Regulatory Risk Log

August 2019

	Inherent Risk Rating	Status in the industry / market
1. Treating Customers Fairly (TCF)	M	Treating Customers Fairly principles for business applied on principles based approach. Overarching consumer protectionist principles (imported from the UK). Implemented January 2014. The FSCA considers that TCF is already a "reality." There will be no formal specific "launch date", rather a gradual process. The FSCA is in the process of embedding and applying TCF standards into existing structures, notable new legislation such as the new Fit and Proper, which was implemented in 2017/18. Such provisions were added to the Insurance Acts and pending legislation such as the Amended FAIS Code of Conduct and COFI Bill. A draft COFI Bill was published in December 2018 for comment early 2019..
2. FAIS Act (amendments) **Fit and Proper amendments**	M	**The new Fit and Proper was publishes on 15 December 2017 effective 1 April 2018 with staggered implementation dates for certain provisions, notable "class of business training", "product training" and CPD.** **Guidance to FSPs on CPD** **The Financial Sector Conduct Authority (FSCA) provided guidance to FSPs, key individuals and representatives regarding compliance with the continuous professional development (CPD)** requirements as set out in Chapter 4 of the Determination of Fit and Proper Requirements for Financial Services Providers, 2017 (Board Notice 194 of 2017). The Communication provides some general guidance in respect of the requirements relating to CPD, and also addresses frequently asked questions received from Industry. Some of the key highlights are as follows: 1. **Section 13(5) of the Fit and Proper** Requirements provides that a FSP must establish, maintain and update on a regular basis a **competence register** in which all qualifications, successfully completed regulatory examinations, product specific training, class of business training and CPD of the FSP, its key individuals and representatives are recorded. 2. The Authority has not yet prescribed the form, manner and intervals in which FSPs must submit the competence register to the FSCA. This means that **FSPs must continue to maintain these registers, and will be required to submit the competence register once this information is requested by the FSCA**. Once prescribed, there will be support processes in place in order to provide FSPs with assistance when submitting the competence register information for the first time. The CPD activities must be recorded in the competence register of the FSP within 30 days after the expiry of the CPD cycle.

	Inherent Risk Rating	Status in the industry / market
		3. Embedding CPD training and development that takes place in respect of CPD must be targeted, and must address any competence gaps that were identified, and/or develop additional knowledge and skills expertise where this was identified as a future need. It is therefore clear that CPD activities must not be undertaken with the sole purpose of obtaining sufficient CPD hours to meet the CPD requirements. This approach purposefully undermines the principle that CPD aims to achieve. 4. Interrupted employment - s 34(1) of the Fit and Proper Requirements creates a dispensation to accommodate representatives that were continuously absent from work for the reasons set out in that section. In any of the circumstances referred to in s 34(1), the FSP must calculate the reduced CPD hours applicable to that representative for the CPD cycle, using the calculation set out in s 34(2). 5. A **CPD activity must be accredited by a 'Professional Body'**, allocated an hour value by that Body and it must also be 'verifiable'. It should also be noted that a CPD activity excludes an activity performed towards a qualification and product specific training. 6. One of the aims of CPD is to maintain competence. Accordingly, the requirement to do CPD only applies to a supervised representative after he/she has complied with the qualification, regulatory examination and class of business training requirements or after the period to comply with the aforementioned requirements has expired (six years), whichever occurs first. Refer to Condition 2 of FSCA FAIS Notice 86 of 2018. 7. **Certification - If a SAQA-recognised Professional Body has accredited the CPD activity, the activity will have a CPD hour value**. Where a CPD activity was completed before a SAQA recognised Professional Body accredited the activity and allocated an hour value to it, then the activity must first be submitted to one of the SAQA Professional bodies where a CPD hour value will be allocated to it. You can also contact the Professional Body and request them to allocate an hour value to the activities. 8. **CPD must be relevant and appropriate** to the role or function of the FSP, key individual and representative. Reference is made to 'FAIS CPD' by industry to distinguish between – • CPD activities completed for other reasons (such as Professional Body membership requirements/maintaining a designation) that may not be relevant or appropriate to the role and function of the FSP, key individual and representative; and • CPD activities that are relevant and appropriate as required in s 32(1). 9. For members of a foreign professional body the CPD activities can be recognised towards the 'FAIS CPD' requirement, provided that it meets the definition of 'extended CPD activity' as per FSCA FAIS Notice 35 of 2019. FSCA FAIS Notice 35 of 2019 does not exempt any FSP, key individual or representative from the CPD requirements. It merely makes provision for the foreign professional body's CPD activities to be accepted even though they are not SAQA recognised.

