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**PRESENTATION ON KEY DEVELOPMENTS AFFECTING THE
FINANCIAL SERVICES INDUSTRY: JANUARY 2018**



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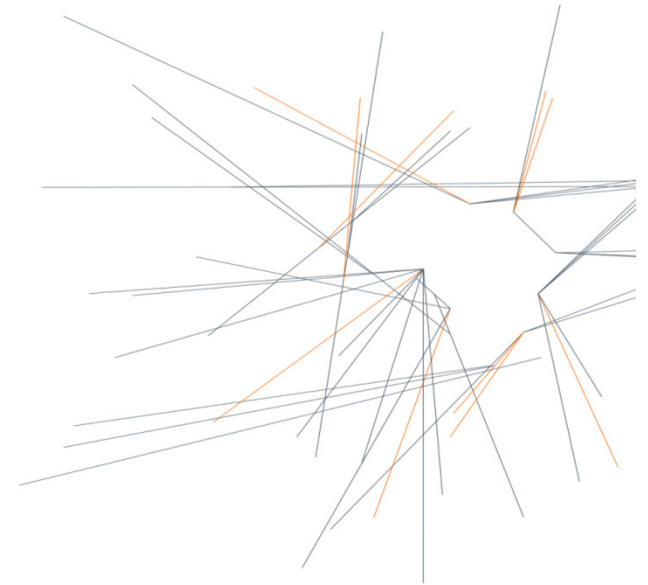
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FINANCIAL SECTOR CODE

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Adam Ismail

January 2018



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CONTEXT OF AMENDED FINANCIAL SECTOR CODE

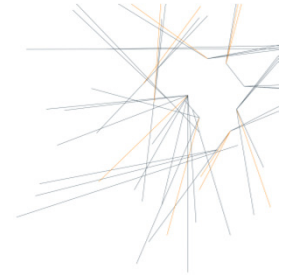


- B-BBEE in the financial sector was regulated by Financial Sector Charter, effective January 2004, binding the sector by agreement.
- Financial Sector Code (FSC) was published on 26 November 2012.
- FSC required to be harmonized with Amended Codes of Good Practice, gazetted 11 October 2013 (CoGP).
- Amended FSC promulgated pursuant to Broad-based Black Economic Empowerment Act of 2003 (which was amended by Act 46 of 2013) (B-BBEE Act).
- Lengthy drafting process and extensive comments from financial sector
- Amended FSC negotiated by financial sector trade associations, ABSIP, labour, community and government and endorsed by Financial Sector Charter Council (Council).

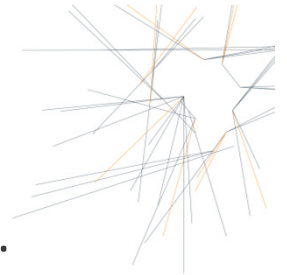
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CONTEXT OF FINANCIAL SECTOR CODE

- Amended FSC effective 1 December 2017 .
- Commitment to provide accessible financial services to black people and to direct investment into targeted sectors.



STATUS OF AMENDED FSC



- Gazetted as a Sector Code in terms of section 9(1) of the B-BBEE Act.
- Binds government, organs of state and the private sector .
- Amended FSC applies with CoGP but takes precedence over CoGP and any other Code.
- CoGP only apply when amended FSC is silent on matters regulated by CoGP.
- Amended FSC applies in perpetuity until amended, substituted or repealed.
- Effective 1 December 2017 with no transitional period.
- Council required to review Amended FSC periodically and gazette any amendments – first review commences 12 months from 1 December 2017.

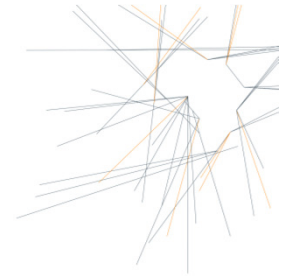
APPLICATION OF AMENDED FSC

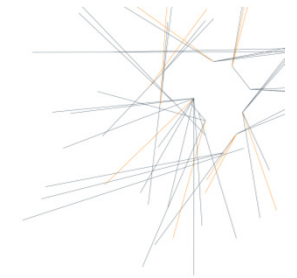


- Regulates participants in business, trade or profession in South African Financial Sector.
- Not a closed list:
 - Banking;
 - long-term insurance;
 - short-term insurance;
 - reinsurance;
 - retirement fund administration;
 - management of collective investment schemes;
 - financial services intermediation and brokerage;

APPLICATION OF AMENDED FSC

- public entities in Financial Sector i.e. Land Bank;
- asset managers, consultants and administrators;
- private equity, venture capitalist and impact investors;
- management of investments for the public;
- underwriting management agents;
- industry trade associations in the Financial Sector.





EXCLUSIONS FROM AMENDED FSC

- Amended FSC does not apply:
 - if no trading operations in South Africa;
 - to trading operations outside South Africa;
 - to manages of investments for the public who are not regulated by the FSB i.e. attorneys with trust accounts.



KEY ASPECTS OF AMENDED FSC

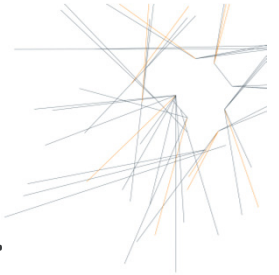
- Objective to render financial services accessible to previously unbanked population and transform economy.
- CoGP – 5 elements. Amended FSC – 7 elements.
- The 2 additional elements: Empowerment Financing and Enterprise and Supply Development and Access to Financial Services (Empowerment Financing and Enterprise and Supplier Development being additional Priority Element).
- Both new Priority Elements apply to large enterprises i.e. annual turnover of R50 000 000 or more which are banks or life offices.
- New Priority Element, access to Financial Services, also applies to large short-term insurers.

KEY ASPECTS OF AMENDED FSC



- Qualifying Small Financial Institutions (QFSI) – annual revenue more than R10 000 000 but less than R50 000 000.
- Both new Priority Elements do not apply to QFSI.
- CoGP – only 3 Priority Elements for discounting principle – Ownership, Skills Development and Enterprise and Supply Development.
- Key focus of 2 additional elements – provision of affordable housing, financing of SMMEs and agricultural activities as well as investment in transformational infrastructure.

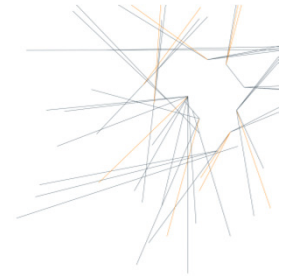
FINANCIAL SECTOR CHARTER COUNCIL (COUNCIL)



- Council conducts periodic review and amendments of Amended FSC.
- Provides interpretive guidance, practice directives and standard documents regarding application or intention of Amended FSC.
- In consultation with DTI and must be approved by DTI for validation.
- Must be consistent with substance of Amended FSC.
- Objective to address ambiguities in interpretation and application of key measurement principles and/or qualifying criteria in Amended FSC.
- Verification agencies to submit B-BBEE Certificate and full verification report to Council within 30 days of certificate issue.

BEE COMMISSION

- Established in terms of B-BBEE Regulations of 6 June 2016.
- Oversees implementation of B-BBEE.
- Compliance and enforcement functions.
- Conducts investigations and addresses complaints.
- Issues advisory opinions.
- Regulates B-BBEE ownership transactions.



KEY PRINCIPLES AND INTERPRETATION OF AMENDED FSC



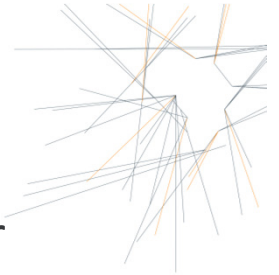
- Fundamental principle - substance takes precedence over legal form. This is where things get tricky, this is very wide. Stick to the road more frequently travelled. The BEE Commission will enforce these and have strong views on the subject.
- Reasonable interpretation of Amended FSC and CoGP which is consistent with objectives of the Act and section 11 B-BBEE Strategy put in place by the Minister – is there a strategy in place (2003 strategy?)
- Measure ownership and management is a snap shot at time of measurement, while other elements measured over the measurement period.

KEY PRINCIPLES AND INTERPRETATION OF AMENDED FSC



- Any misrepresentation or attempt to misrepresent an entity's true BEE status will be dealt with in terms of the BEE Act, disqualification of entire contract, state can set aside contracts, criminal sanctions including fines and prison.
- Initiatives to split up businesses to ensure EME and QSFI may also be an offence, must have some other commercial rationale other than BEE.
- In determining whether EME, QSFI or large enterprise, only SA revenue considered.
- All claims must be supported by evidence otherwise recognition cannot be given.
- If FSC silent on a matter, generic codes apply.

KEY PRINCIPLES AND INTERPRETATION OF AMENDED FSC



- A "financial institution" that is a local subsidiary of a multinational or external company that has a global policy of excluding domestic ownership will be exempt from the ownership requirement – Minister to grant Equity Equivalent Investment Programme in lieu of ownership. Excludes specialised entities (non profits, PBO's, mutual insurance companies, trade associations, entities owned by the state).
 - "Financial Institution" – was defined under old FSC, no longer defined. Could refer to any entity that falls within the scope of the FSC.
 - "Global Policy" – globally and uniformly applied restriction imposed on a foreign owned financial institution by a parent company or a regulator.

THE NEW FSC SCORECARD



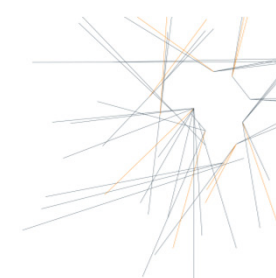
Element	Banks and Life Offices	Short-term insurers	Stock Exchanges and Stock Exchange Members	Other Institutions
Ownership	23	23	23	25
Management Control	20	20	20	20
Skills Development	20	20	20	20
Procurement and Enterprise and Supplier Development	15	35	35	35
Socio-economic development and Consumer Educations	5	5	5	5
Empowerment financing and Enterprise and Supplier Development	25	0	0	0
Access to Financial Services	12	12	0	0
TOTAL	120	115	103	105

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THE NEW FSC SCORECARD

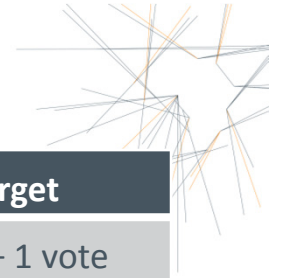
- The New FSC comprises four scorecard variations which apply to different types of financial institutions and two additional elements i.e. Empowerment Financing and Access to Financial Services.
- "**Access to Financial Services**" measures inclusive banking, access to affordable and understandable long term insurance risk cover, and access to affordable and understandable short term insurance risk cover.



THE NEW FSC SCORECARD

- **"Empowerment Financing"** refers to the provision of finance by a measured entity or investment in:
 - equity investments in South African projects, in areas where gaps or backlogs in economic development and job creation have not been adequately addressed, including but not limited to projects in the following sectors:
 - transport;
 - telecommunications;
 - water, waste and solid waste;
 - energy;
 - social infrastructure such as health, education and correctional service facilities.
 - ¹⁸ ○ broad-based black economic empowerment transactions

THE NEW FSC OWNERSHIP SCORECARD



Element	Indicator	Points	Target
	Voting Rights of Black People	4	25% + 1 vote
	Voting Rights of Black Women	2	10%
	Economic Interest of Black People	3	25%
	Economic Interest of Black Women	2	10%
	Economic Interest of Black Designated Groups eg ESOP, BBOS	3	3%
	New Entrants	3	2%
	Net Value	6	Formula Annexe 100(C)
	Bonus Points		
	Direct/Indirect ownership in excess of 15%	3	10%
	Economic interest and voting rights above 32.5%	2	1 point @ 32.5% 1 point @ 40%
TOTAL (including Bonus Points)	28		

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FSC SCORECARD

- Applies to banks, long term and short term insurers, stock exchanges and members of stock exchanges.
- All other entities to use the ownership scorecard from the amended generic codes.





THE NEW FSC OWNERSHIP SCORECARD

- If a measured entity is required to increase its capital base as a direct result of existing or new regulatory requirements i.e. Basel III , any consequent dilution in the black ownership of the measured entity will not result in a dilution of the black ownership that the measured entity can claim on the scorecard.
- The principle will however not apply if the requirement to raise capital is a result of the measured entity having written "bad business".
- Once empowered always empowered principle also applies, subject to a number limitations and requirements.
- much of the principles from the generic codes remain the same, modified flow through principle, exclusion principle, private equity funds, debt instruments, ESOPS and broad based ownership schemes.

OWNERSHIP

Level 6 would be:

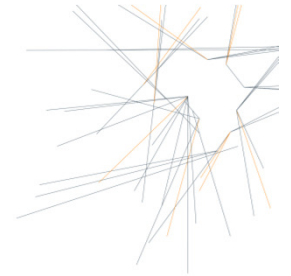
Large Enterprises (generic scorecard)

Banks = 70/109 x 120

Short-term Insurers = 70/109 x 115

Stock Exchanges = 70/109 x 103

Others = 70/109 x 105



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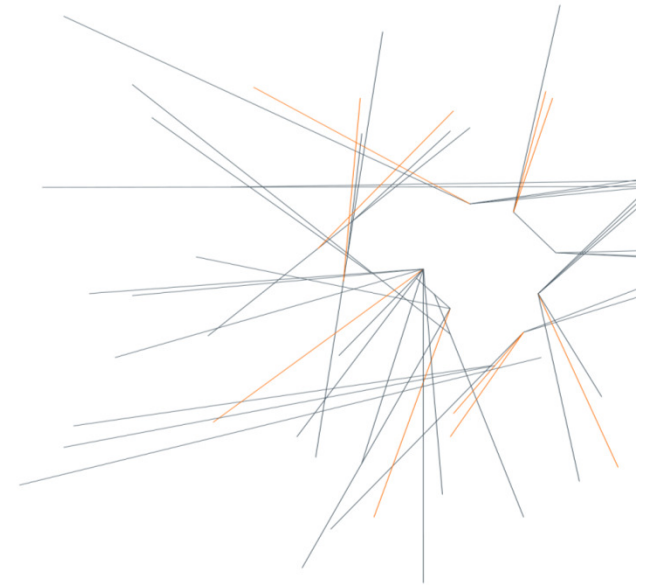
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AMENDED FINANCIAL SECTOR CODES

Safiyya Patel

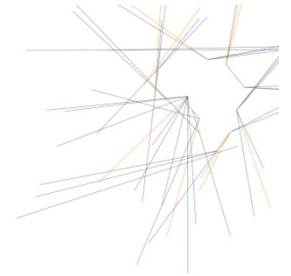
January 2018

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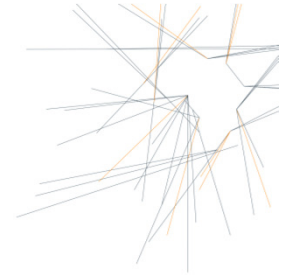


BACKGROUND

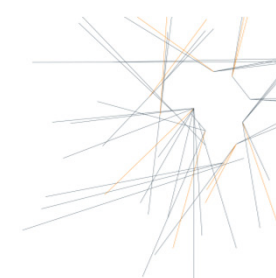
- The previous FSC was published on 26 November 2012
- Amendment of the existing FSC began after the gazette of the Amended Codes of Good Practice in 2013
- Amended FSC published on 1 December 2017 and effective **IMMEDIATELY**



STATUS OF AMENDED FSC

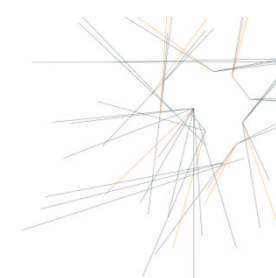


- Gazetted as a Sector Code in terms of S9(1) of the B-BBEE Act
- Binds government, organs of state and the private sector
- Amended FSC takes precedence over CoGP as regards financial services sector
- If Amended FSC is silent on matters then regulated by CoGP
- Amended FSC applies in perpetuity until amended, substituted or repealed
- FS Council required to review Amended FSC periodically and gazette any amendments – first review commences 12 months from 1 December 2017



