A will be revised to deal with the offence or act of non-compliance relating to the reporting obligations in section 28A.

Amendments to the Nonprofit Organisations Act

Proposal to amend section 30 of the NPO Act to provide for a maximum penalty of R1M or a maximum term of imprisonment of five years, or both, for offences committed in terms of the NPO Act.

We suspect that these proposed changes will move quickly through the legislative process given their link to the grey listing issue, at which point we will assess the practical impact on your AI procedures and that all important, *Risk Management Compliance Programme*.

Credit Providers draft Public Compliance Communication

The Financial Intelligence Centre has issued a revised draft public communication intended to assist in determining what is meant by the term ‘credit provider’ in the context of:

- item 11 of Schedule 1 to the 2001 Financial Intelligence Centre (FIC) Act, and
- the 2005 National Credit Act.

Once finalised, the communication is expected to provide,

- Guidance on the practical interpretation and application of the term, and
- An overview of certain anti-money laundering, counter terrorist financing and counter proliferation financing vulnerabilities.

The revised draft communication started life with a draft document released in December 2022 for public comment, with relevant commentary having been incorporated into this new draft. Clearly not seen as too urgent.

This one should not be of great interest to most of our client base but should any of you want more detail please [Click here](#) for an article on the subject from Webber Wentzel.

From the Financial Services Tribunal

When regulators get it wrong. Land Bank: Prudential Authority review application dismissed with costs

If the regulators can't get it right when applying their own regulations, what's the chance for the rest of us? Click here to read an article from *Moneyweb*, which provides the details of what was not understood in this case involving the appointment of directors with the prior PA approval [Land Bank](#).

From the Information Regulator and related data matters

POPIA and Risks for Personalised Marketing

Written By Eszter Rapanos, based on a Webber Wentzel publication.

With our broker clients, and even UMAs seeking to create awareness and turning to social media and data bases as a means of marketing, we felt this article was worthy of providing in full rather than the usual link.

“Personalised marketing, powered by technologies like artificial intelligence (AI), has transformed the way businesses engage with customers. By analysing purchasing patterns and behaviour’s, companies can tailor their marketing to individual preferences, increasing engagement and sales potential. However, this practice comes with significant data protection risks under the Protection of Personal Information Act (POPIA).

Key Risks for Personalised Marketing

1. Purpose Specification:

POPIA mandates that personal information must be collected for a specific and defined purpose.

Risk: *Using collected data for unrelated marketing activities could breach this requirement.*

Solution: *Implement processes to prevent scope creep in data use.*

2. Record Retention:

Personal data should not be kept longer than necessary.

Risk: *Extended data retention for actionable insights may violate POPIA.*

Solution: *Regularly review retention policies to ensure compliance.*

3. **Security Safeguards:**

POPIA requires reasonable technical and organisational measures to protect personal data.

Risk: *Large datasets used for marketing are attractive to cybercriminals.*

Solution: *Strengthen data security controls to prevent unauthorized access.*

4. **Data Subject Participation:**

Businesses must provide customers with clear information about how their data is processed.

Risk: *Self-learning AI systems can make it difficult to track and report on data use*

Solution: *Understand AI tools thoroughly and maintain transparency with customers.*

5. **Notifications:**

POPIA requires notifying customers about how their personal information is collected and used.

Risk: *Failure to inform customers before data collection may lead to non-compliance.*

Solution: *Prioritise clear and upfront communication about data use, relying on exceptions only when absolutely necessary.*

How You Can Assist Clients

- **Advise clients** guiding them on compliance with POPIA requirements for personalised marketing, reducing their legal and reputational risks.
- **Implement internal controls** - assist businesses to establish processes for data retention, security, and customer notification.
- **Enforce risk mitigation** through regular reviews of marketing practices to ensure they align with POPIA regulations.”

From the Minister of Trade and Industry

Companies Act Amendments

To quote from, a very useful summary by Cliffe Dekker Hofmeyr,

“The President has proclaimed that certain sections of the Companies Amendment Act, 16 of 2024 and the entirety of the Companies Second Amendment Act, 17 of 2024, are now in force with effect from 27 December 2024.

In this alert, we set out a brief summary of some of the key provisions which have come into force, and also touch on those which are not yet effective (the most important and contentious of the latter being the provisions on the public’s access to annual financial statements, as well as remuneration approval by shareholders and the concomitant remuneration committee “two strike” rule).

- **Share buy-backs.**
- **Regulated companies**
- **Public access to AFS**
- **Prescription and fiduciary breaches**
- **Social and ethics committee aspects**
- **Beneficial ownership**

For further details regarding the amendments, see their January 2024 seminar. [Click here.](#)

Most of these changes have little practical impact on most of our client base, except for the beneficial ownership, set at 5%, which is not in line with all other pieces of legislation, currently at least.