		10. Non-compliance with any competence requirement will result in regulatory action being taken against the FSP, key individual and/or representative. The same principle applies to non-compliance with the CPD requirements. If it is clear that a representative will not meet the CPD requirements by the end of a CPD cycle, the FSP can pro-actively move the representative to a role that does not require compliance with the CPD requirements prior to the expiry of the CPD cycle and remove the representative from its representative register. However, if a representative is already non-compliant with the CPD requirements, the FSP must debar the representative. *The person must first meet the CPD requirements applicable to him/her before he/she can be registered as a representative again. If the FSP moves the representative to another role and removes him/her from its representative register before they are non-compliant, then the person can be appointed as a representative again and the representative register can be updated when they become compliant*
		Exemption from Continuous Professional Development Requirements, 2019 **The Financial Sector Conduct Authority (FSCA) published: The Exemption from Continuous Professional Development Requirements, 2019 - No 2 of 2019 on 30 May 2019.** The purpose of the Exemption is to allow financial services providers, key individuals and representatives until 31 July 2019 to comply with the Continuous Professional Development (CPD) requirements set out in the Determination of Fit and Proper Requirements for Financial Services Providers, 2017, in respect of the current CPD cycle (2018 CPD cycle). **The effective date of the Exemption is 1 June 2019.It should be noted that –** a. the Exemption does not detract from the CPD hours required for the next CPD cycle, ie 1 June 2019 until 31 May 2020 (2019 CPD cycle); b. the Exemption does not affect the period of the 2019 CPD cycle. In other words, the 2019 CPD cycle will still commence on 1 June 2019 and end on 31 May 2020; c. the CPD hours completed for the 2018 CPD cycle in the exemption period (1 June 2019 until 31 July 2019), cannot be calculated towards the 2019 CPD cycle; and d. CPD hours completed in the exemption period (1 June 2019 until 31 July 2019) by those who already comply with the CPD requirements for the 2018 CPD cycle, will be awarded towards the 2019 CPD cycle Foreign Professional Bodies & SA CPD activities **Exemption provisions based on FAIS Notice 35 of 2019 published 17 May 2019.** The Regulator has published the following documents;

		1. The Exemption from Continuous Professional Development Requirements, 2019 ("the Exemption"); https://www.fsca.co.za/Notices/FSCA%20FAIS%20Notice%2035%20of%202019.pdf and
		2. Explanatory Note: Exemption from Continuous Professional Development Requirements. https://www.fsca.co.za/Notices/Explanatory%20Note.pdf
		
		The Exemption creates a dispensation to persons (financial services providers, key individuals and representatives,) who are members of foreign professional bodies, in respect of CPD requirements. The effective date of the Exemption is 17 May 2019**.**
		
		The concept of CPD activities has been modified to make allowance for the term **'extended CPD activity'**:
		An activity, other than product specific training and an activity performed towards a qualification, that is:
		• recognised by a foreign professional body;
		• allocated an hour value or a part thereof by that foreign professional body; and
		• verifiable**.**
		FSPs, Key Individuals and Representatives MUST ensure that their CPD activities satisfy the general requirements described in BN194 s 32(1)*(c)*(i-iv):
		Section 32(1)*(c)*(i-iv) – General requirements
		An FSP, Key Individual and Representative MUST; ensure that the type and combination of CPD activities undertaken -
		• are relevant;
		• contributes to their skill, knowledge, expertise and professional and ethical standards;
		• addresses any identified needs or gaps in-
		    ○ their technical knowledge;
		    ○ their generic knowledge and understanding of their environment; and
		    ○ their knowledge and understanding of applicable laws; and
		• adequately take into account the changing internal and external conditions relevant to the class of business and financial services rendered.
		
		CPD activities recognised by a **foreign professional body** can, **with effect from 17 May 2019**, be used in order to comply with the CPD requirements described in chapter 4 of Board Notice 194, subject to the conditions described above.
		
		The explanatory note which accompanied FAIS Notice 35 of 2019, indicated that the following designations would fall within the scope of the exemption: CFA; CPA; CAIA; FRM; FMVA; ChFC; CEBC; LIFA; CIIA and the FChFP. If you hold one of these designations, you are a member of the applicable foreign professional body and the exemption applies, subject to the conditions described above.

		There are many foreign professional bodies – the onus will be on the applicant to confirm the professional body status that applies. **FSCA FAIS Notice 35 of 2019** **Explanatory note on the Exemption**
		Financial Soundness for Juristic Representatives **Section 53 of the Fit and Proper Board Notice 194 of 2017 stipulates that ss 44(1) and (2); 45; 48 and 49 relate to juristic representatives and commences on 1 March 2019.** **Please note the requirements in respect of FSPs that handle client money and those that do not:** • S 44 provides that every juristic representative will, as of 1 March 2019, be required at all times to maintain financial resources that are adequate both as to amount and quality to enable it to carry out its activities and to ensure that liabilities are met as they fall due. • S 44(3) which became effective on 1 April 2018 provides that no person may continue as a juristic representative if it has been placed under liquidation or provisional liquidation or is subject to any pending proceedings which may lead to liquidation or provisional liquidation. In addition, no person may continue as a juristic representative if it seriously and persistently failed or fails to manage any of its financial obligations satisfactorily. This places an obligation on the FSP to ensure the overall financial soundness of its juristic representatives. • S 45 applies to juristic representatives of Category 1 FSPs. As of 1 March 2019, the assets of a juristic representative of a Category I FSP must at all times exceed the liabilities of that juristic representative. • S 48 provides that a juristic representative must comply with the additional asset, working capital and liquidity requirements. • S 49 refers to early warning requirements, warning lights that may alert an FSP, or its juristic representative that it is running the risk of not meeting its financial soundness requirements**.**
		Exemption of Services under Supervision **On 3 December 2018, the Financial Sector Conduct Authority (FSCA) published FSCA FAIS Notice 86 of 2018 - Exemption of services under supervision, effective from 1 February 2019.** The new notice withdraws Notice 83 of 2018 - Exemption of services under supervision, 2018, that was published on Friday, 30 November 2018 by FSCA. The FSCA additionally published its Regulatory Response to Public Comments received on the Proposed Exemption of Services under Supervision, 2018. The Notice introduces significant changes in the requirements and arrangements that were previously in place with respect to the supervision of representatives**.**