APPLICATION OF AMENDED FSC

- Applies to persons conducting businesses in the SA Financial Sector including
 - banking
 - long-term insurance
 - short-term insurance
 - re-insurance
 - retirement fund administration
 - management of collective investment schemes
 - financial services intermediation and brokerage
- does not apply:
 - if no trading operations in South Africa
 - to trading operations outside South Africa
 - to managers of investments for the public who are not regulated by the FSB eg attorneys with trust accounts



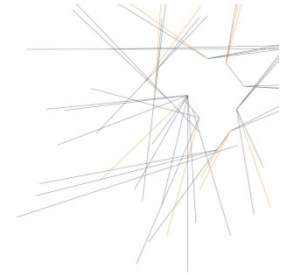
SOME KEY ASPECTS OF AMENDED FSC

- Exempted micro-enterprises = annual revenue of up to R10 million
- Qualifying Small Financial Institutions = annual revenue of more than R10 million but less than R50 million
- EMEs and QSFI:
 - More than 50% black owned (if there is an existing equity deal in place) or otherwise at least 51% Black Owned = Level 2 B-BBEE contributor
 - 100% Black Owned = Level 1 B-BBEE contributor
- Verification agencies must submit the financial institution's B-BBEE certificate and full verification report to the FS Charter Council within 30 days of the certificate issue

THE NEW FSC SCORECARDS



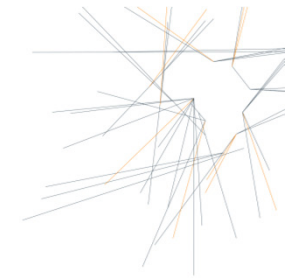
Element	Banks and Life Offices	Short-term insurers	Stock Exchanges and Stock Exchange members	Other financial institutions
Ownership	23 points	23 points	23 points	25 points
Management Control	20 points	20 points	20 points	20 points
Skills Development	20 points	20 points	20 points	20 points
Procurement and ESD	15 points	35 points	35 points	35 points
Socio Economic Development and Consumer Education	5 points	5 points	5 points	5 points
Empowerment Financing and ESD	25 points	0 points	0 points	0 points
Access to Financial Services	12 points	12 points	0 points	0 points
Total	120 points	115 points	103 points	105 points



PRIORITY ELEMENTS

- Ownership
- Skills development
- Enterprise and supplier development
- Empowerment financing

Non-compliance with sub-minimum requirements will result in the financial institution's B-BBEE status being discounted by 1 level



B-BBEE RECOGNITION LEVELS

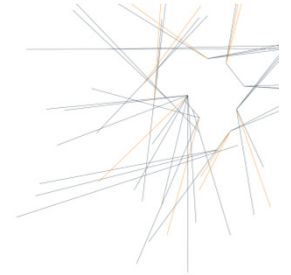
B-BBEE Status	% Qualification	B-BBEE Recognition Level
Level One Contributor	$\geq 100/109$	135%
Level Two Contributor	$\geq 95/109$ but $< 100/109$	125%
Level Three Contributor	$\geq 90/109$ but $< 95/109$	110%
Level Four Contributor	$\geq 80/109$ but $< 90/109$	100%
Level Five Contributor	$\geq 75/109$ but $< 80/109$	80%
Level Six Contributor	$\geq 70/109$ but $< 75/109$	60%
Level Seven Contributor	$\geq 55/109$ but $< 70/109$	50%
Level Eight Contributor	$\geq 40/109$ but $< 55/109$	10%
Non-Compliant Contributor	$< 40/109$	0%

THE NEW FSC OWNERSHIP SCORECARD



Indicator	Points	Target
Voting Rights of Black People	4	25% + 1 vote
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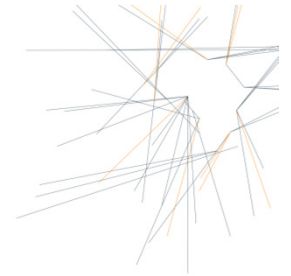
ONCE EMPOWERED ALWAYS EMPOWERED



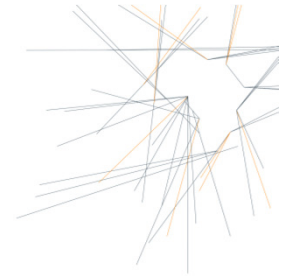
- Under previous FSC
 - dilution of black ownership, which occurred on or after 1 January 2011, as a result of black participants electing to sell their shares and realising net value did not result in dilution of Black Ownership for purposes of the scorecard
- Under the Amended FSC
 - only a portion of diluted black equity can be recognised if black participants elect to sell their shares. This is akin to the provisions in the COGP
- Banks and Life Offices have the option to top up the shortfall in its ownership points through the provision of Black Business Growth Funding, as an equity equivalent on the exit of black owners. Other financial institutions can top-up the shortfall on the exit of black owners through additional enterprise development contributions or by way of an equivalent value to support black students studying at post school education and training institutions

BEE COMMISSION

- Established in terms of B-BBEE Regulations of 6 June 2016
- Oversees implementation of B-BBEE
- Compliance and enforcement functions
- Conducts investigations and addresses complaints
- Issues advisory opinions
- Regulates B-BBEE ownership transactions

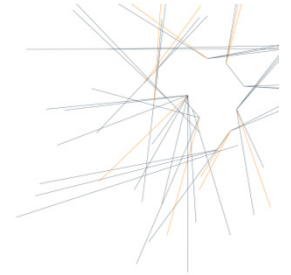


FRONTING PRACTICE



- Introduced into the BBBEE Act, 24 October 2014
- **Comprises the following elements:**
 - **any transaction, arrangement or other act or conduct**
 - **that directly or indirectly**
 - **undermines or frustrates the achievement of the objects of the BBEEA, or**
 - **the implementation of any provisions of the BBEEA**

CONSEQUENCES OF FRONTING



- Criminal offence
 - subject to a fine and/or imprisonment for 10 years if a natural person
 - a fine of up to 10% of annual turnover if a juristic person
- Barred from conducting business with any organ of state or public entity for a period of 10 years

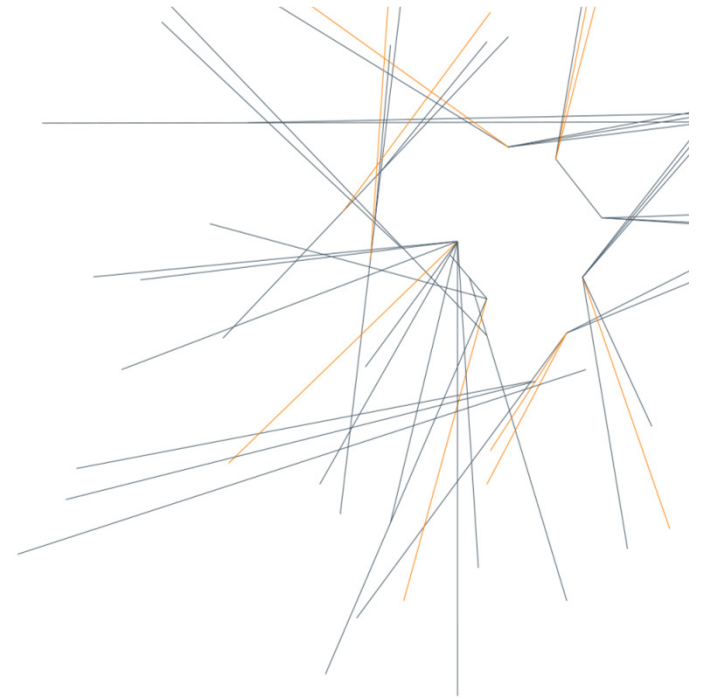
PRASA V SWIFAMBO RAIL AGENCY (PTY) LTD (2017)



- PRASA applied to review and set aside its decision to award a contract for the purchase and supply of locomotives to Swifambo (a B-BBEE company)
- Concerned mainly administrative and procurement law issues
- Amongst Swifambo's contentions was that it was an "*innocent tenderer*"
- The Court dismissed this contention on the basis that it was a "front" for Vossloh, the ultimate supplier of the locomotives
 - Swifambo was set up for the tender (it was a shelf company)
 - it had no resources or technical capabilities
 - it only had its BBBEE status to offer to the contract
 - it was obliged to maintain its BBBEE status for the duration of the contract
 - Vossloh had full control over Swifambo, including the power to appoint its management company
- The Court remarked that misrepresentation was not necessary for fronting to occur
- Also the fact that Swifambo and its shareholders might have benefitted financially did not in itself equate to empowerment

FINANCIAL SECTOR REGULATION ACT, 9 OF 2017

ZELDA SWANEPOEL





INTRODUCTION

- The Financial Sector Regulation Act (**FSRA**) was assented to on 21 August 2017.
- Commencement date to be proclaimed in the Gazette.
- Section 305 provides that different dates may be prescribed regarding coming into effect of –
 - different provisions of the FSRA;
 - different provisions of the FSRA in respect of different categories of financial institutions; and
 - the repeal or amendment of different provisions of legislation amended by the FSRA.
- Draft regulations were issued for comments which are due by **31 January**.



INTRODUCTION

- The **draft regulations** deal with the following:
 - If any provisions of the FSRA comes into effect before the establishment of the two Authorities that -
 - references to the Prudential Authority means a reference to the South African Reserve Bank (**SARB**); and
 - references to the Financial Sector Conduct Authority (**FSCA**) means a reference to the Financial Services Board (**FSB**).
 - The establishment of the Tribunal (dealing with appeals and review of decisions by decision makers) and provides that practice directives and guidelines of the Appeal Board may remain in effect until replaced by the Tribunal.
 - Clarifies the publication requirements per the FSRA is satisfied if published on website of relevant regulator.

FINANCIAL PRODUCT PROVIDER AND FINANCIAL SERVICE PROVIDER



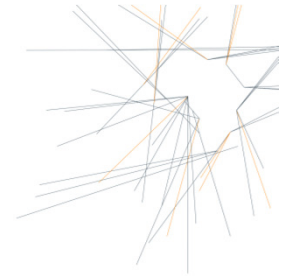
- Financial product provider and financial service provider is qualified to where the product and/or services are provided as a business or as part of a business. If not performed as part of a business, then not regulated in terms of the FSRA.
- **A financial product include**, amongst others -
 - a benefit provided by a pension fund and friendly society;
 - a health service benefit provided by a medical scheme; and
 - a credit agreement in terms of the National Credit Act (**NCA**).
- **Note:** The designation of a product as a financial product can only be done if such designation furthers the object of the FSRA and satisfies the requirements of section 2(2), which are for instance lending, making a financial investment or managing a financial risk.

FINANCIAL PRODUCT PROVIDER AND FINANCIAL SERVICE PROVIDER

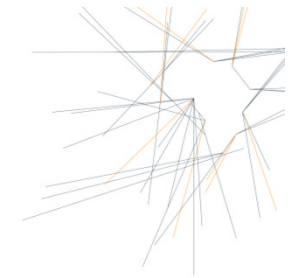


- A **financial service** includes -
 - any of the following activities conducted in the Republic in relation to a financial product, a foreign financial product, a financial instrument, or a foreign financial instrument:-
 - offering, promoting, marketing or distributing;
 - providing advice, recommendations or guidance;
 - operating or managing;
 - providing administration services.
 - an intermediary service as defined in the Financial Advisory and Intermediary Services Act (**FAIS**);
 - securities services as defined in the Financial Markets Act (**FM Act**);
 - a service provided to a financial institution through outsourcing arrangement.

FINANCIAL PRODUCT PROVIDER AND FINANCIAL SERVICE PROVIDER



- **Relevance:**
 - Intermediary service per FAIS is included, but not advice. Does advice here have a wider meaning and the carve out in FAIS for advice is not available?
 - Note the nature of the services that are included under the first bullet – why mention these and specifically mention intermediary services per FAIS?
 - What about intermediary services that fall in the exclusion of a "representative"?
 - Must therefore apply for a license or an exemption.
- **Note:** May designate something as a financial service if i) it is not regulated in a financial sector law; ii) it is rendered in SA; and iii) relates to a financial product or financial service.



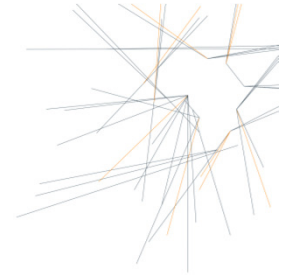
FINANCIAL INSTITUTIONS

- **Financial institution:**
 - Financial product provider
 - Financial service provider
 - Market infrastructure
 - Holding company of a financial conglomerate = thus not all holding companies
 - A licensee in terms of the FSRA

BUT excludes a representative as defined in FAIS.

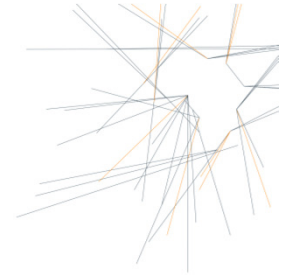
- This is an interesting exclusion, because a financial service provider includes a person who renders an intermediary service.
- Thus if such service is rendered as a representative, such person shall not be regulated as a financial institution.

OUTSOURCING ARRANGEMENTS



- **Contractor:**
 - Means a person with whom a financial institution has entered into an outsourcing arrangement but does not **include an independent contractor per definition of a "staff member"**.
 - Such person refers to "a natural person who is engaged by the person on contract as an independent contractor to provide goods or services to the person or to perform functions or duties on behalf of the person under terms specified in the contract, but not in terms of an outsourcing arrangement".

OUTSOURCING ARRANGEMENTS

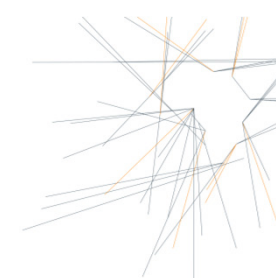


- An outsource agreement is defined as:
 - an arrangement between a financial institution and another person for the provision of a **control function**; or a function that a financial sector law requires to be performed **in a particular way** or by a particular person; and a function that **is integral to the nature of a financial product or financial service** that the financial institution provides **but does not include**:
 - a contract of employment with an employee;
 - a contract between a natural person seconded to the financial institution; or
 - an arrangement to act as a representative.

OUTSOURCING ARRANGEMENTS



- A staff member includes an employee, a secondee (being a natural person) and a natural person who is engaged to render services other than in terms of an outsourcing arrangement. [Possibly a representative?]
- Thus, seem to exclude "natural persons" from the definition of a contractor, even if seconded to a financial institution.
- **What are the implications of being a contractor?**
 - A financial institution = a financial product provider or a financial service provider.
 - A financial service provider = a person who renders a financial service.
 - A financial service includes an arrangement provided through an outsourced arrangement.

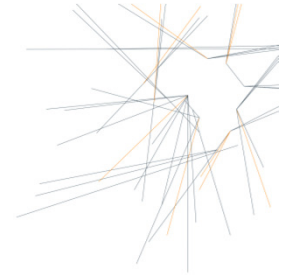


OUTSOURCING ARRANGEMENTS

- This means that a contractor is regarded as –
 - a financial institution and must apply to be licensed under the FSRA as a financial services provider.
 - However, the licensing provisions of the FSRA specifically state that a contractor must only be licensed if so prescribed in standards.

SUPERVISED ENTITIES

- A **supervised entity** is -
 - a licensed financial institution;
 - a contractor; and
 - a representative.
- Interestingly, does not include employees or secondees as natural persons).
- May conduct inspections and gather information from a supervised entity and non-compliance can also result in penalties and convictions.
- Note also that the Financial Institutions (Protection of Funds) Act now includes references to "a supervised entity".





FINANCIAL CUSTOMERS

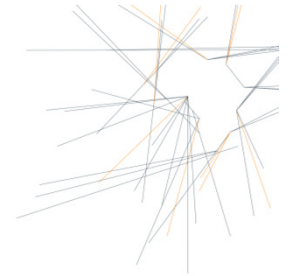
- **Financial customer:**
 - A person to whom a financial product, or financial service is offered or provided, and includes a successor in title of the person and the beneficiary of the product, instrument or service.
 - **Observations:**
 - What is the meaning of "offered or provided".
 - Either it means offer and acceptance – in which event the scope of protection will be limited.
 - If it means offered and provided in the ordinary meaning of the word – exceptionally wide.
 - Also includes successor and/or the beneficiary of the product or service.
 - Very wide.