Matters Transformation

The 2025 Financial Sector Transformation Council returns

A reminder that the deadline for this year's submission is much earlier than in previous years, being **31 March 2025**.

The year-end upon which the return is based now stretches over a 13-month period (December 2023 until December 2024) and not 12 months as in the past.

We did raise a query on how the *December 2024 year-ends*, are to be handled given that the financial statements, let alone a verification report, would not have been completed by the submission deadline

A response was provided which stated,

“.... we acknowledge that it may be a challenge to finalise the B-BBEE audit for the December 2024 measurement period by March 2025. As such, the verified December 2023 B-BBEE reports will be accepted, as they fall within the applicable measurement period”.

We had asked, once again, for guidance on how Generics and QSFI should report if they have not been formally verified and as they have in the past, they simply re-state the rules and totally ignore the question.

Notwithstanding this frustrating approach, we are still of the view that clients who are either a QSFI (turnover between R10M and R50M) or Generic (turnover above R50M) and have not been formally verified and yet know their status is non-compliant, still provide an affidavit providing details of their status and maybe their plans to obtain verification, if indeed there are such plans.

We have also done some investigations into how the Code is applied, or more specifically how the rating within the code is applied, for foreign owned FSPs.

There is a mechanism for these companies to be rated in lieu of locally owned shares, referred to as Equity Equivalent (EE) contributions, whereby an alternative investment in a DTI approved structure, based on a percentage of local revenue or local company value. To quote from the DTI's own explanation of the **“scheme”**,

“The Codes of Good Practice require that all entities operating in the South African economy make a contribution towards the objectives of Broad-Based Black Economic Empowerment (B-BBEE).

It is, however, acknowledged that there may be Multinationals that have global practices preventing them from complying with the ownership element of B-BBEE through the traditional sale of shares to black South Africans. In this instance, and provided that it can be proven that such entities do not enter into any partnership arrangements in other countries globally, the Codes of Good Practice have made provision for the recognition of contributions in lieu of a direct sale of equity. Such contributions are referred to as Equity Equivalent (EE) contributions. Such EE contributions count towards the ownership element of B-BBEE made by Multinationals. The value of these EE contributions may be measured against 25% of the value of the Multinational's South African operations or may be measured against 4% of the Total Revenue from its South African operations annually over the period of continued measurement.

Equity Equivalent would entail a public programme/scheme and/or private programme/scheme designed to fulfil the requirements of B-BBEE ownership. Equity Equivalent may also entail a programme targeting investment or any other programme that promotes Socio-Economic advancement/ development within the South African Economy. Such a programme needs to be approved by the Minister of Trade and Industry in order to qualify for ownership points on the scorecard. Where approval for an Equity Equivalent Programme has been granted, the programme and points awarded may not form part of any other B-BBEE element in the Multinational's B-BBEE Scorecard.

A proposal for an EE Programme would have to be developed by a representative entity of the foreign Multinational for submission to the dtic and may either take the form of a private programme or a public programme or a combination of both as provided for..."

This option for multinationals was also referenced in a recent press release by the Minister of Trade, Industry and Competition, Parks Tau.

His plan is for all South African businesses to pay 3% of annual net profit after tax for a new R100 billion transformation fund (that is a different issue to follow) and specifically mentioned the multinationals.

To quote from an article from *The Daily Investor* of 19 January,

“He explained that the BBBEE codes of good practice make provision for multinational entities to comply with ownership elements.

This includes setting aside funds—25% of the value of their South African operations—for transformation purposes.

“Therefore, funds from the equity equivalent investment programme will form part of the transformation fund,” Tau said.”

Our interpretation of this option is that it only applies to local FSPs 100% owned by a multinational and who does not allow local ownership elsewhere in their structure within other territories.

So, such a company that has invested in SA and allowed local ownership would not have access to Equity Equivalence, but the Code, and B-BBEE generally is anything but straightforward so if affected we would urge the use of an experienced (in financial services sector) consultant to guide you.

From the Council for Medical Schemes

Complaints to the CMS

A recent CMS newsletter provided details of how to contact them in the event of a complaint against a medical scheme. To quote the section of their communication in full,

“Should things not go as planned, here’s our complaints procedure. If you have an issue with your medical scheme, we encourage you to first raise it through the scheme’s channels. If you are unsatisfied with the outcome, you may **lodge a complaint** with the CMS.”

You can also find the details under the Consumer Assistance section of the CMS website,

www.medicalschemes.co.za

The website, under the Resources section, also has useful information on,

- Medical Schemes in South Africa
- Accredited Managed Care Organisations
- Accredited Scheme Administrators
- Accredited Medical Brokers (are you listed?)

Useful detail for those involved in the medical aid sector.