		The Notice repeals Board Notice 104 of 2008, FAIS Notice 52 of 2018 and FSCA FAIS Notice 83 of 2018. **Some key definitions** **'Competency requirements'** means the experience requirements, qualification requirements, regulatory examination requirements or class of business training requirements**.** **'Supervised representative'** means a representative who does not meet one or more of the competency requirements and who renders financial services under supervision. **'Supervision'** means the guidance, instruction and oversight, by any means or medium, by a supervisor using a variety of assessment, observation and oversight methods or tools that are appropriate for the assessed level of competence of the supervised representative. **Summary of important changes impacting upon supervision** • An FSP is exempted from section 13(2)(a) of the Act insofar as it relates to the competence requirements as outlined in the next bullet point. • A supervised representative is exempted from sections 12 (competence) and 29(1)(a) (class of business training), Parts 2 (minimum experience), 3 (minimum qualifications), and 4 (regulatory examinations) of Chapter 3, and Chapter 4 (CPDs), of the fit and proper requirements. • A supervised representative appointed to work under supervision prior to 1 February 2019, must comply with the applicable class of business training within twelve (12) months from the commencement date as outlined on page 2 of the notice. • Unchanged - The maximum period any representative can act under supervision in ANY Category or subcategory is six (6) years from the date of appointment. • There is now a clear distinction between those FSPs performing execution of sales and those that do not. • The FSCA has released seven (7) conditions of the exemption; entry level requirements, specific compliance periods, supervision agreement (FSCA now stipulated what needs to be incorporated into any Agreement), duties of the FSP, duties of the supervisor (expansion of role verses previously published Notices), duties of the representative, intensity of supervision (adopting a risk-based approach). **Transitional arrangements** **All of the requirements of the Notice commence on 1 February 2019 except for the class of business arrangements.** **CONDITION - CLASS OF BUSINESS TRAINING and EFFECTIVE DATE**

	Inherent Risk Rating	Status in the industry / market
		Condition 3 in respect of representatives appointed as supervised representatives on or after 1 December 2018 – Effective 1 March 2019 Condition 3 in respect of representatives appointed as supervised representatives before 1 December 2018 – Effective 1 June 2019 A supervised representative must comply within twelve (12) months from the effective date as stipulated above. **The seven conditions of the exemption - commencement on 1 February 2019:** **Condition 1 - Entry-level requirements (excludes category I FSP that only has product permissions in Long Term A and/or friendly society benefits)** • Qualifications: A category I FSP that only performs execution of sales must have a Grade 10 or a Grade 10 equivalent. • All the other entry level requirements for other FSP types remain unchanged as per BN 104 of 2017. **CONDITION 2 - SPECIFIC COMPLIANCE PERIODS** **Regulatory examinations 'RE'**: A supervised representative (unless exempted, for rendering services in respect of a Tier 2 product or performing execution of sales) must within two (2) years from date of first appointment comply with the RE requirement. (The imposed mid-year deadlines have fallen away**)** **Class of business and qualifications**: A supervised representative must within twelve (12) months from the date on which a person was first appointed as a representative in respect of a particular product category comply with the COB training requirements AND six years from appointment to comply with the qualification requirements. **CPD**: A supervised representative (unless exempted, for rendering services in respect of a Tier 2 product or performing execution of sales) must comply with the CPD requirements, from the date on which the supervised representative meets the **class of business training requirements, regulatory examination requirements and qualification requirements**, **or after six (6) years** from date of first appointment, whichever occurs first. Where the compliance date does not coincide with the start of the CPD cycle, the CPD hours must be calculated pro rata. **Experience:** A supervised representative must work under supervision for at least the minimum stipulated experience periods per product category and remain there until being assessed as having obtained the required level of experience. The minimum experience periods may run concurrently where a supervised representative is appointed for multiple product categories; and commence on the date the supervised representative was first appointed as a representative for a particular product category**.**

	Inherent Risk Rating	Status in the industry / market
		CONDITION 3 - SUPERVISION AGREEMENT Any agreement must - identify the supervisor; set out the full tasks and functions list that the supervised representative must perform on behalf of the FSP; reference the categories of financial services and financial products; set out the appropriate and relevant knowledge, skills and expertise required to competently perform, training needs and programme to address the needs; outline the supervision arrangements including the duties of each party, supervision methodology, tools, processes and procedures including oversight, monitoring and assessment methodologies; list the criteria to assess whether it is appropriate to reduce the level of intensity of the supervision; and indicate the performance appraisal criteria and assessment intervals, and the official sign-off criteria. **CONDITION 4 - DUTIES OF THE FSP (SHIFT TO A MORE PRINCIPLE AND OUTCOMES BASED APPROACH)** The FSP must have the operational ability to appoint supervised representatives, and be able to consistently monitor and supervise them. A supervisor must be assigned who has an adequate, appropriate and relevant skillset in respect of product and function that the representative performs, and have required coaching and assessment skills. He or she must meet the prescribed minimum competency requirements for its license type, including CPD. The supervisor can be a representative or a key individual of the FSP. An FSP must reflect on its register of representatives, the central register and the competency register whether a representative is rendering services under supervision, and update the register within 15 days of a change. **CONDITION 5 - DUTIES OF THE SUPERVISOR (SHIFT TO A MORE PRINCIPLE- AND OUTCOMES-BASED APPROACH)** These duties include - implementing and ensuring compliance with the supervision agreement; keeping all records pertaining to the supervision; recording and documenting the method, frequency and level of intensity of supervision; having robust reporting channels to senior management within the firm; reviewing and assessing the learning activities and note all progress made at regular intervals; and focusing on employee development.