SIGNIFICANT OWNERS (IN TERMS OF THE FSRA)

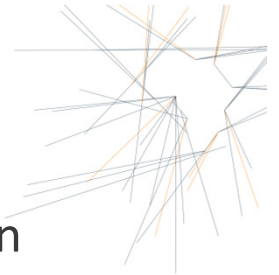
- FSRA regulates significant owners of financial institutions.
 - Includes a person who directly or indirectly alone or with a related party, controls or materially influences the business strategy of the financial institution.
 - Also includes a person who holds a **qualifying stake**.
 - **Qualifying stake** is defined with reference to the financial institution, but includes a person who directly or indirectly, alone or together with a related or inter-related person holds at least 15% of the issued shares of the financial institution.
 - Therefore – will look through direct holding companies to determine status as significant owner.

SIGNIFICANT OWNERS (IN TERMS OF THE FSRA)



- **Effect:**
 - Approvals required for becoming a significant owner of a eligible financial institution (which can be effected through any arrangement and need not be through shareholding).
 - Can make standards regarding significant owners in respect of regarding fit and proper status, competence and financial standing.
 - May issue directives –
 - compelling the significant owner to take certain actions such as take action specified if the institution has contravened or is likely to contravene a financial sector law; and
 - to submit a plan under which the significant owner will cease to be a significant owner of the financial institution.

CHANGES IN CONTROL OF AN INSURER (IN TERMS OF INSURANCE ACT)



- Note that the provisions in the Insurance Act dealing with a change in control applies **in addition to** the provisions of the FSRA.
- The change of control provisions apply to the insurer and the controlling company.
- Impose a duty on insurer and controlling company to notify the Authority in respect of arrangements where a person becomes a significant owner.
- An approval under the FSRA may then only be given with due considerations of the Insurance Act.
- Note also that the Competition Authorities may not approve such a transaction without referring and interaction with the Authority.
- Note also that directives regarding significant owners may also be issued in terms of the Insurance Act. **[Note changes regarding this aspect]**



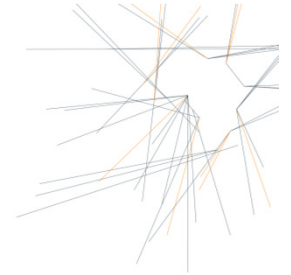
FINANCIAL INSTITUTIONS AND GOVERNING BODIES

- Note that a **juristic person** is defined to include associations, partnerships or clubs.
- **Relevance:**
 - Impose duties on the **governing body** to ensure compliance with obligations.
 - **Governing body** is a very wide concept and refers to any person, whether elected or not, that controls, formulate strategy or directs the affairs of a financial institution.
 - Even if not caught by the wide ambit of the term **governing body**, a **key person** includes a person other than a member of the governing body who makes or participates in decisions that affect the whole or substantial part of the business of the financial institution.
 - 53 ○ Obligations imposed on **governing body** and **key persons**.

APPLICATION OF THE FSRA

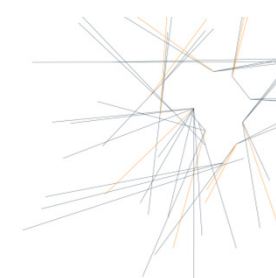


- Inconsistencies with the FSRA (excluding a regulation or regulatory instrument made under the FSRA) and the provisions of another financial sector law = provisions of the FSRA will prevail.
- Inconsistencies with the regulation or regulatory instrument made under the FSRA and the regulation or regulatory instrument made under provisions of another financial sector law = regulation or regulatory instrument made under the FSRA will prevail.
- Will have to test inconsistencies continuously.
- Application of the Consumer Protection Act (**CPA**):
 - Limited carve out – does not apply to any act, financial product or financial service that is subject to a financial sector law.
 - The Cabinet members must test if the protection is the same, or higher than the protection in terms of the NCA or CPA.



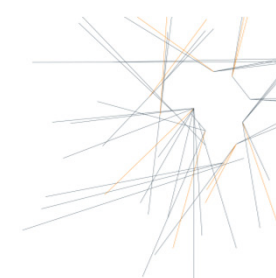
THE AUTHORITIES

- The Prudential Authority does not regulate financial services and its regulatory function extends only to institutions that provide financial products, securities services and market infrastructures.
- Standards made by the Prudential Authority exclude standards relating to financial services.
- The FSCA must regulate the conduct of financial institutions, which includes the conduct in terms of the NCA.
- The FSCA may make conduct standards in respect of financial institutions, representatives, key persons and contractors and is not limited to financial services.
- Such conduct standards can extend to the design and suitability of financial products and services.



THE AUTHORITIES

- Note that financial regulators may make standards regarding-
 - the promotion, marketing and distribution of, and advice in relation to, those products and services;
 - fit and proper status, governance, remuneration, dismissal and incentive schemes of governing bodies and key persons;
 - record keeping and data management;
 - outsourcing;
 - insurance arrangements;
 - management of conflicts .
- **Note:** different standards may be made for different categories of financial institutions, contractors, key persons and representatives or different circumstances.



THE AUTHORITIES

- May issue a directive to financial institution, key person or holding company of financial conglomerate to comply with legislation or to instruct financial institution to –
 - cease to offer a financial product, modify a product, remove a person from a specified position, not pay a dividend, not enter into a transaction or remedy the contravention.
- May only remove such person if the person has contravened a financial sector law, was involved in financial crime, failed to take steps to prevent a contravention of a financial sector law (if it could do so) or if no longer complies with the fit and proper requirements.
- **Note:** for a period of 3 years the FSCA will be responsible for Collective Investment Schemes (CIS), Pension Funds and Friendly Societies.

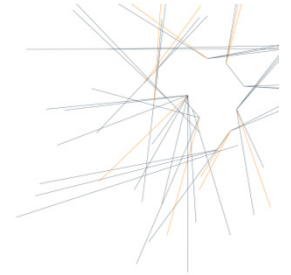
LICENSING



- All persons who as part of a business provide a financial product or a financial service - must be licensed.
- Only applies to a contractor if so required in terms of a standard.
- The relevant authority will consider the fit and proper status of key persons and significant owners.
- 3 month approval process but may be extended to 9 months.
- A licensee must report a material contravention to the Authorities.
- Regarding all licensee applications: May not make a decision unless the other financial sector regulators* have concurred.

* the Prudential Authority; the FSCA, the National Credit Regulator and the Financial Intelligence Centre.

ADMINISTRATIVE ACTION

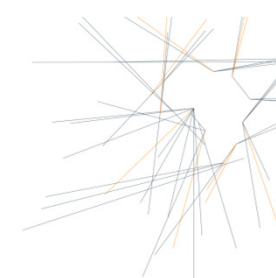


- **Administrative action procedure:**
 - A financial sector regulator authority may prescribe an administrative action procedure which must be consistent with the Promotion of Administrative Justice Act (**PAJA**) and the requirements of the relevant financial sector law.
 - The financial sector regulator may depart from such requirements in the same manner as contemplated in PAJA, such as the reasons for such departure, the nature thereof and the objectives to be achieved by the procedure.
 - May prescribe different procedures for **different types of administrative actions** and **different circumstances** but will have an opportunity to comment on the procedures as they become relevant and applicable.

OTHER IMPORTANT PROVISIONS

- A person may not undertake to indemnify or compensate another person in respect of a liability incurred in connection with an administrative penalty, unless so allowed in terms of standards.
 - Effect? May you take out D&O liability insurance?
- May not refer to an internal complaints resolution process as an "ombud" or an "ombud scheme".





OTHER IMPORTANT PROVISIONS

- **Liability in relation to juristic persons:**
 - If a financial institution commits an offence in terms of a financial sector law; and a member of the governing body of the financial institution failed to take all reasonably practicable steps to prevent the commission of the offence, the member of the governing body commits the like offence, and is liable on conviction to a penalty not exceeding the penalty that may be imposed on the financial institution for the offence.
 - If a key person of a financial institution engages in conduct that amounts to a contravention of a financial sector law; and the financial institution failed to take all reasonably practicable steps to prevent the conduct the financial institution must be taken also to have engaged in the conduct.
 - Effect?
 - How to represent both the company and the key persons?



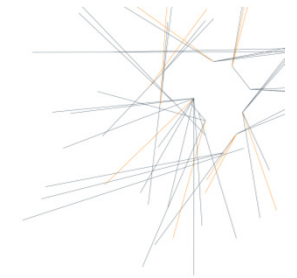
DEBARMENTS IN TERMS OF THE FSRA

- Can be done by the responsible authority in terms of section 153 of the FSRA:
 - Restricted to debarment of natural persons.
 - **When may be debarred?**
 - If contravened a financial sector law in a material way;
 - If attempted or conspired with to contravene a financial sector law in a material way.
 - **Effect of a debarment?**
 - May not be involved in providing financial products or financial services, acting as a key person or providing services to a financial institution such as through an outsourcing arrangement.

DEBARMENTS IN TERMS OF THE FSRA

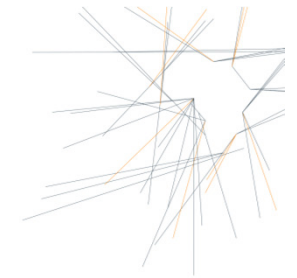
- If a financial institution becomes aware of the debarment order, it must give effect thereto.
- The debarment order can be amended and/or revoked on application.





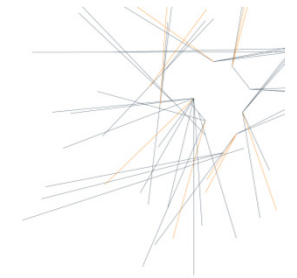
DEBARMENTS IN TERMS OF FAIS

- Entire section 14 amended and section 14A repealed.
- Can only debar representatives and key individuals.
- **Must** debar such persons if satisfied that –
 - no longer meet the fit and proper requirements; or
 - contravened FAIS in a material manner. [**Note: debarments in terms of FAIS is limited to conduct in terms of FAIS**]
- Reasons for debarment must have occurred whilst the person was a representative.
- Prescribes that a procedurally fair process must be followed:
 - give adequate notice;
 - provide procedures regarding debarments;



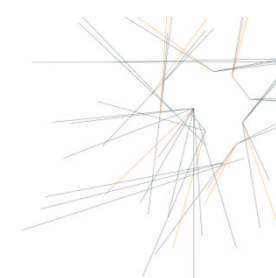
DEBARMENTS IN TERMS OF FAIS

- give opportunity to make submission; and
- inform of right to appeal to the Tribunal.
- If debarred –
 - must withdraw authority to act, if not already done so; and
 - notify the authority of such debarment.
- **Note:** Can only debar a person if –
 - reasons for the debarment occurred whilst being a representative;
 - if the person is still a representative; and
 - if no longer a representative – commence process no later than 6 months from the date that the person ceased to be a representative.



GUIDANCE NOTE ON DEBARMENTS

- Published by the FSB on 18 December 2017.
- Purpose:
 - clarify role of Registrar in reappointment of a debarred representative by a Financial Services Provider (**FSP**);
 - classify responsibilities of FSP when reappointing a debarred representative; and
 - list information to be submitted by FSB to Registrar pursuant to such appointment.



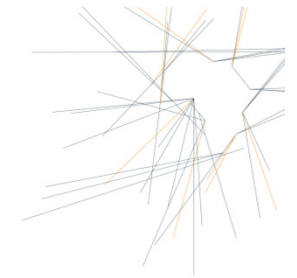
DEBARMENT OF A REPRESENTATIVE

- Purpose of notification of debarment in terms of 14(3):
 - consider referral of representative's action for criminal investigation;
 - that the Registrar may have updated information in respect of the debarment, in order to confirm upon reappointment if the FSP had complied with all reappointment requirements;
 - to ensure debarment relate to issue within FAIS (and not *mala fides*).
- Debarment decision by FSP is an administrative action in terms of PAJA of the FSP. Registrar may not adjudicate if debarment is lawful.
- If Registrar is of the view that is unlawful, has no other power but to take action against FSP, may not overrule debarment.
- Updating the central representatives register or publishing list of debarred representatives is not administrative action by the Registrar .

REAPPOINTMENT OF REPRESENTATIVE



- FSP must update its rep register with the name of debarred representative upon reappointment.
- Must inform the FSB within 15 days (in terms of FSP license condition) of change to rep register.
- Documents to accompany notification is listed in BN 82 of 2003 (**BN 82**).



ROLE OF REGISTRAR IN REAPPOINTMENT

- Reappointment is set out in BN 82
- Registrar only becomes aware of reappointment once effected by FSP and informed to Registrar.
- Purpose NOT for Registrar to enquire or to consider reappointment. Such consideration is not requirement for reappointment. Do not need Registrar's blessing in terms of BN 82 to reappointment.
- As with initial appointment of representative, Registrar is NOT empowered by statute to interfere in appointment.
- At most – satisfy itself that process in BN 82 were followed
 - If not followed, may take action under section 9 (withdraw/suspend FSP license) or section 14A (debar the representative).



BN 82

- BN 82 provides that a debarred representative can apply to an FSP to be appointed, provided provisions of BN 82 are met (*inter alia* 12 month period must have lapsed).
- 12 month period
 - generally assumed a fixed period.
 - HOWEVER there is a proviso: 12 months UNLESS was debarred for not complying with section 13(2)(a) [re competency and fit & proper];
 - when complies with section 13(2)(a), for example if have been "reformed" and thus have necessary quality of honesty and integrity before 12 months have lapsed, may be reappointed.
- Name not removed from list of debarred representatives automatically after 12 months, only once reappointed as a representative.

AMENDMENTS IN TERMS OF THE FSRA TO OTHER LEGISLATION



- **Financial Institutions (Protection of Funds) Act**

- Deleted all references to inspections and administrative sanctions.
- Remove and delete provisions dealing with the enforcement committee.
- Replaced a reference to an "institution" to the following entities for purposes of curatorship, statutory management or penalties:
 - supervised entity;
 - any person, partnership, company or trust in which, or in the business of which, a supervised entity has or had a direct or indirect interest;
 - any person, partnership, company or trust which has or had a direct or indirect interest in a supervised entity;

AMENDMENTS IN TERMS OF THE FSRA TO OTHER LEGISLATION



- a participating employer in a pension fund organisation;
- any person, partnership, company or trust that controls, manages or administers the affairs or part of the affairs of a supervised entity or an unregistered person;
- any unregistered person.

AMENDMENTS IN TERMS OF THE FSRA TO OTHER LEGISLATION



- **Long-term and Short-term Insurance Acts**

- Identifies which Authority will be responsible for which sections / acts.
- States that powers in terms of these acts are in addition to the powers in terms of the FSRA (thus eliminating possible conflicts).
- Regards everything that must be published in the Gazette as a regulatory instrument.
- Registration applications also requires that directors and significant owners meet the fit and proper requirements.
- The conditions of registration may include limitations regarding outsourcing arrangements.

AMENDMENTS IN TERMS OF THE FSRA TO OTHER LEGISLATION



- Does not repeal the financial soundness requirements or amends section 36 and section 37 which are now dealt with in standards. However these sections are repealed in terms of the Insurance Act.
- Amends section 25 and section 26 dealing with a change of control.
 - Defines control with reference to the companies Act.
 - Reduce the interest to 15%.
 - Requires compliance with fit and proper requirements.
- Note that the Long-term Insurance Act (**LTI Act**) and the Short-term Insurance Act (**STI Act**) is further amended in terms of the Insurance Act.