Interesting things we have read

FAnews

Is your financial advisory practice prepared for the future?

A good article dealing with the sale of an FSP, or 'succession planning' as referred to in the article, which is a discussion with Laurence Muller, Masthead Finance Director, and Chief Operating Officer.

[Click here](#) to read more ...

The next generation of cyber threats

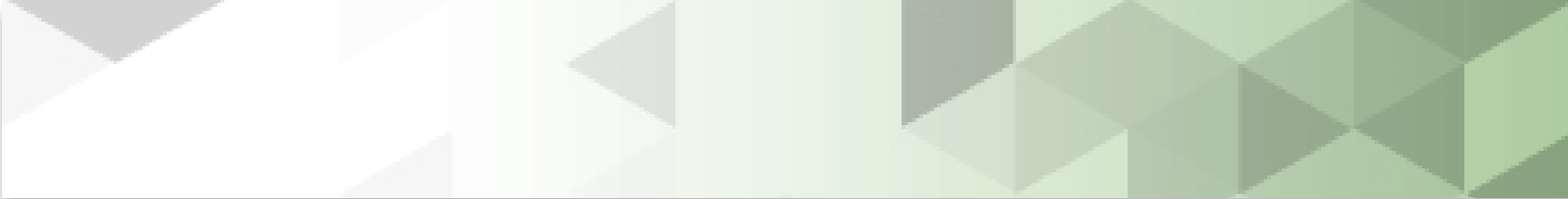
An interview with Ryan van de Coolwijk, Business Unit Head: Cyber, Collectables, and Digital Distribution at iTOO Special Risks, to gain insights into how insurers are preparing for the next wave of cyber threats.

Whilst the discussion does look at how such risks are to be insured, insurers also need to be assessing their own vulnerabilities in line with the PA/FSCA Joint Standard on Cyber Security and Resilience, which has a target completion date of June this year, which may well see increased scrutiny of binder/outsource broker and UMA standards in this regard. [Click here](#) to read more

Adams and Adams *(Via QSURE Insurance News Brief)*

Exclusion clauses – and how not to word them

An article on an American case involving Professional Indemnity covers – specifically in claims-made wordings. This scenario could apply just as easily here, hence why we included the article, and illustrates how important it is to say what you think you are saying by getting it checked and checked again.



All too often we write these articles in the *AC Regulatory Review*, and it makes perfect sense, but it takes others, usually with no knowledge of the subject matter, to question what we meant to say. We encourage all to follow a similar process, be it policy wordings, proposals, claims forms, records of advice – so that we can say what we mean.

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

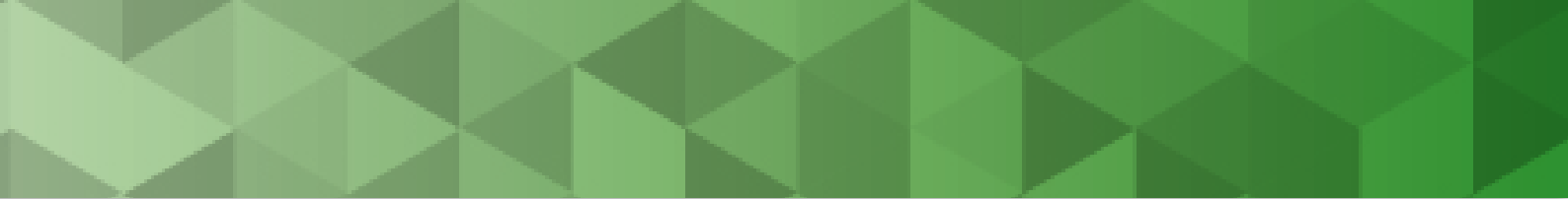
Cliffe Dekker Hofmyer

Fictional citations, real consequences

A cautionary tale for the modern lawyer: A report on a recent case where a firm of attorneys were apparently relying on “**case law**” believed to have been generated by AI and clearly not checked but delivered as “**fact**” in a court case.

[Click here](#) to read more.

We have also played a little with Microsoft Copilot and whilst we have found it useful, especially the speed in which it can access data, we have seen results that we know are not correct or fully accurate. The problem is that unless you have a reasonable idea of what to expect, what you get can be wrong and you don’t know it. It’s like using Google Maps – it works best when you have a rough idea where you are going otherwise it can be a very dangerous navigator.



Finally, a little-known restriction on playing lotteries. This was taken from a client newsletter issued by **Nedbank**,

“You may not take part in online lotteries, gambling, or sports betting activities with providers outside of South Africa using your credit, debit, or virtual cards. If you do, we may be instructed to confiscate the winnings and pay them over to the Gambling Board of South Africa”.

So, its ‘Phanda Pusha Play’ only.

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