		CONDITION 6 - DUTIES OF THE REPRESENTATIVE Disclosure of supervision status remains unchanged. The representative must actively pursue completing all competencies within the prescribed time limits**.** **CONDITION 7 - INTENSITY OF SUPERVISION (SHIFT TO A MORE PRINCIPLE- AND OUTCOMES-BASED APPROACH)** The FSP must adopt a risk-based approach to supervision and determine, with justification, the level of intensity of supervision that applies.
		<u>Exemption for PE FSPs and juristic representative</u> **<u>THE FINANCIAL SECTOR CONDUCT AUTHORITY (FSCA) HAS PUBLISHED FSCA FAIS NOTICE 87 OF 2018 APPLICABLE TO PE FSPS WHO RENDERS FINANCIAL SERVICES TO OR FOR OR ON BEHALF OF PRIVATE EQUITY FUNDS ONLY.</u>** The extent of the exemption is that all such providers are exempted from sections dealing with continuous professional development (CPD) of the fit and proper requirements as outlined in Board Notice 194 of 2017, provided that the FSP, key individual or representative completes at least 50% of the CPD hours prescribed by 31 May 2019**.** The exemption is valid until 31 May 2019. **<u>THE FINANCIAL SECTOR CONDUCT AUTHORITY (FSCA) HAS PUBLISHED FSCA FAIS NOTICE 88 OF 2018 AFFECTING JURISTIC REPRESENTATIVES OF PRIVATE EQUITY FINANCIAL SERVICES PROVIDERS.</u>** A juristic representative is exempted from sections 48(2) and 48(4) of Board Notice 194 of 2017 (the fit & proper requirements), insofar as it relates to the liquidity requirements. The exemption will only expire in June 2020.

	Inherent Risk Rating	Status in the industry / market
		The Financial Sector Conduct Authority (FSCA) has released **FAIS Information Circular 2 of 2018 in respect of regulatory examinations (REs).** Its purpose is to provide information and clarity in respect of the version update of the regulatory examinations insofar as the following two examinations are concerned**:** RE1: Regulatory Examination: FSPs and Key Individuals in all categories of FSPs RE5: Regulatory Examination: Representatives in all categories of FSPs Exemption of Services Under Supervision No 2 of 2018, was published in FSCA FAIS Notice 86 of 2018 on 3 of December 2018. This exemption will come into effect on 1 February 2019. As a result, the questions contained in the RE1 and RE5 must be aligned with the published exemptions. Please take note of the timelines that will be applied to transition from the old version of the REs to the updated versions.
		Proposed amendments of the General Code of Conduct (GCOC) **FSCA- Invitation to comment on proposed amendments to the General Code of Conduct and the Specific Code of Conduct - Short-term Deposits** [2-Nov-2017, closed 28 February 2018] This is the next proposed roll out of certain RDR proposals to be incorporated in the relevant regulation, the General Code of Conduct amendments and amendments to the Specific Code of Conduct for Authorised FSPs and Representatives conducting **Short-term Deposits Business.** Major changes in the offing will affect complaints handling departments (complaints management process requirements), direct marketers, general disclosures around intermediary remuneration as we head towards RDR, suitability of advice requirements and analysis, advertising and marketing, replacement provisioning and types of replacements **The extensive amendments, published on 01 November 2017 are proposed on the Advertising and Complaints sections of the FAIS GCoC.** **Some proposals on the advertising and marketing section include the following:** • The key individual must approve advertisements; • Where the advertisement is not in line with principles in the FAIS GCoC, it must be withdrawn and a notification must also be sent to persons who the FSP knows to have relied on the advertisement.

	Inherent Risk Rating	Status in the industry / market
		- Where all information cannot be included in the advertisement, the FSP must also indicate where the additional information can be accessed - Information on the advertisement must be prominent so as not to mislead the client. This includes - depending on the nature of the advertisement - the name of the product supplier or FSP or both - FSP's have to keep a record of all advertisements - Negative option marketing is not acceptable - Where comparative marketing is used, the comparison must take into account comparable features across the financial products and the financial service - Limitations - Endorsements and testimonials must be based on actual experience Some proposals on the advertising and marketing section include the following: - The key individual must approve advertisements; - Where the advertisement is not in line with principles in the FAIS GCoC, it must be withdrawn and a notification must also be sent to persons who the FSP knows to have relied on the advertisement. - Where all information cannot be included in the advertisement, the FSP must also indicate where the additional information can be accessed - Information on the advertisement must be prominent so as not to mislead the client. This includes - depending on the nature of the advertisement - the name of the product supplier or FSP or both - FSP's have to keep a record of all advertisements - Negative option marketing is not acceptable