AMENDMENTS IN TERMS OF THE FSRA TO OTHER LEGISLATION



- **FAIS**

- Includes an alternative fund as a financial product.
- Also includes a financial product issued by a foreign provider, even if not marketed in South Africa if financial services in respect of it is rendered in South Africa.
- Amends intermediary services definition to exclude "performed by a person for or on behalf of a client or product supplier".
 - Effect: Secondment arrangements / call centre arrangements where it is the product provider acting
 - Must still give effect to meaning of "intermediary", however Registrar's response clearly indicates the intention with this amendment

AMENDMENTS IN TERMS OF THE FSRA TO OTHER LEGISLATION



- Provides that the fit and proper requirements and the code of conduct is regarded as regulatory instruments as well as the guidelines for compliance officers.
- Deletes the carve-out regarding what does not constitute an intermediary service:
 - **Previously the following did not constitute "intermediary services":**
 - the rendering by a bank, mutual bank or co-operative bank of collection of premiums where acting merely as a conduit.
 - an intermediary service rendered by a product supplier who is authorised under a particular law to conduct business as a financial institution; and where the rendering of such service is regulated by or under such law.

AMENDMENTS IN TERMS OF THE FSRA TO OTHER LEGISLATION



- Retains that FAIS does not apply to –
 - services rendered in terms of the FM Act;
 - to a pension fund administrator;
 - to a medical scheme;
 - certain services rendered by trustees or custodians,
- but deletes that FAIS does not apply to manager of a CIS.

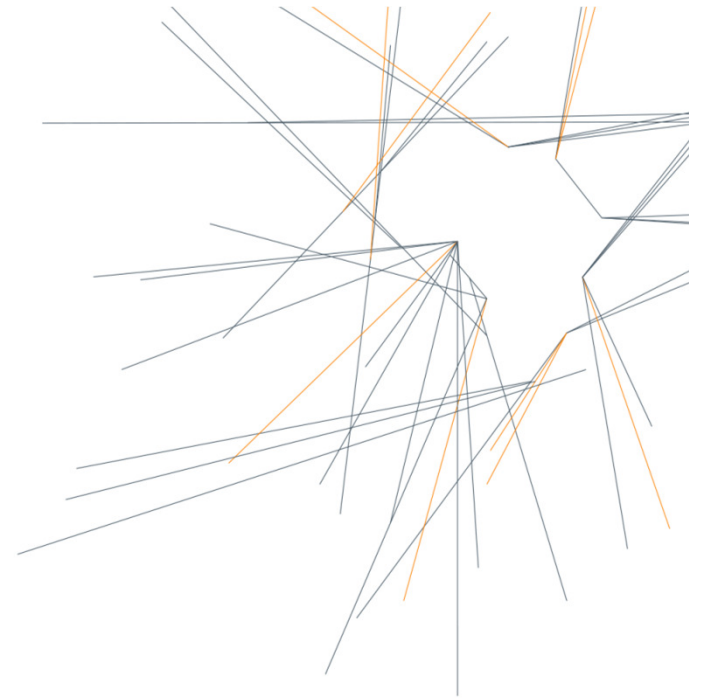
AMENDMENTS IN TERMS OF THE FSRA TO OTHER LEGISLATION

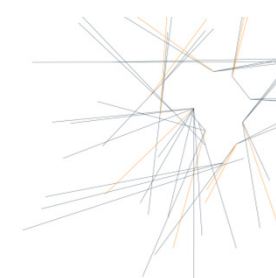


- Adds that the provisions of FAIS do not apply to –
 - collection and accounting for premiums and receiving, submitting, processing and settling claims when performed by a product supplier who –
 - is authorised to conduct business as a financial institution; and
 - where the rendering of such service is regulated under such law; provided that it does not apply to a person to whom the service is delegated and/or seconded if such person is not an employee; and
 - the rendering financial services by a manager of a CIS where the conduct is regulated under Collective Investment Schemes Control Act (**CISCA**), provided that it does not apply to an authorised agent in terms of CISCA.

INSURANCE ACT, 18 OF 2017

ZELDA SWANEPOEL





INTRODUCTION

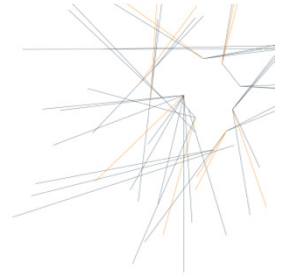
- Assented on 17 January 2017 and will come into effect on a date as published by the Minister.
- Various reiterations of the Insurance Act were published and in November 2017 the comments to Schedule 1 (classes of business) and Schedule 3 (transitional arrangements) were released.
- No further changes, other than grammatical changes, were noted from the November 2017 draft.
- However, there has been some significant changes from the May 2017 draft.
- The most significant changes are highlighted.



CHANGES TO THE INSURANCE ACT

- Aligns definitions to the FSRA, such as definition of a **control function**, definition of **outsourcing** and definition of **fit and proper requirements**, however other definitions, such as **key person** and **governing body** differs in the FSRA and the Insurance Act, due to the wider application of the FSRA to various financial institutions.
- Specifically address transformation and financial inclusion as requirements under the licensing considerations (license will not be approved without such transformation plan) and the object of the Insurance Act.
- Clarification to the definition of a **disability event** in respect of loss of limbs. Previously defined to state that a disability event includes an event where a person can't carry on activities of daily life "including as a result of a loss of limb". This has now been clarified to be two separate types of disability events.

CHANGES TO THE INSURANCE ACT



- Micro-insurance classes extended for non-life to agriculture policies.
- As part of the designation of the insurance group, it is now required that the Prudential Authority must also indicate which entity it will designate as the controlling company that must apply for a license as such.
- Significant duties imposed on boards of controlling companies.
- Clarifies that the designation of an insurance group may change if the risk profile of the group changes. Previously no qualification was given to such change in designation.
- Also provides that juristic persons forming part of an insurance group must on request from a controlling company provide certain information to the controlling company to fulfill its obligations. For this reason, **binding corporate rules** must be issued and forms part of the governance structure of an insurance group.

CHANGES TO THE INSURANCE ACT



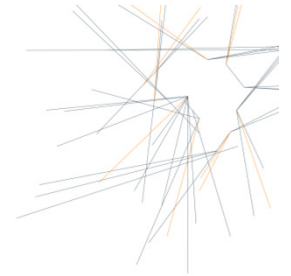
- Clarifies: provisions dealing with significant owners apply in addition to the requirements under the FSRA and **also applies to controlling companies.**
- Previously, if a significant owner's interest was deemed to be prejudicial to the insurer or the policyholders, the Prudential Authority was empowered to instruct that the shareholding be reduced, dividends restricted and/or voting rights restricted. Now provides for a specific process before such powers may be exercised:
 - Must act reasonably;
 - Consultation must be undertaken with the insurer, controlling company, as well as the significant owner;
 - Plan submitted to include timeline of limitation of voting rights; or reduction of the proportion of voting rights; or cessation as significant owner.



CHANGES TO THE INSURANCE ACT

- Includes that not only the license of the insurer, but also of the controlling company, may be varied, amended and/or suspended.
- Previously, a cell captive insurer was not allowed to insure the risks of another insurer (in other words provide for reinsurance arrangements), however this is now permissible subject to approval by the Prudential Authority.
- Clarifies that conditions imposed in terms of a license for an insurer and controlling company may only be included to further the objectives of the Insurance Act.

CHANGES TO THE INSURANCE ACT



- The Prudential Authority is empowered to impose –
 - different conditions in respect of different types or kinds of insurers or controlling companies, and different classes and sub-classes of insurance business; and
 - conditions to facilitate the progressive compliance to promote developmental, financial inclusion and transformation objectives.
- Changes regarding Lloyds and branches of foreign insurers includes –
 - clarifying what does it mean to conduct business in SA which is a very wide provision;
 - that trust deeds may not be amended without approval; and
 - 85 ○ trust funds may not be withdrawn.



CHANGES TO THE INSURANCE ACT

- Under business rescue and winding up a clear distinction is made between the powers of the judiciary (courts) and the Prudential Authority.
- Addressed that policyholders are concurrent and not preferred creditors.
- Specifically provides that any action taken by the Prudential Authority is administrative action and PAJA must be complied with, in particular that reasons for a decision must be furnished.
- Also deleted the requirement that "international standards" must be considered when taking administrative action.
- However, such international standards may be considered when making standards.

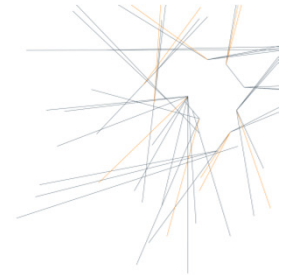
CHANGES TO THE INSURANCE ACT



- Provides for exemptions for insurers and controlling companies from the provisions of the Insurance Act if -
 - practicalities impede the strict application of a provision;
 - if a strict application is not proportional to the nature, scale and complexity of the insurer or insurance group;
 - necessary for developmental, financial inclusion and transformation objectives.
- Any exemption may apply to insurers or controlling companies generally or be limited to particular kinds or types of insurers or controlling companies.

CHANGES TO THE INSURANCE ACT

- Penalties is increased to R50 000 000 in respect of –
 - insurers for non-compliance with requirements not to dispose of assets or enter into new policies when a license is suspended;
 - significant owners if they do not reduce shareholding after following the plan as described.



OTHER IMPORTANT CHANGES TO REMEMBER

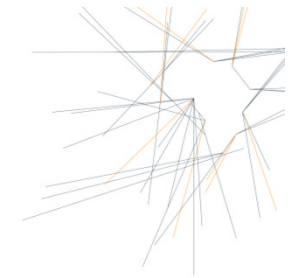


- Repeal the provisions of section 25 of the STI Act and section of the 26 LTI Act dealing with a change of control. Note these sections will be amended in terms of the FSRA.
- IGF guarantees will also be required for life business in respect of collection of premiums.
- Non-life business refers to "indemnifying for a loss". However, in life business, under the class "funeral" provides that it is an amount, which may not exceed a prescribed amount to "cover cost associated with a funeral or rendering a service on the happening of a death event". Must the amount therefore be applied solely for the funeral and/or be equal to the funeral?



OTHER IMPORTANT CHANGES TO REMEMBER

- Section 8(5) of the STI Act = repealed by Financial Services Laws General Amendment Act (with effect from 1 January 2018)
- This Act also already amended the wording of section 48 of the STI Act and 49 of the LTI Act.
- Accident and health non-life relates to **disability event** and **life event** as a result of **an accident** and not for any other events.
- As part of the licensing process, directors, key persons and significant owners' compliance with the fit and proper requirements will be considered.



OTHER IMPORTANT CHANGES TO REMEMBER

- Must apply, as part of licensing, to conduct –
 - business other than insurance business in RSA;
 - any business, including insurance business, outside RSA.
- Within 2 months from effective date must submit detailed information regarding –
 - group structure;
 - the holding company; and
 - any intra-group transactions.



CHANGES TO THE LTI ACT AND THE STI ACT

- Many of the definitions are repealed, but reads exactly the same and it is unclear why the definitions changed. See for instance definition of "fund policy".
- Previous version deleted the authority of the Minister to prescribe higher amounts for assistance policies, this is reinserted and the amount of R30 000 is now included.
- **Most important change:**
 - Differentiate between a licensed insurer and a registered insurer.
 - Licensed insurer = if obtained a new license in terms of the Insurance Act.
 - Registered = if registered in terms of the LTI Act and the STI Act.



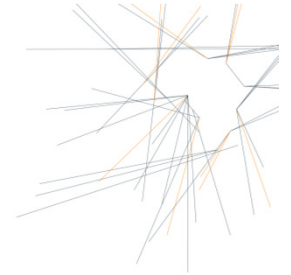
CHANGES TO THE LTI ACT AND THE STI ACT

- What is the relevance?
 - If licensed – new definitions per the Insurance Act will apply, such as new definitions of long-term policy, insurance obligations, disability policy, health and accident and health policies, and most importantly the new definition of "**policyholder**".
 - Why is that so relevant?
 - Currently a policyholder is a person entitled to be provided with the benefits under a long-term policy.
 - Under the Insurance Act it is the person who enters into the policy and the successor in title.
 - **What is the impact then on the PPR since the PPR currently refers to a policyholder per the current LTI Act!**



CHANGES TO THE LTI ACT AND THE STI ACT

- Repeal of various sections of the LTI Act and STI Act, the most important are:
 - Provisions dealing with reclassification of policies
 - All provisions dealing with licensing
 - All provisions dealing with financial soundness
 - Section 48 of the LTI Act dealing with a policy summary
 - Section 47 of the STI Act dealing with copy of policy
 - Section 52 of the LTI Act dealing with non-payment of premiums
 - Section 53 of the LTI Act dealing with option to pay benefits
 - Section 59 of the LTI Act and 53 of STI Act dealing with misrepresentation.



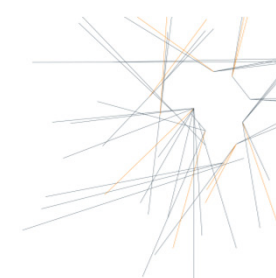
CHANGES TO SCHEDULES

- In the definition of "policy benefits" for licensed insurers:
 - ... benefits to which a person ~~policyholder~~ is contractually entitled under a life insurance policy arising from an insurer's insurance obligations
 - **This is to cater for business where the policyholder is someone else that the person contractually entitled to the benefits.**
- Previously proposed a deletion of Part 4 of the Regulations to the LTI Act, but this is reinserted to continue to distinguish between bank business and insurance business.
- The process regarding relicensing will be published.
- No longer require a binder agreement for reinsurance policies.



CHANGES TO SCHEDULES

- No other changes were accepted to "**beneficiary**", "**group**" or "**individual**".
 - **Beneficiary**
 - Policy other than group policy – person towards whom insurance obligations must be met;
 - Group policy – **member of association or fund** or employee **or** person nominated by member or employee who may not be the association, fund or employer.
 - Note: Per the classes of business, it provides insurer may only pay the benefits to a beneficiary.



CHANGES TO SCHEDULES

- **Group**

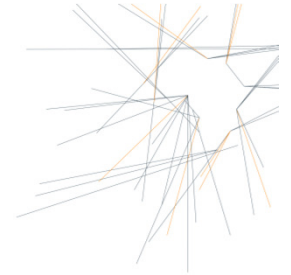
- Policy entered into with **an autonomous association** of persons united voluntarily to meet their common needs and aspirations, **which association is democratically controlled**; or
- an employer; or
- a fund.

where the policy is held by the association, fund or employer for the exclusive benefit of **beneficiary**.

- **Note:**

- Can not have a group with any other entity / organisation.
- What is the meaning of "democratically controlled"?

- ⁹⁷ ○ Can always only pay the beneficiary.



CHANGES TO SCHEDULES

- **Individual (underwritten on a group or individual basis)**
 - Policy entered into with a person and includes –
 - **credit scheme** (where the credit provider is the policyholder) and the beneficiary
 - policy with an employer (where the employer is the policyholder) and the beneficiary and the lives insured are directors or employees,
 - **BUT EXCLUDES:**
 - a group insurance policy, or
 - a policy where two or more persons are insured without an insurance interest in each other's lives.

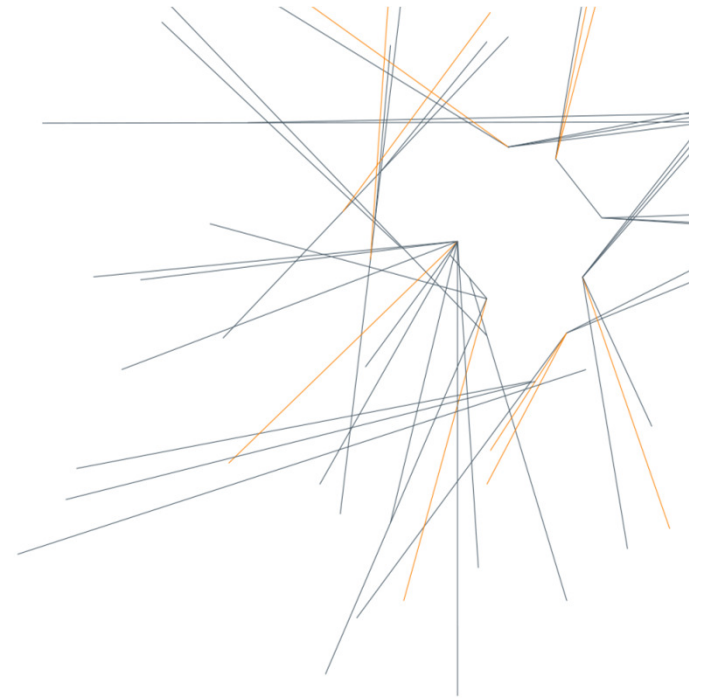
CHANGES TO SCHEDULES

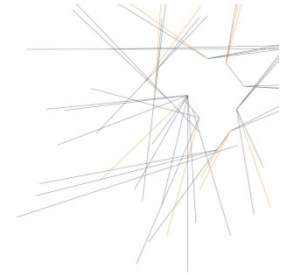


- The role of the beneficiary is elevated and receives statutory protection much like a policyholder within the current context.
- All members of group policies (on a *stipulatio alteri* structure), will lose their current protection as policyholders as they will become only beneficiaries under the group policy.
- In the case where a client enters into a policy, and is therefore the policyholder, the client as policyholder under an individual policy is still free to nominate someone like the employer or funeral parlour to be the beneficiary in which case the employer or funeral parlour would receive more and better statutory protection than the policyholder.
- This significantly impacts all employer schemes, church schemes and funeral schemes.