		Where comparative marketing is used, the comparison must take into account comparable features across the financial products and the financial service Limitations Endorsements and testimonials must be based on actual experience Other proposals include the following: The FSP is not permitted to say that it is regulated by the FSCA where this is not the case Financial interests to representatives should not only be based on quantity but should also result in fair customer outcomes The FSCA can determine the format and matters that should be address in the record of advice The amendments also aligns the FAIS GCoC with the Policyholder Protection Rules (PPR's) released by the Registrar under the Short Term Insurance Act, 1998. The commencement date of the advertising and complaints sections is 01 July 2018 and 01 January 2019. All the other sections will come into effect on a date of publication of the Notice in the Government Gazette.
		FAIS Debarment **Guidance Notice on debarment** The **Financial Sector Conduct Authority ("Authority")** published the following **Guidance** Notice on its website on **6 June 2019:** **Guidance Notice on the Debarment Process in terms of Section 14 of the Financial Advisory and Intermediary Services Act, 2002.** The Guidance Notice is available under Home > Regulatory Frameworks > Guidelines > FAIS. It can also be accessed by clicking on FAIS after following the link below: https://www.fsca.co.za/Regulatory%20Frameworks/Pages/Guidelines.aspx The Guidance Notice provides some general guidance in respect of the application of section 14 of the Financial Advisory and Intermediary Services Act, 2002. It also highlights the salient factors that require consideration when FSPs effect debarments and clarify the function of the Authority upon receipt of the notification of such debarments.

		<u>"New" Debarment Section inserted by the FSRA</u>
		
		Section 14 of the FAIS Act was substituted by Section 290 of the Financial Services Regulation (FSR) Act 9/2017 w.e.f. 1 April 2018 and the new Section 14 was inserted dealing with debarment. Section 14A was repealed.
		
		FSPs' must remove/debar a representative or KI who does not comply with the fit and proper requirements or who has contravened or failed to comply with any provision of the FAIS Act in a material manner and must remove such debarred representatives from the register of representatives.
		
		A debarred representative may appeal to the Financial Services Tribunal established through Section 219 of the FSR Act.
		
		Before effecting a debarment in terms of subsection (1), the provider must ensure that the debarment process is lawful, reasonable and procedurally fair.
		
		"A financial services provider must- before debarring a person-
		
		○ *give adequate notice in writing to the person stating its intention to debar the person, the grounds and reasons for the debarment, and any terms attached to the debarment, including, in relation to unconcluded business, any measures stipulated for the protection of the interests of clients;*
		○ *provide the person with a copy of the financial services provider's written policy and procedure governing the debarment process; and*
		○ *give the person a reasonable opportunity to make a submission in response;*
		○ *consider any response provided …………., and then take a decision in terms of subsection (1); and*
		○ *immediately notify the person in writing of-*
		    ○ *the financial services provider's decision;*
		    ○ *the persons' rights in terms of Chapter 15 of the Financial Sector Regulation Act; and*
		    ○ *any formal requirements in respect of proceedings for the reconsideration of the decision by the Tribunal.*
		
		Where the debarment has been effected, the FSP must-
		
		○ *immediately withdraw any authority which may still exist for the person to act on behalf of the financial services provider;*
		○ *where applicable, remove the name of the debarred person from the register referred to in section 13(3);*
		○ *immediately take steps to ensure that the debarment does not prejudice the interest of clients of the debarred person, and that any unconcluded business of the debarred person is properly attended to,*
		○ *notify the Authority within five days of the debarment;*
		
		and provide the Authority with the grounds and reasons for the debarment …within 15 days of the debarment

	Inherent Risk Rating	Status in the industry / market
		A debarred person may not render financial services or act as a representative or key individual of a representative of any financial services provider, unless the person has complied with the requirements …for the reappointment of a debarred person as a representative or key individual of a representative. *A person who has been debarred has the right to appeal the debarment decision to the Financial Services Tribunal and the FSP must inform the debarred person of the right to appeal its decision".* An FSP may appoint a debarred representative provided that; ○ 12 months has elapsed since the debarment has been enforced, where such debarment occurred as a result of contravening the fit and proper requirements as it relates to honesty and integrity. ○ all business of the former representative has been concluded ○ complaints, legal proceedings or administrative procedures brought forward from persons affected by the former representative has been lawfully resolved. ○ the former representative has fully complied with any determination or court order relating to the debarment has been resolved. **<u>Debarment Notification to the FSCA</u>** **On 6 June 2018,** the **Financial Sector Conduct Authority ('Authority')** published the **Notice on the Form and Manner of Section 14 Notifications**, 2018 ('the Notice'). The purpose of the Notice is to prescribe the form and manner of the **notification to the Authority of the debarments by a Financial Services Provider (FSP) of its representatives and the submission of the grounds and reasons for such debarments**. Effective 6 June 2018 all FSPs must, within a stipulated time period of five days of a debarment of a representative, notify the Authority by completing a newly revised Debarment Notification Form (Part I) and submit the form to the Authority by either hand delivery or electronic mail. A FSP must then, within 15 days of the actual debarment, provide the Authority with more information by completing the Debarment Notification Form (Part II). The revised process is outlined in the FSCA Notice.
		FAS Conduct of Business Reports