POLICYHOLDER PROTECTION RULES

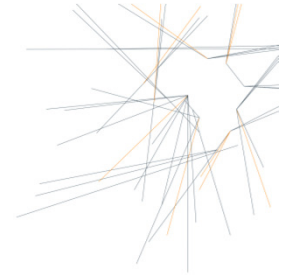
ZELDA SWANEPOEL





INTRODUCTION

- Published in the Gazette on 15 December 2017.
- Came into effect on **1 January 2018** provided that there are certain transitional periods.
- With regards to **transitional arrangements**, note that:
 - Rules apply to **new and existing policies** from the date on which a rule takes effect except where otherwise indicated in a rule.
 - Different rules have different implementation dates **allowing for 6 to 24** month transitional periods.



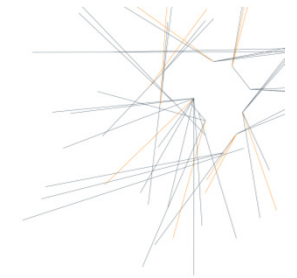
INTRODUCTION

- **Transitional periods which have changed from the last draft:**
 - Cooling off rights (rule 4) - entire rule has a 12 month period;
 - Certain provisions of intermediary agreements (rule 12) :
 - No transitional provisions for new arrangements.
 - Except in respect of existing arrangements transitional period of 12 months regarding the conclusion of agreements with only FSP and reps.
- Rules 17 & 18 on claims and complaints management – was 12 months for individual and group schemes, now extended to 18 months but only in respect of group schemes.
- Rule 20 on termination of policies - was 12 months now 24 months.

INTRODUCTION



- Certain existing rules in terms of the current PPRs remain applicable to **new and existing policies** for:
 - a **period of 12 months**, namely –
 - Rules on direct marketing;
 - Rules on cancellation of policies and cooling off rights;
 - Additional insurer duties;
 - claims;
 - signature of blank forms;
 - policy loans and cessions); and
 - a **period of 24 months**, namely-
 - application of Part VII of the current PPR re assistance business group schemes.



INTRODUCTION

- Note that the PPR does not apply to reinsurance policies.
- Application to commercial lines policies?
 - Yes, but only to some juristic entities that meet the thresholds.
- Reference to "the Act" is a reference to the current LTI Act and STI Act and not to the Insurance Act, however the Insurance Act (upon its enactment) amends the definition of "policyholder" in the LTI Act depending on whether an insurer is a licensed or registered insurer:
 - Licensed – policyholder is the person with whom you concluded a policy;
BUT
 - Registered insurer – policyholder is the person entitled to the benefits.



INTRODUCTION

- **Question:** What will be the implications? Will the PPR be amended again or will different insurers afford different protections to different people which will result in confusion.
- **To make matters more complex:**
 - The Schedule to the Insurance Act does not state its implementation date.
 - The transitional provisions to the Insurance Act makes provisions for insurers who are licensed to be licensed for the classes mentioned in Schedule 2.
 - This must mean that Schedule 2 becomes effective with the effective date of the Insurance Act.



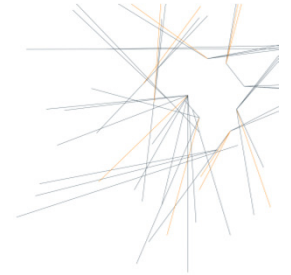
INTRODUCTION

- This is supported by the fact that definition of "beneficiary", "group" and "individual policy" is not amended in the current LTI Act to differentiate between a licensed and a registered insurer.
- **What is the effect?**
 - Groups will be regulated per the Schedule to the Insurance Act.
 - A policyholder will depend on whether the insurer is licensed or registered.
 - The same with a beneficiary and group policy since it is differently defined in the Insurance Act, the LTI Act, STI Act and the new PPR.
 - The PPR will therefore give protections differently.
- Implementation of the Insurance Act with the PPR must be discussed with the Regulator.

CRUX OF CHANGES TO PPR



- Previous drafts included in the definition of **policyholder** a member and a potential policyholder.
- This meant that all rules had to be complied with in respect of members of group schemes (including employees in an employer scheme) and members of fund policies.
- This would have grave implications.
- This has been changed through amendments to following definitions:
 - Policyholder
 - Member
 - Beneficiary



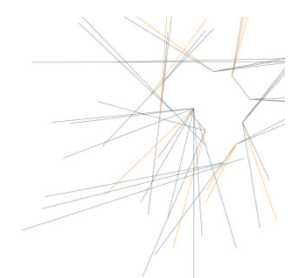
POLICYHOLDER PPR DEFINITIONS

- LTI Act

has the meaning assigned to it in the Act and includes any person in respect of whom a fund, under a fund member policy, insures its liability to provide benefits to such person in terms of its rules"

- STI Act

No definition in the definitions section. Different rules contain phrases such as "For the purposes of this rule, reference to a "policyholder" includes a member of a group scheme



BENEFICIARY PPR DEFINITIONS

- LTI Act

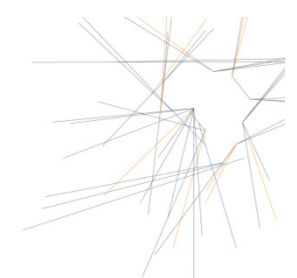
"means –

- (a) *a person nominated by the policyholder as the person in respect of whom the insurer should meet policy benefits; or*
- (b) *in the case of a fund member policy, a fund policy or a group scheme, a person nominated by the fund, member of the fund or member of the group scheme, or otherwise determined in accordance with the rules of that fund or group scheme as the person in respect of whom the insurer should meet policy benefits;*

- STI Act

"means -

- (a) *a person nominated by the policyholder as the person in respect of whom the insurer should meet policy benefits; or*
- (b) *in the case of a group scheme, a person nominated by the group scheme or member of the group scheme or otherwise determined in accordance with the rules of that group scheme as the person in respect of whom the insurer should meet policy benefits!"*



MEMBER PPR DEFINITIONS

- LTI Act

"Member" - *means a member of a fund or a member of a group scheme*

"member of a group scheme" means –

a person who participates in a group scheme to insure himself; or

a person who participates in a group scheme to insure the lives of

one or more other persons in which the first person has an insurable interest

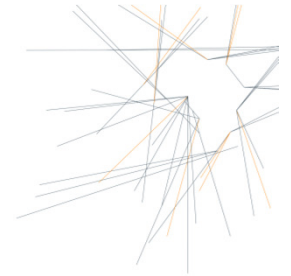
"member of a fund" mean –

any person in respect of whom a fund under a fund policy insurers its liability to provide the benefits to such person.

- STI Act

110 NONE

MEMBER OF A FUND PPR DEFINITIONS

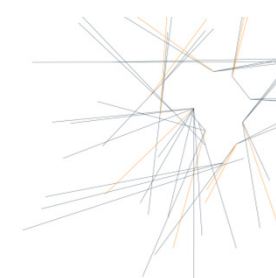


- LTI Act

"means any person in respect of whom a fund, under a fund policy, insures its liability to provide benefits to such person in terms of its rules"

- STI Act

NONE



POTENTIAL POLICYHOLDER PPR DEFINITIONS

- LTI Act

"means a person who –

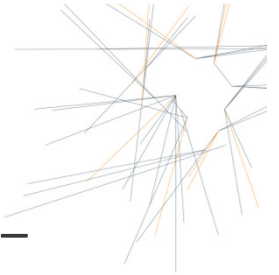
- (a) has applied to or otherwise approached an insurer or an intermediary to become a policyholder;*
- (b) has been solicited by an insurer or an intermediary to become a policyholder; or*
- (c) has received advertising, as defined in rule 10, in relation to any policy or related service of an insurer"*

- STI Act

"means a person who –

- (a) has applied to or otherwise approached an insurer or an intermediary to become a policyholder;*
- (b) has been solicited by an insurer or an intermediary to become a policyholder; or*
- (c) has received advertising, as defined in rule 10, in relation to any policy or related service of an insurer"*

CRUX OF CHANGES TO PPR



- Further amendments in rules 1.5, 1.6, 1.7 and 1.8 which determines –
 - if an insurer can demonstrate due to nature of fund or group scheme; that it is no reasonably practical to engage directly with members that the rules can be complied with through the policyholder, **provided** –
 - there are systems and agreements in place to ensure that the policyholder provides such communication to the members;
 - **insurer remains liable** notwithstanding such reliance;
 - **must mitigate risks of unsuitable advice** by independent intermediaries;
 - insurer must be enabled to **monitor fair treatment of members** through these means.



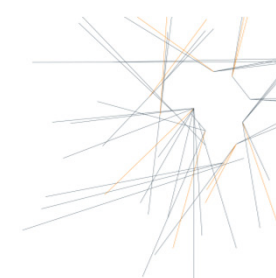
CRUX OF CHANGES TO PPR

- Carve-out do not apply where the **member is also the policyholder**. In such instance must comply with all rules towards the member.
- [Rule 2.2] Insurer must, when developing products, make use of information on needs of kinds or **categories of both policyholders and members** (not only policyholders – greater protection for groups). Rule now only applies to development of any new products or material changes in design of existing products. Previously – all changes.
- [Rule 3.2] Insurer must **not only assist policyholders, but also members** where such member exercises a right under section 106(4)(a) of the NCA (replacement of policies), to comply with relevant provisions of that Act.



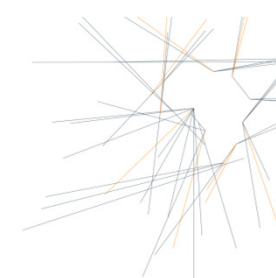
CRUX OF CHANGES TO PPR

- Cooling off rights must also be **afforded to members** in a voluntary group.
- Data requirements [Rule 13.4] is however extended to **members**.
- In determining premiums – must balance interest of the insurer with interest of policyholders and members **but only applies to new policies are where premiums are changed.**



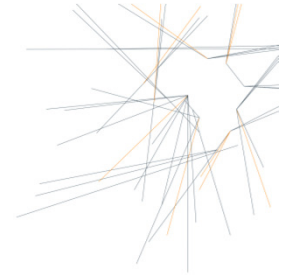
OTHER IMPORTANT PROVISIONS

- Note that outsourcing in the PPR has a different definition.
- Rules regarding marketing, loyalty benefits and advertising already apply.
- Direct marketing – old PPR applies for 12 months, but have regard to new rules as it will apply to all policies upon coming into effect next January 2019.
- Must have a data management procedure in place dealing with access to data.
- The data management procedure applies to both policyholders and members, but limited to name, ID number and contact number.



INTERMEDIARY CONTRACTS

- **FAIS product knowledge and competency requirements =**
 - requirements relating to class of business training and product specific training.
- **Intermediary agreement =** an agreement entered into between insurer and intermediary (this includes a rep) in terms whereof the intermediary will render services as an intermediary.
- An insurer may **only enter into an intermediary agreement** with –
 - FSP –
 - complies with section 8 licensing;
 - and insurer has satisfied itself that the intermediary and persons acting on its behalf meets the FAIS product knowledge and competency requirements.



INTERMEDIARY CONTRACTS

- Rep of the insurer –
 - if duly appointed as a representative;
 - meets the fit and proper requirements, including the FAIS product knowledge and competency requirement.
- Intermediary agreement must be concluded directly between the insurer and the intermediary.
- Provide a written copy to the intermediary.
- Despite any provision – the intermediary agreement terminates immediately if the FSP is no longer an FSP or the appointment of the representative has been terminated.

INTERMEDIARY CONTRACTS

- An insurer **must** provide information to an intermediary who is authorised by a policyholder or member as set out in the authorisation even if the intermediary does not have a contract with the insurer.



REPLACEMENT OF INDIVIDUAL RISK POLICIES: LTI ACT ONLY



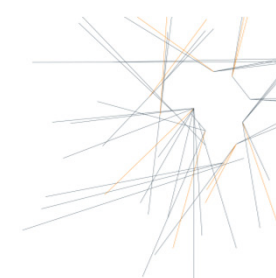
- New definition for replacement:

"replacement" means the action or process of-

(a) substituting an individual risk policy (the "replaced policy"), wholly or in part, with another individual risk policy (the "replacement policy");

(b) the termination or variation of an individual risk policy (the "replaced policy") and the entering into or variation of another individual risk policy (the "replacement policy");

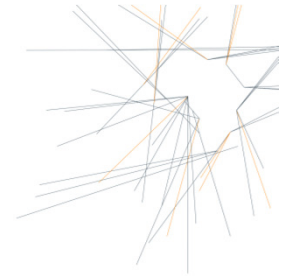
with the purpose of meeting the same or similar needs or objectives of the policyholder or in anticipation of, or as a consequence of, effecting the substitution or variation, irrespective of the sequence of the occurrence of the transactions;



REPLACEMENT OF INDIVIDUAL RISK POLICIES

- Applies to individual risk policies.
- New definitions of **termination of an individual risk policy** as well as for **variation of a policy**
- New definition of termination of an individual risk policy
*"**termination of an individual risk policy**" means the termination of the policy by the policyholder, including the full surrender of the policy or cancellation of the policy from inception;"*

REPLACEMENT OF INDIVIDUAL RISK POLICIES

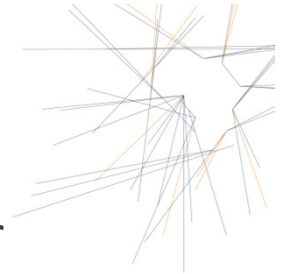


- New definition of variation of a policy
 - "variation of a policy" in relation to the replaced policy, includes –*
 - (i) a reduction in the premium payable;*
 - (ii) making the policy paid-up;*
 - (iii) the cessation of premiums;*
 - (iv) the application of the policy value as premiums payable in respect of the relevant policy referred to in section 52(2) of the Act;*
 - (v) the reduction or removal of any benefit in respect of the policy;*
 - (vi) the policy becoming static because an option to update cover or premiums has not been exercised; and*
 - (vii) the partial surrender of the policy*



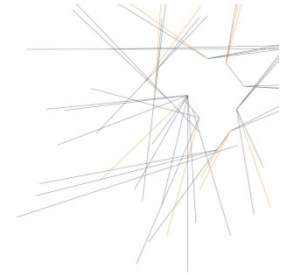
REPLACEMENT OF INDIVIDUAL RISK POLICIES

- Insurer must obtain confirmation **from intermediary who rendered the intermediary services** whether the policy is a replacement.
- If yes, obtain copy of replacement advice, **unless the intermediary confirms that no advice was given.**
- Replacement advice to be exchanged between insurers within 14 days.



REPLACEMENT OF INDIVIDUAL RISK POLICIES

- New insurer must within 14 days through the managing executive or person with sufficient seniority confirm that –
 - Replacement advice complies with the disclosure requirements; and
 - Replacement advice contains sufficient information regarding the replacement to indicate that sufficient steps was taken by the intermediary to satisfy himself/herself that the replaced policy is **more** suitable to the policyholder's needs.
- If insurer establish that intermediary failed then –
 - the insurer must inform the registrar; and
 - **allow a policyholder, if policy is not older than 6 months**, of the right to terminate.
- ¹²⁴ Note: No similar rule under STI Act.