		Comment was sought by 18 July 2018 on a revised draft conduct of business reporting matrix for the financial sector, with annexures, reports. Posted on 11 June 2018 on the Financial Sector Conduct Authority (FSCA) website, the two documents were developed to respond to 'outcomes-based regulation and proactive supervision' – in keeping with 'twin peaks' regulatory imperatives. **Informed by stakeholder input on a first draft released in December 2016, the revised matrix and annexures apparently reflect 'extensive changes' to the original format.** They focus on: business structure, governance and control functions, 'value propositions' in respect of both clients and services, advertising and marketing, the client take-on process, the remuneration model, recruitment, training and performance management, complaints, 'assistance business administration', insurance premium collection, managing client assets, the custody of assets, and mandates **General request for information (RFI) replaces Compliance Reports in 2019.** Considering various changes to the regulatory framework in recent years, the Conduct of Business Division developed a FAIS conduct of business report which was aimed at obtaining qualitative information from authorised financial services providers (FSPs) in line with new regulatory requirements. The intention was to establish the level of compliance by FSPs in terms of the principles of treating customers fairly as it is embedded in the amendments to the regulatory framework. This report was published for comment and the draft report was ready for implementation in 2019. It however, became clear with the establishment of the Financial Sector Conduct Authority (FSCA) that the supervisory approach of different departments should be aligned. Such alignment requires the development of a quantitative conduct of business return to assist the Authority with the risk assessment of FSPs. This resulted in the decision to issue a general request for information (RFI) instead of a conduct of business report for FAIS or a compliance report in 2019. The purpose of the RFI is to confirm that the FSPs' business information as per the Authority's records is accurate and to identify where there are discrepancies. If, as a result of the submission of this RFI, any discrepancies are found between the information held by the Authority, and that reported by the FSP, the FSP will be required to submit a profile change request to update the records held by the Authority. Licensing Condition 2.1 has been one of the most frequently contravened requirements and impacts on the effectiveness of the supervisory duties of the Conduct of Business Division of the FSCA. The intention is to conduct this information request as a **once-off substitute** for the submission **of the annual / bi-annual compliance reports**. It is important to note that all FSPs will be required to complete and submit this information request, including FSPs that were previously exempted from submitting annual compliance reports. Information regarding the submission dates will be communicated in due course
		Section 19(30Audit reports; Form and Manner of report

	Inherent Risk Rating	Status in the industry / market
		The form and manner of the auditor report referred to in section 19 (3) of the Financial Advisory and Intermediary Services Act (FAIS) **changed from 1 July 2019.** The determination, published in FAIS Notice 46 of 2019, consists of 17 pages. **The auditor's report must cover the following:** Determining the amount of money and/or assets, which includes financial products held on behalf of clients by the Provider at year-end (the FSCA now requires that money and assets held on behalf of clients by the Provider and related liabilities or obligations at the financial year-end to be disclosed in the financial statements of the Provider, whether included in the notes to the financial statements or by way of an annexure). That such money and/or assets were, throughout the financial year, kept separate from those of the business of the Provider, and in the case of non-compliance, the extent thereof. Any information required by the FSCA as set out in Schedule A (money and assets held on behalf of clients at year-end) and Schedule B (work performed and auditor findings) attached to the report
		The policyholder protection rule 17 (claims management) and rule 18 (complaints management), in as far as it relates to group schemes, commenced on 1 July 2019. **Compli-Serve notes that the notice for the new long-term and short-term policyholder protection rules (PPRs) was already published on 15 December 2017 in the *Government Gazette* (with 18 month implementation). The PPRs apply to natural persons and juristic persons whose asset value or annual turnover is less than R2 million.** **Insurers should already have pre-existing claims management processes that have been updated to include TCF principles and any additional requirements mentioned in the rule. Likewise, insurers should already have pre-existing complaints management processes that have been updated to include TCF principles and any additional requirements mentioned in the rule. 6 ComplianceMATTERS 1 August 2019 062019** **An insurer must implement a comprehensive complaints management framework with policies, procedures that include escalation and review mechanisms, registers, the allocation of responsibilities to a competent person and reporting to the appropriate forums.**
		2019/20 financial sector levies in force Revised levies for financial institutions came into effect on 12 July 2019. These levies apply to pension funds, their administrators and adjudicators; retirement annuity funds; friendly societies; short-term insurers and Lloyd's underwriters; long-term insurers; intermediaries; collective investment schemes in securities, property, participation bonds and hedge funds; foreign collective investment schemes; authorised financial services providers and their ombud; exchanges; central securities depositories; and credit rating agencies. The levy on financial market abuse has also been revised, along with

		special solvency assessment and management framework levies payable by short- and long-term insurers. Provision is made for exemptions, consolidated payments and arrears. The increases have generally kept in line with inflation and the following applies to **financial services providers**; Category I or IV FSP (a) A base amount of R3 575; and (2018: R3 373) (b) KI/Rep x R570 (2018: R538) Category I or IV FSP (1.1 and/or 1.19 only) (a) A base amount of R3 575; and (2018: R3 373) (b) KI/Rep x R250 (2018: R250) Category II, IIA or III FSP (a) A base amount of R7 203; and (2018: R6 795) (b) KI/Rep x R570; and (2018: R538) (c) AUM x 0.0000184595 (2018: 0.0000174146) Ombud Levy (a) A base amount of R1 105; and (2018: R1 023) (b) KI/Rep x R421 (2018: R390)
3. RETAIL DISTRIBUTION REVIEW SOUTH AFRICA "RDR"		**FSCA's RDR Status Update- phased manner of implementation to continue** **RDR Discussion Document on Investment Related Matters was released end July with updated thinking based on input received.** Stakeholder input on the specific questions raised in this Discussion Document will inform the development of draft subordinate legislation in relation to the various RDR proposals impacting the investments sector. Such draft subordinate legislation will in turn be preceded by additional consultation, as prescribed for the type of regulatory instrument concerned. Input requested to FSCA.rdrfeedback@fsca.co.za by 17 August 2018

	Inherent Risk Rating	Status in the industry / market
		In summary the discussion document covers the following measures: Measure 1 - has been introduced to define the typical activities of an investment manager. The FSCA have listed four broad categories of Category II activities, par (3.1(a) to 3.1(d)). Measure 2 - will test the four discretionary activities 3.1(a) to (d) against Measure 1 to determine which activities can be described as investment activities. 1. FSCA's views are that activities 3.1(a) to 3.1(c) will meet the definition of an investment manager in Measure 1. 2. FSCA's views are that activity 3.1(d) – a mandate of convenience, is unlikely to meet the definition of an investment manager. Measure 3 – set appropriate fit and proper standards to qualify for the new definition of investment management. Measure 4 – create a different license category for entities that perform activities currently classified as Category II, but which will not meet the new investment management definition. A possible designation is a model portfolio provider (MPP). Measure 5 – set appropriate fit and proper standards to qualify for the new definition of model portfolio provider. Measure 6 – mandates for convenience – should these continue to be regarded as performing a discretionary activity? Could be defined and categorised as an activity separate from investment management. This may include no fees being charged by an entity for doing switches. **Categorising investment advisers within an RDR framework** The FSCA would like to categorise investment advisers into two groups: 1. Product supplier agents (PSAs) – who operate on the licence of a product supplier and may provide advice on the products of that product supplier (and any other product suppliers in the group) only; and 2. registered financial advisers (RFAs) – can provide advice on whatever products their licence permits and are not limited to offering the products of any particular product supplier(s). **NB:** An entity cannot operate as both a PSA and an RFA.

	Inherent Risk Rating	Status in the industry / market
		Measure 7 – provide for the possibility of an adviser being categorised as the PSA of an investment manager or a LISP. Measure 8 – consider how to apply Measure 7 to model portfolio providers. Assumes MPPs have their own licence separate from that of an investment manager. Measure 9 – confirm in light of Measures 7 and 8 above that an investment manager (3.1(a) to (c)) may use multiple distribution channels for the distribution of its portfolios. Measure 10 – clarify the relationship between Manco and third party co-branding investment manager. Measure 11 – confirm that a CIS Manco can, if it so wishes, appoint a PSA to provide investment advice as its agent. Measure 12 – clarify the adviser categorisation implications of using a LISP platform outside the adviser's group – in particular in relation to PSAs within the group. Measure 13 – clarify the adviser categorisation implications of acting as a third party co-branding investment manager as well as holding another type of discretionary mandate. Measure 14 – Set clear requirements for due diligence reviews to be carried out before various contractual arrangements between parties in the investments value chain are entered into. **The following RDR developments are planned for the remainder of 2018.** **Before end June 2018:** • Publication of a discussion paper on RDR Proposals relating to Investment Management and Investment Advisers. The purpose of this paper will be to elicit stakeholder input on: - possible regulatory proposals to define the activity of "investment management"; - considering the extent to which investment management needs to be demarcated from other forms of discretionary investment mandates; - clarifying the nature of the legal and business relationships between different types of entities in the investments sector; and - resulting fee and remuneration implications. **Remainder of 2018:** • Finalising the RDR related changes to the FAIS General Code of Conduct.

		• Ongoing technical work on intermediary activity segmentation. • Completion of the actuarial model for testing new life risk commission model impacts, and commencement of the testing process. • Research into current tied adviser remuneration practices in the long-term insurance sector, to inform next steps on the proposal to strengthen the principle of Equivalence of Reward (RDR Proposal RR). • Publication of a discussion paper on Adviser Categorisation. The paper will present updated proposals on: - practical aspects of the previously proposed two-tier adviser categorisation model; - possibly allowing product supplier agents to advise on products of another product provider in respect of different classes of financial products; - product supplier responsibility in relation to different categories of adviser; - use of referrals and leads to meet “gap filling” needs in tied advice models; - conditions for using the descriptors ‘independent’ or ‘financial planning’ to describe advice; and - implications for juristic representatives and group structures. • Consumer testing of an RDR communication brochure and levels of consumer understanding of different terms used to describe different types of advisers. • Publication of a discussion paper on an RDR Remuneration Dispensation for the Low Income Market (RDR Proposal TT). The paper will take into account the FSCA’s broader financial inclusion and transformation priorities, including the proposed micro-insurance conduct standards being introduced through the LTIA and STIA PPRs**.** **The FSCA information document summarises the current implementation status of the 55 RDR regulatory proposals initially published in 2014 and planned RDR developments for the remainder of 2018. This is done in the form of a table** **FSCA feedback from the Annual FAIS Roadshow.** Phase 1 of the RDR is completed except for one outstanding item, and that relates to the "Equivalence of Reward' and payments to tied agents etc. Phase 2 is next in line. In April or May 2018 the FSCA will release a **paper on investments** which will outline how the FSCA wishes to distinguish advisers from asset managers. Paper will also concentrate on the LISPS market and white-labelling. In May 2018 the FSCA is set to release a paper on **Adviser Categorisation** Caroline de Silva as an introduction stated that the RDR proposals is the FSCAs thinking regarding implementation of changes to existing legislation. Phase I of RDR is now over from a thinking perspective. This will now be followed by implementation through existing legislation. Some detail were