TERMINATION OF POLICIES

- New definitions for material change and termination:

*"**material change**" means any change in circumstances that results in a policyholder or beneficiary not being entitled to claim a policy benefit under a policy"*

*"**termination**" or any derivative of the term, in relation to a policy, means that a policy comes to an end, for any reason, and includes -*

(a) the cancellation or lapsing of a policy; or

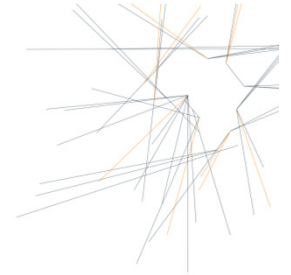
(b) the non-renewal of a policy where the policy provides for the automatic renewal of that policy or if the policyholder has a legitimate expectation that the policy will be renewed."



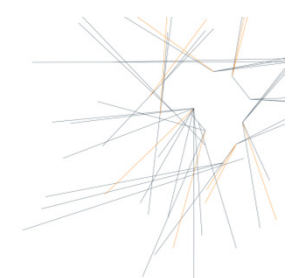
TERMINATION BY INSURER (INDIVIDUAL)

- **Where insurer terminates an individual policy in circumstances other than –**
 - non-payment of premium;
 - material change in risk which results in policy automatically coming to and end or provides the insurer a right to terminate,
- then
 - the insurer must give notice at least 31 days notice; and
 - remain liable for 31 days and –
 - receive proof of that policyholder has been made aware of the termination; [If cant get proof 31 days passed and took reasonable steps to contact policyholder]
 - or receives confirmation of new policy.

TERMINATION BY INSURER (INDIVIDUAL)



- If confirmation cant be received –
 - that a period of 31 days lapsed since sending it to last known address of policyholder;
 - took all reasonable steps to ensure the contact information is correct **and** to contact the policyholder.



TERMINATION BY INSURER (GROUP)

- **Where insurer terminates a group policy the insurer must -**
 - give notice to policyholder and the Registrar of at least 31 days;
 - be able to show that it took reasonable steps to provide notice to members of the group schemes.
- If insurer can indicate that is not reasonably practical to notify the members due to **the nature of the group scheme** –
 - must provide policyholder with reasonable support to do so to the members; and
 - satisfy itself that policyholder has provided notice to members.
- Insurer remains liable for shorter of –
 - 31 days after the date of compliance with rule; or
 - receives proof of new policy providing similar cover.

TERMINATION AND REPLACEMENT BY POLICYHOLDER (GROUP)



- Where policyholder terminates or replaces a group policy **the insurer of the policy being terminated** must give notice to the Registrar.
- Insurer must before entering into new policy determine if it is a replacement or substitution.
- Prima facie a replacement if –
 - entered into policy with same policyholder;
 - same lives assured.
- If the policy is a replacement, the **new insurer** must at least 31 days before entering into the policy take reasonable steps to inform the **members** of material differences; and reasons for difference.

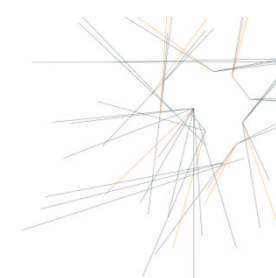
TERMINATION AND REPLACEMENT BY POLICYHOLDER (GROUP)



- New waiting periods are void.

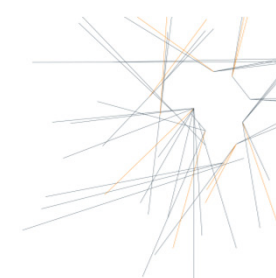
In respect of termination of group policies (by insurer / policyholder):

- Communication requirements only complied with if –
 - taken reasonable steps to communicate with members; and
 - where it suspects details are incomplete, or information won't reach the members, that it took all reasonable efforts to communicate using other means.



APPLICATION OF PART VII OF THE PPR

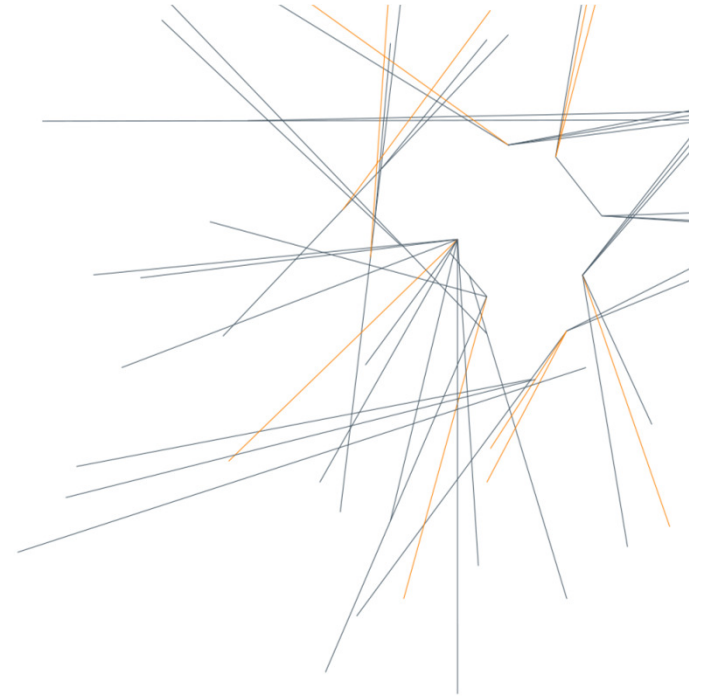
- Applies for 24 months.
- Note the definition and requirements to qualify:
 “assistance business group scheme” means the provision of policy benefits under an assistance policy to a group where -
 - (a) individual persons are the policyholders;
 - (b) no individual underwriting takes place;
 - (c) the individual person whose life is insured, is directly or indirectly paying premiums;
 - (d) the policy may be cancelled by either party to the policy ; and
 - (e) the policy has term cover only,and **“scheme”** has a corresponding meaning;



APPLICATION OF PART VII OF THE PPR

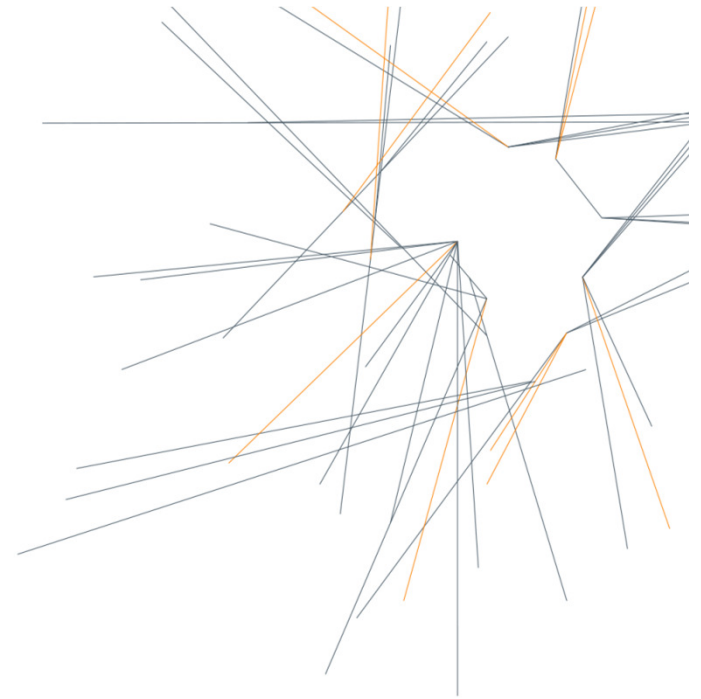
- **“group”** means two or more people who have entered, on a group-underwriting basis, into a policy with an insurer through an administrator who has been provided with a mandate by the insurer to facilitate these policies"
- **“administrator”** means a person who has a written mandate from an insurer to do administrative work in respect of a specific assistance business group scheme and who is licensed as a financial services provider in terms of, or who is a representative as contemplated in, the FAIS Act;
- **“administrative work”** means work in connection with the handling of enquiries, maintaining administrative records, the receipt of premiums and processing of claims to the extent agreed to in terms of a written mandate between the insurer and the administrator under an assistance business

132 group scheme



REMUNERATION STRUCTURES

JOHAN HENNING



REMUNERATION FOR INTERMEDIARY SERVICES: LONG-TERM

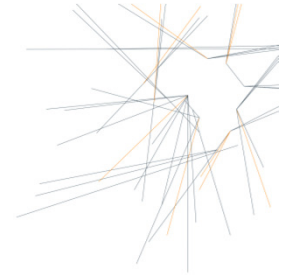
INTERMEDIARY REMUNERATION & OTHER CONSIDERATION



- Position following implementation of:
 - the Long-term Regulations (**LTI Act Regulations**) – 15 December 2017;
 - the Short-term Regulations (**STI Act Regulations**) – 15 December 2017;
 - Board Notice 181 of 2017 – Equivalence of Reward;
 - Proposed amendments to the General Code of Conduct for Authorised Financial Services Providers and Representatives (**FAIS General Code**);
 - Amendments to the FAIS Fit and Proper Determination (**Fit and Proper Determination**);
 - Replaced Policyholder Protection Rules (**Replaced PPR**).

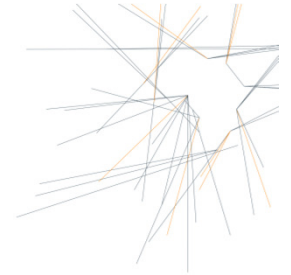
TYPE OF PAYMENTS

- Remuneration for intermediary services
- Binder fees
- Outsource fees
- Providing of financial interests
- Payments in respect of ownership interests
- Fees agreed with the client / policyholder
- Lead fees and referral fees

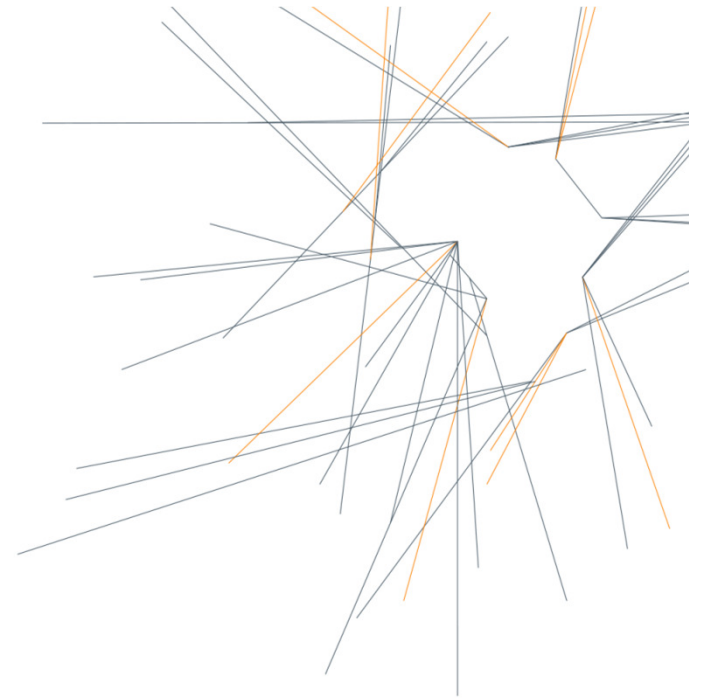


REMUNERATION FOR INTERMEDIARY SERVICES

- Commission Regulations – LTI Act and STI Act
- Board Notice 181 of 2017 – Equivalence of Reward
- Replaced fit and proper determination in FAIS
- FAIS General Code as amended
- Replaced PPR



**REMUNERATION FOR
INTERMEDIARY SERVICES:
LONG-TERM**



REMUNERATION FOR INTERMEDIARY SERVICES: LONG-TERM



- Proposed amendments to the Commission Regulations early 2017 - refer to this as the **Proposed Regulations**.
- The Commission Regulations published December 2017 - refer to as the **New Regulations**.
- Key definition in the Commission Regulations is "*rendering services as intermediary*".

REMUNERATION FOR INTERMEDIARY SERVICES: LONG-TERM



- **Proposed Regulations** - proposed amendment to the existing definition of "*rendering services as an intermediary*".
- **“services as intermediary”** means any act performed **by a person on behalf of an insurer or a policyholder** -
 - *directed towards entering into, varying or renewing an insurance policy; or*
 - *with a view to -*
 - *maintaining, servicing or otherwise dealing with;*
 - *collecting or accounting for premiums payable under;*
 - *receiving, submitting or processing claims under;*
 - *providing administrative services, other than policy data administration services as defined in sub-regulation 3.19 in Part 3C rendered on behalf of an insurer, in relation to,*
 - *an insurance policy, and includes any such act in relation to a fund, a member of a fund and the agreement between the member and the fund".*

REMUNERATION FOR INTERMEDIARY SERVICES: LONG-TERM



- The words "*... performance by a person other than a long-term insurer or a policyholder, on behalf of a long-term insurer or a policyholder, ...*" would have been deleted.
- The implications would have been that one life office would be able to render intermediary services on behalf of another life office as intermediary.
- Also a policyholder would have been able to render intermediary services in respect of a policy to which it is a policyholder.

REMUNERATION FOR INTERMEDIARY SERVICES: LONG-TERM



- The proposed amendment has not been effected in the New Regulations:
 - one life office can thus not render intermediary services on behalf of another life office;
 - commission is thus not regulated between long-term insurers;
 - one life office cannot be a non-mandated intermediary of another life office and can thus not be a binder holder other than a underwriting manager;
 - a policyholder cannot render intermediary services in respect of its policy. In a credit scheme the bank as policyholder will thus not be subject to the commission regulations because the bank cannot be an intermediary.

REMUNERATION FOR INTERMEDIARY SERVICES: LONG-TERM



- The definition of rendering services as intermediary thus remains unchanged.
- The requirements are thus still:
 - it is a service rendered by a person interposing between a policyholder and an insurer;
 - the service must be of a specific nature directed towards:
 - entering into; maintaining or servicing a policy;
 - collecting, accounting for or paying premiums; or
 - providing administrative services in relation to a policy.

REMUNERATION FOR INTERMEDIARY SERVICES: LONG-TERM



- Definition of independent intermediary remains the same.
- The definition of representative under the New Regulations:
 - person employed or mandated by the insurer;
 - to render intermediary services in relation to policies:
 - of that insurer;
 - of an insurer in the same group as that insurer;
 - after 1 January 2018 issued by another insurer not in the same group in respect of a class of policies not offered by any insurer in the group or which the Registrar may determine.

REMUNERATION FOR INTERMEDIARY SERVICES: LONG-TERM



- Grandfather clause in respect of agreements between insurers entered into prior to 1 January 2017. Intermediary services may still be rendered in respect of policies issued up to 1 January 2018 notwithstanding the class of policy.
- Gap in respect of policies where the agreement between the insurers was entered into after 1 January 2017 and the insurers in the same group who employed or mandated the representative, do not offer such class of business.

REMUNERATION FOR INTERMEDIARY SERVICES: LONG-TERM



- Independent Intermediaries – commission only.
- Representatives – equivalence of reward:
 - draft determination Board Notice 181 of 2017 (determination);
 - worded to state what does not constitute equivalence of reward;
 - in terms of 3.2(4A) of the Commission Regulations no remuneration may be provided otherwise than in accordance with the principle of equivalence of reward;
 - in other words all payments to representatives will be in accordance with the principle unless specifically prohibited in the determination.
[This is an important interpretation principle]

REMUNERATION FOR INTERMEDIARY SERVICES: LONG-TERM



- Remuneration not complying with the principle:
 - loans, credit, etc. on terms more favourable than arms-length terms offered by licensed credit providers, other than a salary advance (ordinary salary 31 days in advance);
 - consideration payable for the purchase of the book of the representative;
 - remuneration exceeding 15% of ordinary remuneration over 12 months, including bonuses, performance awards, travel accommodation, share options, profit share schemes, but excludes standard benefits;
 - any similar arrangements or future undertakings.

REMUNERATION FOR INTERMEDIARY SERVICES: LONG-TERM



- Meaning of –
 - **Ordinary remuneration:**
 - any combination of -
 - a) fixed recurring salary;
 - b) commission in monetary form not exceeding maximum commission;
 - c) standard benefits,
provided to all representatives or particular types of representatives and includes pension, medical scheme, leave benefits and reimbursement of travel and subsistence expenses on pre determined tariff.

REMUNERATION FOR INTERMEDIARY SERVICES: LONG-TERM



- **In respect of ordinary remuneration:**
 - There is no limitation on fixed recurring salary;
 - This can be any amount and can be paid in combination with maximum commission and standard benefits;
 - On the face of the determination an amount materially above maximum commission can thus be paid as ordinary remuneration;
 - However this needs to be read with the FAIS Fit and Proper Determination discussed below as it applies to representatives with the result that the consideration must be reasonably commensurate and not structured in a manner that may increase the risk of unfair treatment of clients. This conclusion is dealt with below.

REMUNERATION FOR INTERMEDIARY SERVICES: LONG-TERM



- **Credit Schemes:**
 - Current annexure 1 to the Commission Regulations provides for commission payable in respect of a credit scheme;
 - 7.5% is allowed – without administrative work;
 - 22.5% is allowed – with administrative work ;
 - Intention is to remove the 22.5% **with effect from 1 January 2019;**
 - Only applies to intermediaries;
 - “*credit scheme*” means a group scheme under which every life insured is indebted to or a surety of the policyholder whose insurable interest as policyholder arises solely from that indebtedness or suretyship.

REMUNERATION FOR INTERMEDIARY SERVICES: LONG-TERM



- To the extent that the bank is the policyholder in terms of a credit scheme the bank cannot be an intermediary because of the definition of rendering services as intermediary and may receive any consideration for services rendered;
- If the services fall in the definition of outsourcing services then Directive 159 will apply and the remuneration must be reasonably commensurate.

REMUNERATION FOR INTERMEDIARY SERVICES: LONG-TERM



- **Replacement of risk policies:**
 - No commission may be paid in respect of the replacement of risk policies unless all the requirements of Rule 19 of the Replaced PPR has been met;
 - Effective date for requirement – 1 January 2018.
- **If replacement policy:**
 - Insurer must obtain a copy of the replacement advice record;
 - Must provide a copy thereof to the insurer of the replaced policy within 14 days;
 - Managing executive or his delegate must confirm in writing that the replacement advice record:
 - complies with section 8(1)(d) of General Code; and
 - the record shows that the intermediary took reasonable steps to satisfy him/herself it is more suitable.

REMUNERATION FOR INTERMEDIARY SERVICES: LONG-TERM



Must commission be reasonably commensurate with the services?

- Proposed Regulations contained a Part 3D relating to general principles for determining remuneration:
 - in terms thereof commission had to be reasonably commensurate to the service and other requirements;
 - the proposed Part 3D has not been implemented and Part 3D now requires insurers to notify the Registrar if they enter into any arrangement to pay remuneration to an independent intermediary or representative for any service, function, activity which does not constitute rendering services as an intermediary or a binder function.

REMUNERATION FOR INTERMEDIARY SERVICES: LONG-TERM

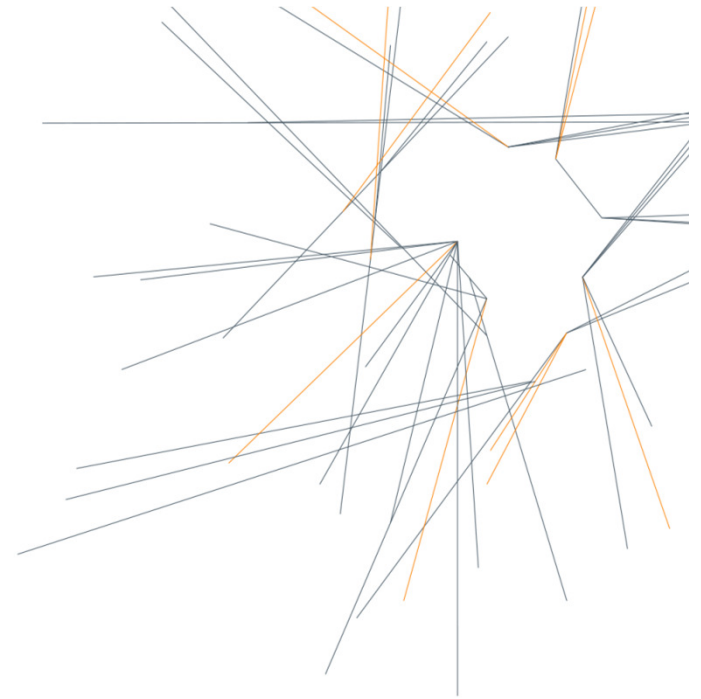


- The amendments to the FAIS General Code, section 3A, contains provisions that financial interests must be reasonably commensurate in respect of fees agreed with clients or fees agreed with third parties but specifically do not apply to commission and fees authorised in terms of the LTI Act or STI Act.
- Section 40(2) of the replaced Fit and Proper Determination:
 - an FSP must ensure that any remuneration or fees payable to a representative must be reasonable and commensurate and not structured in a manner that may increase the risk of unfair treatment of clients;
 - rule 12.2 of the replaced PPR provides that an insurer may only enter into an intermediary agreement with a representative of the insurer appointed in terms of section 7(1)(b) of FAIS.

REMUNERATION FOR INTERMEDIARY SERVICES: LONG-TERM

- An insurer will be able to render intermediary services in respect of its own policies due to the amendment to the definition of Intermediary Services through the FSR Act once those amendments become effective notwithstanding *TriStar Investments (Pty) Limited v Chemical Industries National Provident Fund [2013] JOL (SCA)*.
- Thus, although the Commission Regulations no longer require that commission need to be reasonably commensurate, payments by Insurers to their representatives will need to be reasonably commensurate.
- This requirement needs to be taken into account when dealing with equivalence of reward. Although the equivalence of reward requirement seems open ended remuneration will need to be reasonably commensurate.
- There is however no requirement in respect of independent intermediaries

REMUNERATION FOR INTERMEDIARY SERVICES – SHORT-TERM



REMUNERATION FOR INTERMEDIARY SERVICES: SHORT-TERM



- In the Proposed Regulations the definitions of *representative* and *services as intermediary* would have differ from the definitions in the STI Act.
- It was proposed that a representative is a natural person employed or mandated by the insurer.
- The proposed definition of intermediary services would have made it clear that it is a service rendered be a person on behalf of an insurer or policyholder thus making it clear it interposes between the insurer and policyholder.
- The proposed definitions have not be implemented. The definitions as they read in the STI Act have been copied over in the New Regulations.

REMUNERATION FOR INTERMEDIARY SERVICES: SHORT-TERM



- *Services as an intermediary* has in our view the same meaning as in the LTI Act with reference to the Tri Star matter notwithstanding the fact that it does not refer to a person acting on behalf of an insurer or policyholder.
- The interpretation of intermediary services in FAIS is however different and moves away from the Tri Star case because of the *Natal Joint Municipal Pension fund v Endumeni Municipality, 2012 (4) SA 593 (SCA)* matter:

The inevitable point of departure is the language of the provision itself, read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.

REMUNERATION FOR INTERMEDIARY SERVICES: SHORT-TERM



- Representative is still defined as a natural person employed by or working for a short-term insurer.
- Read in isolation, secondment agreements where the insurer enters into a secondment agreement with a labour broker and the natural persons work for the insurer and get paid by the labour broker, is still possible.
- However the provisions of the new Short-term PPR makes this no longer possible.
- Rule 12.2.2 makes it clear that the intermediary agreement must be between the insurer and the intermediary and not a third party.
- Rule 12.2.2(b) makes it clear that the intermediary must be appointed as a representative in terms of 7(1)(b) of FAIS.

REMUNERATION FOR INTERMEDIARY SERVICES: SHORT-TERM



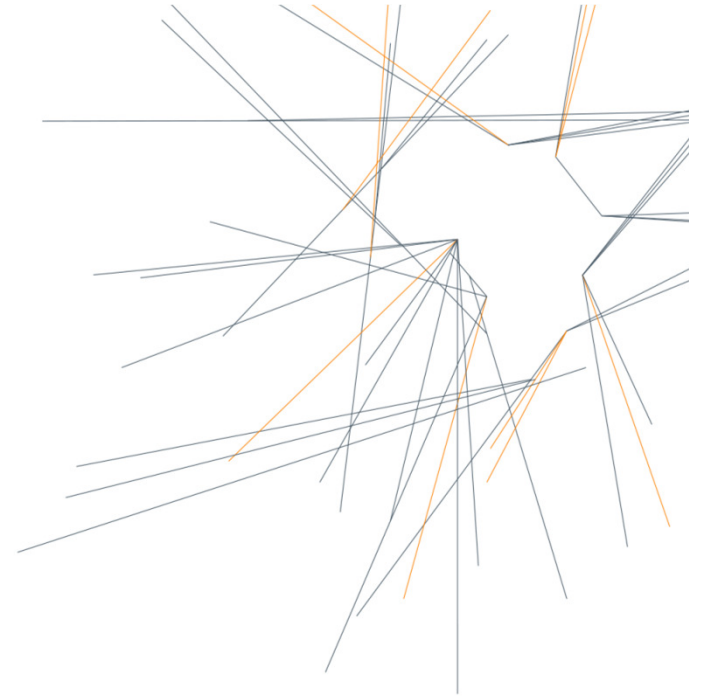
- The New Regulations only regulates commission paid to independent intermediaries and do not regulate payments to representatives at all.
- However, because the PPR requires that the representatives be appointed as representatives in terms of section 7 of FAIS, the FAIS Fit and Proper Determination applies to the representatives.
- Section 40(2) of the FAIS Fit and Proper Determination requires that the remuneration paid to a representative must be reasonable and commensurate to the actual function and activity and may not be structured in a manner that may increase the risk of unfair treatment to clients.
- No similar requirement applies to independent intermediaries receiving commission.

REMUNERATION FOR INTERMEDIARY SERVICES: SHORT-TERM

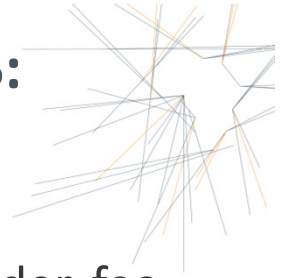


- Part 5C in the Proposed Regulations provided for general principles in respect of remuneration and also introduced the requirement that commission payments must be reasonable and commensurate.
- This concept has not be introduced in the New Regulations and similar to long-term, the insurer must now notify the Registrar before it enters into an arrangement with an independent intermediary or a representative to pay remuneration for a service, function or activity which in the opinion of the insurer does not constitute services as intermediary or a binder function.
- The notification obligation is limited to remuneration in respect of a service, function or activity. It does not include a profit share *per se*, unless the profit share will be remuneration for a service, function or activity.

BINDER FUNCTIONS – LONG-TERM



LIMITATION ON REMUNERATION FOR BINDER FUNCTIONS: LONG-TERM



- Part 3C of the New Regulations.
- As a starting point an insurer may pay a binder holder only a binder fee that is consistent with the following principles:
 - must be reasonable and commensurate with the actual cost of performing the binder function, taking into account the nature of the function and the resources, skills and competencies reasonably required to perform it;
 - must not result in the person being rewarded more than once for the same function;
 - conflicts between the interests of policyholders and the recipient of the fee must be mitigated;
 - must not impede the delivery of fair outcomes to policyholders.

LIMITATION ON REMUNERATION FOR BINDER FUNCTIONS: LONG-TERM



- In addition but subject to the above further limitations apply in the case of non mandated intermediary that is authorised to render advice or a non mandated intermediary that is an associate of another non mandated intermediary that is authorised to give advice. (Remember a life office cannot be a non mandated intermediary).
- The maximums are:
 - 3.5% - enter into, vary etc.;
 - 5% - enter into etc., and one or more of determining wording, premium and value;
(this must be done as agent in the strict sense)
 - 0% - determine wording, premium and value without;
 - 4% - settling claims (as agent in the strict sense);
 - Registrar may approve higher amount if it complies with principles above.

LIMITATION ON REMUNERATION FOR BINDER FUNCTIONS: LONG-TERM



- Regulation 3.22(1) provides:

A non-mandated intermediary that is a binder holder, in respect of the services rendered under the binder agreement, may not directly or indirectly receive or be offered any share in the profits of the insurer attributable to the type or kind of policies referred to in the binder agreement.

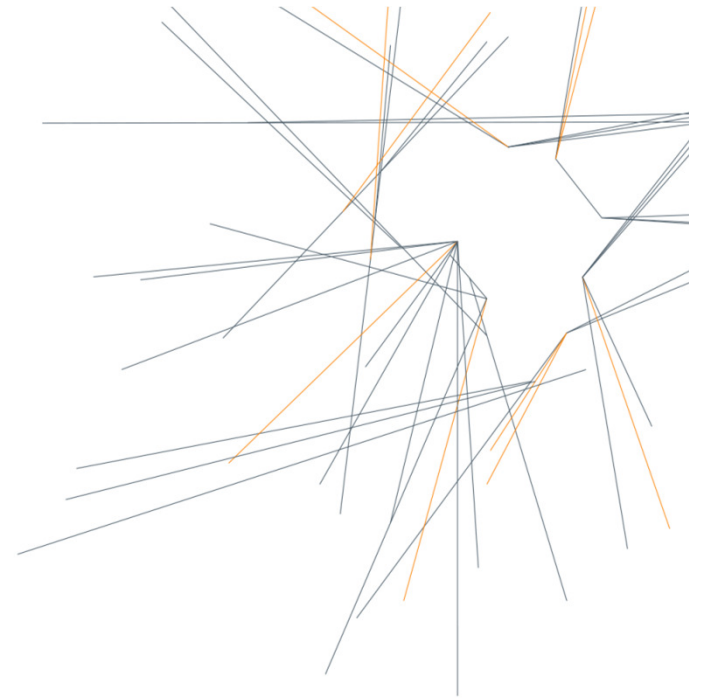
- This provision has always been part of Part 6 of the Regulations and has not been interpreted to prohibit cell captive distributions.
- Regulation 3.22(2) has been added making it clear that payments of dividends in a cell structure as defined in line with the Insurance Act is not prohibited.
- Creates uncertainty in respect of other banc-assurance models and "similar arrangements".

LIMITATION ON REMUNERATION FOR BINDER FUNCTIONS: LONG-TERM



- Underwriting managers and administrative FSPs may still share in profits in terms of the binder agreements.
- The Proposed Regulations proposed a correction to the definition of underwriting manager in the LTI Act Regulations by replacing sub(i) of the definition which reads "*performed any act directed towards or entering into, maintaining or servicing a policy ..*" with "*any act directed towards entering into, varying or renewing an insurance policy...*".
- Unfortunately this amendment has not been introduced in the New Regulations and the mistake is thus carried forward placing underwriting managers at risk in the long-term space.

BINDER FUNCTIONS – SHORT-TERM

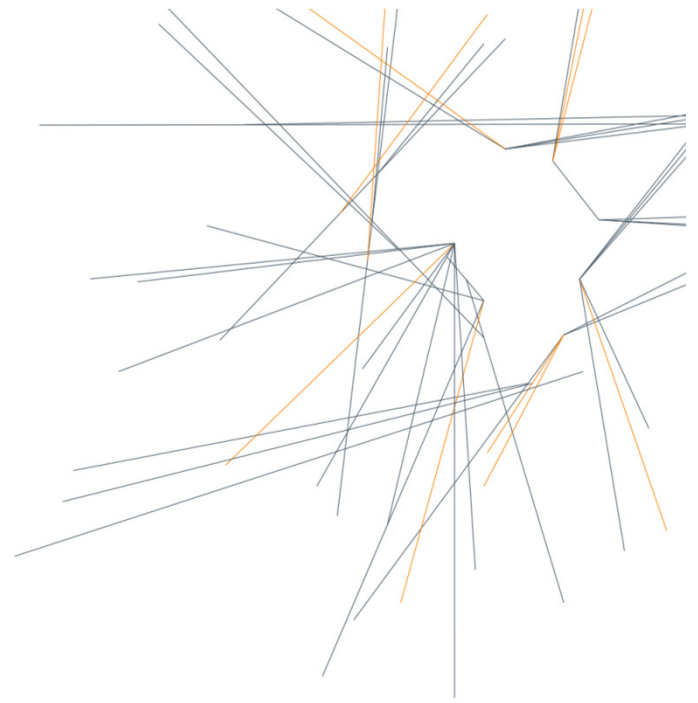


BINDER REGULATIONS: SHORT-TERM

- The position is the same as in the long-term space except that the definition of *underwriting manager* does not contain the same mistake as in the long-term space.



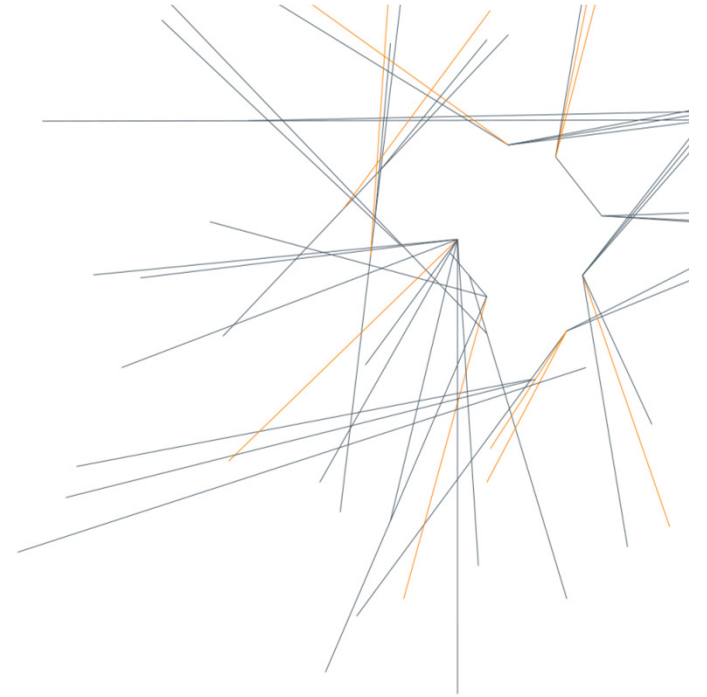
OUTSOURCE FEES



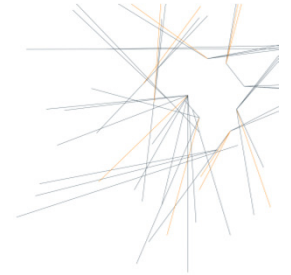
OUTSOURCE FEES

- Part 3C of the Proposed Regulations Long-term and Part 5B of the Proposed Regulations Short-term did contain proposals to regulate certain outsourced functions.
- The New Regulations in both the long and short-term space do not contain these proposed amendments.
- Remuneration of outsourced functions are thus still regulated in terms of Directive 159.
- However the Registrar must be notified 30 days in advance in the event that the insurer enters into an arrangement with an independent intermediary and a representative in terms whereof payment will be made for any service, function or activity which is not an intermediary service or a binder function.





PROVIDING FINANCIAL INTEREST



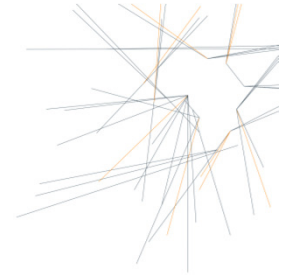
PROVIDING OF A FINANCIAL INTEREST

- Section 3A of the amended General Code:
 - 3A only applies to the extent that it is relevant to a conflict of interest and therefore relates to the rendering of financial services;
 - In terms of 3A commission and fees allowed in the LTI Act, STI Act and Medical Schemes Act, is allowed *per se* without any qualification;
 - 3A(1)(b) applies to financial interests provided by a provider to its representative and has been amended;
 - Take into account that an insurer may now only appoint a representative in terms of the LTI Act and STI Act if that representative is appointed in terms of an intermediary agreement and is authorised in terms of section 7 of FAIS.



PROVIDING OF A FINANCIAL INTEREST

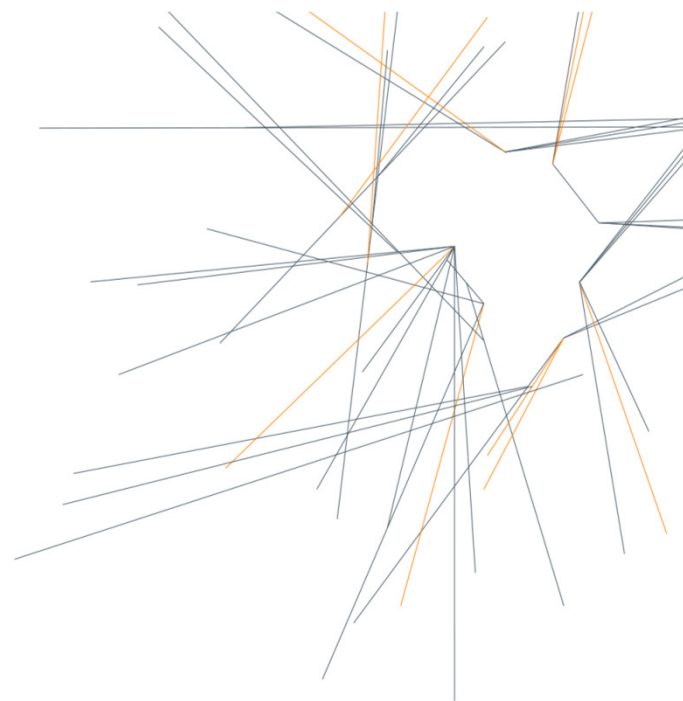
- In addition to section 40 of the Fit and Proper Determination discussed above, the payment to the representative will also qualify as a financial interest in terms of the FAIS General Code.
- 3A(1)(b) will thus apply.
- A provider may not offer any financial interest to a representative -
 - (i) that is determined with reference to the quantity of business secured for the provider without also giving due regard to the delivery of fair outcomes for clients; or
 - (ii) for giving preference to a specific product supplier; or
 - (iii) for giving preference to a specific product of a product supplier.



PROVIDING OF A FINANCIAL INTEREST

- New 3A(1)(bA) added.
- (bA) provider must be able to demonstrate that the determination of and entitlement to the financial interest -
 - (i) takes into account measurable indicators of the quality of treatment of clients and the quality of the representative's compliance with FAIS;
 - (ii) is dependent on agreed minimum client treatment and compliance levels being achieved,and that sufficient weight is attached to such indicators to materially mitigate the risk of the representative giving preference to the quantity of business secured for the provider over the fair treatment of clients.

OWNERSHIP INTEREST

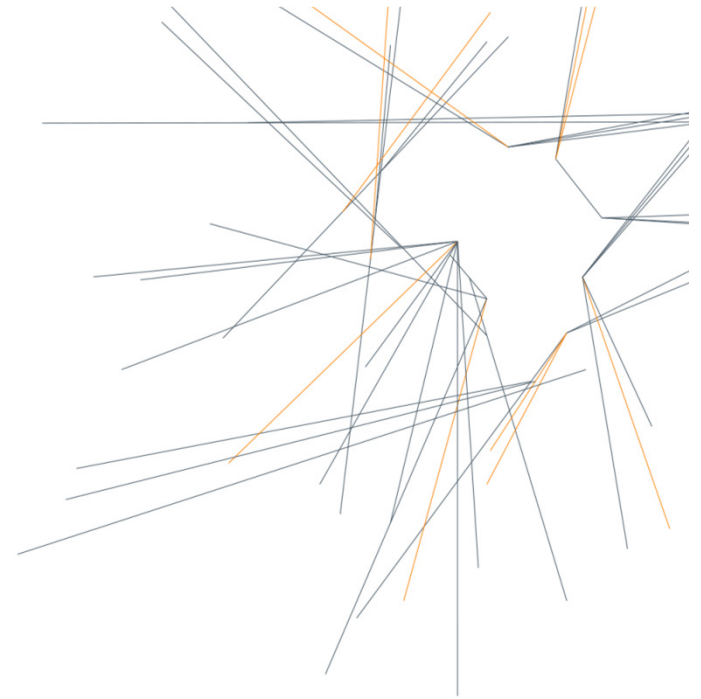




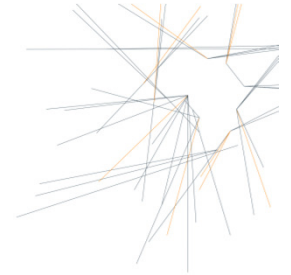
OWNERSHIP INTEREST

- Definition remains unchanged and is an equity or proprietary interest for which fair value has been paid at the time of acquisition including dividends or profit payments.
- The position of payment of dividends to binder holders that are not cell owners now a bit more risky due to the New Regulations (both LTI Act and STI Act). Better to always take the shareholding one level up from the binder holder.
- Also now clear fair value to be determined in terms of the 2008 Companies Act.

**FEES AGREED WITH CLIENT /
POLICYHOLDER**



FEES AGREED WITH THE CLIENT / POLICYHOLDER



"49. Limitation of remuneration

No consideration shall be offered or provided by or on behalf of a long-term insurer, a policyholder or any other person, or accepted by any independent intermediary or any other person, for rendering services referred to in the regulations, other than commission or remuneration contemplated in the regulations and otherwise than in accordance with the regulations."

Section 48 of the STI Act provides the same.

FEES AGREED WITH THE CLIENT / POLICYHOLDER

Maree v C Booysen t/a NVM Beleggings & Versekeringsadviseurs (307/09) [2010]
ZASCA 44 (31 March 2010)

SCA ruled that section 49 applies to all consideration paid for rendering services as an intermediary no matter from what source and includes agreed fees payable by the policyholder or client. Such agreements void if exceeding maximum commission.

FEES AGREED WITH THE CLIENT / POLICYHOLDER



- To the extent that the person interposes between the insurer and the policyholder and renders one of the services mentioned in the definition of rendering services as intermediary, then no amounts over maximum commission may be paid.
- To the extent that consideration is not paid for intermediary services or binder services, the Registrar must be notified if paid to an independent intermediary or representative.
- To the extent that the consideration is not regulated in terms of the LTI Act or STI Act Commission Regulations the following will apply:

FEES AGREED WITH THE CLIENT / POLICYHOLDER

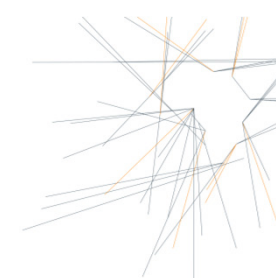


- Section 3A(1)(d) of the FAIS General Code in respect of fees agreed with clients and third parties.
- A provider or its representatives may only receive / offer the financial interests if -
 - (i) those financial interests are reasonably commensurate with the actual cost of performing the service to which they relate, taking into account the nature of the service and the resources, skills and competencies reasonably required to perform it;
 - (ii) the payment of those financial interests does not result in the provider or representative being remunerated more than once for performing a similar service;

FEES AGREED WITH THE CLIENT / POLICYHOLDER



- (iii) any actual or potential conflicts between the interests of clients and the interests of the person receiving the financial interests are effectively mitigated; and
 - (iv) the payment of those financial interests does not impede the delivery of fair outcomes to clients.
- In addition section 3A(1)(a)(iv) requires that the amount, frequency, payment method and recipient of those fees and details of the services that are to be provided by the provider or its representatives in exchange for the fees are specifically agreed to by a client in writing and those fees may be stopped at the discretion of that client.



FEES AGREED WITH THE CLIENT / POLICYHOLDER

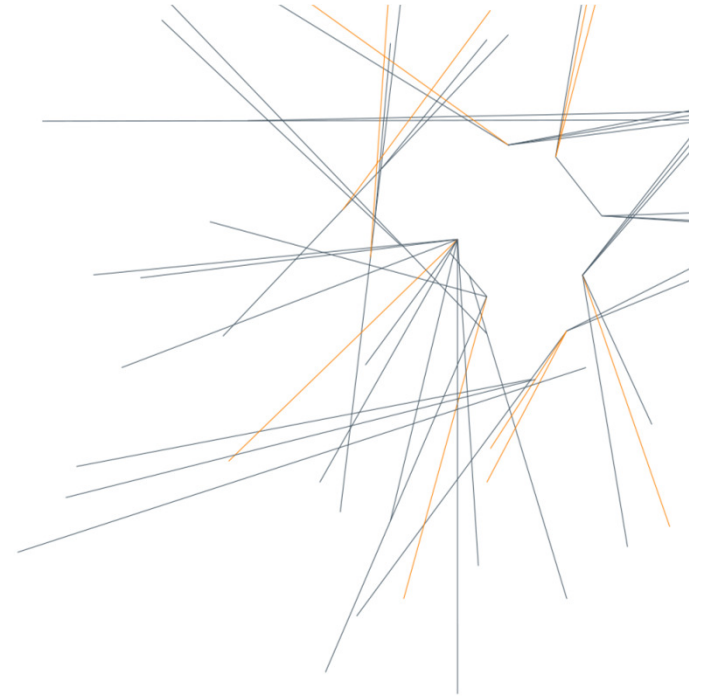
- **Rule 12 of the New PPR (Long- and Short-term):**
 - An insurer may not facilitate the deduction or charging of any fee payable by a policyholder to an intermediary or any other person, unless the insurer has satisfied itself that the amount and purpose of the fee have been explicitly agreed to by the policyholder in writing and that it appears from such agreement that the fee:
 - relates to an actual service provided to a policyholder;
 - relates to a service other than the rendering services as intermediary;
 - does not result in the intermediary or other person being remunerated for any service that is also remunerated by the insurer.

FEES AGREED WITH THE CLIENT / POLICYHOLDER



- Section 8(5) of the STI Act has been deleted with effect 1 January 2018.
- The position following the Maree case in respect of long-term also now applies to short-term.
- Even if the insurer does not facilitates the fee, the fee may not be paid to the extent that it is regulated in the regulations due to section 48 and section 49.

LEAD FEES AND REFERRAL FEES





LEAD FEES AND REFERRAL FEES

- Lead fees and referral fees are not regulated in the commission regulations and is not caught by the prohibition in sections 49 and 48 respectively.
- However, to the extent that it is paid to an independent intermediary or a representative the Registrar must be notified 30 days in advance in terms of the commission regulations.
- To the extent that the lead or referral fees are paid to a third party 3A(1)(d) applies as discussed above and the fees:
 - must be reasonably commensurate with the actual costs;
 - does not result in double payments;
 - conflicts of interests are mitigated.
 - Provided Part 3A applies.

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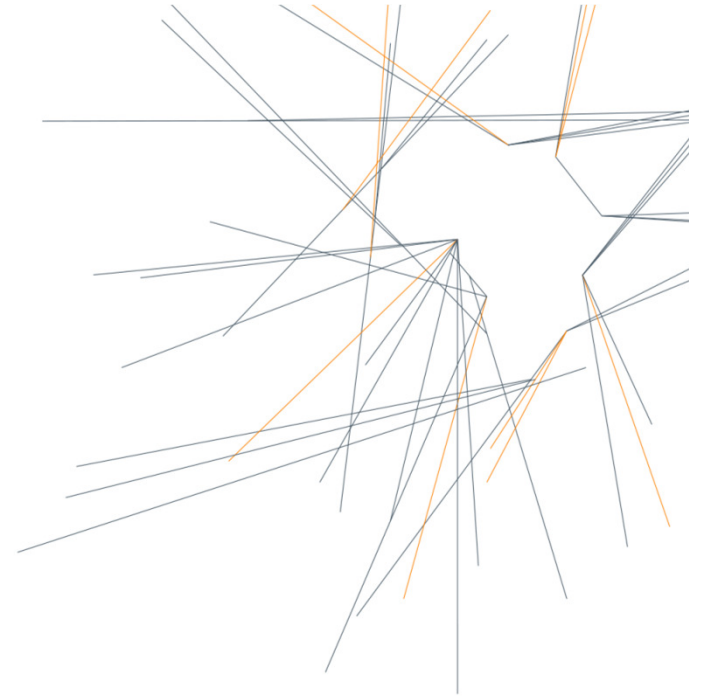
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