		however still to be finalised. RDR proposals will be implemented by amendments to existing legislation, such as the Long-Term and Short-Term Insurance Acts, Regulations to FAIS as well as other subordinate legislation, for example the Amended Fit and Proper. The finalisation of Advisor Categorisation will be finalised in 2018. There will be two main categories of financial adviser, with the originally proposed category of multi-tied agent falling away: • A Product supplier agent (PSA) who is not licensed in own right, but authorised to provide advice on a product supplier's licence and • A Registered financial adviser (RFA) who is a firm or an individual (sole proprietor) licensed to provide advice in its right, and not a product supplier No individual adviser or firm may operate in both capacities. In other words, you cannot be a representative for product provider A and be an independent broker at the same time. Strict rules will apply in the case of "Gap filling", in other words, where the employer of the representative (PSA) does not offer certain products. This is only likely to be introduced in Phase three of RDR during 2018. An individual adviser (RFA or PSA) may use the additional designation "financial planner" if the adviser has met all requirements for such designation set by a professional body recognised by SAQA and is a member in good standing of such an association. The FSCA feels very strongly that advice provided by an RFA should not be influenced by any product supplier or other third party. This forms the basis for determining a RFA's independent status, and contains a number of steps to mitigate the possibility of influence, including the outlawing of production targets. Further work is underway on standards for contract terminations. No RFA firm or individual RFA adviser may describe itself or its advice as "independent" unless: • It has no direct or indirect ownership interest in any product supplier and no product supplier has any such ownership interest in it • It does not earn any direct or indirect remuneration from any product supplier other than regulated commission (where applicable) – i.e. no binder fees, no outsourcing fees, no profit shares, no cell arrangements, no joint venture arrangements, etc. • No other relationship exists with any product supplier or other third party that could result in any product supplier influencing the advice provided

		Product suppliers and advisers share responsibility for customer outcomes. The greater the amount of risk of product supplier influence, the higher the level of product supplier responsibility. Investment Platforms, to be addressed in 2018. No changes proposed to initial RDR proposals, i.e: • All rebates prohibited – "clean" pricing • No remuneration for platform provider (LISP) other than platform fees paid by customer • Considering need to address some current practices that apparently circumvent RDR proposals Need to better clarify distinction between FAIS Category I and Category II license criteria: • Considering defining "investment management" as a specific licensed activity • Will identify specific activities that comprise "true" investment management, rather than current broad reference to a discretionary mandate • Also considering need to address risks of conflict of interest when exercising discretion • For e.g. where an investment manager uses a discretionary mandate to place investments in portfolios it manages
4. SA Regulators Twin Peaks approach – Financial Sector Regulations. **Draft Conduct Standard for Banks**	M	Twin Peaks approach to the South African regulatory landscape to be adapted over a 3 year period. - FSCA Work in Progress **The Financial Sector Conduct Authority (FSCA)** has published **a** Draft Conduct Standard for Banks, under **section 106(2)(b) of the *Financial Sector Regulation Act, 2017*** **(FSRA).** The **draft Conduct Standard** applies to all entities registered under the ***Banks Act, 1990*** **(i.e. banks, mutual banks, co-operative banks, branches of foreign banks and representative offices of foreign banks) (referred to as banks),** and will apply in addition to any other requirement already imposed on banks by other financial sector laws**.** The objective of the draft Conduct Standard is to introduce requirements that promote the fair treatment of financial customers of banks. The draft Conduct Standard was designed to follow the sequencing of the six Treating Customers Fairly Outcomes as well as, to the extent possible, the sequencing

		of the typical financial product lifecycle. The various requirements set out in the draft Conduct Standard were directly informed by the TCF Outcomes as follows: 1. TCF Outcome 1: *Customers are confident that they are dealing with financial institutions in which the fair treatment of customers is central to their culture.* Section 3 of the draft Conduct Standard sets out the manner in which banks would be expected to demonstrate that fair customer treatment is central to their culture, and incorporated into their governance and oversight frameworks. 2. TCF Outcome 2: *Entails that products and services marketed and sold in the retail market are designed to meet the needs of identified customer groups and are targeted at these customer groups.* The application of the draft Conduct Standard is not limited to retail financial customers although the application of section 5 of the draft Standard is limited to this segment. Section 4 of the draft Conduct Standard proposes to regulate the design, suitability and performance requirements for financial products and financial services. The section deals with the oversight arrangements that a bank must have in place in order to ensure that the objective of TCF Outcome 2 is met. 3. TCF Outcome 3: *Customers are provided with clear information and kept appropriately informed before, during and after point of sale.* Section 6 of the draft Conduct Standard sets minimum standards for advertising, including the governance processes that must be in place for the approval of advertisements. In addition, section 7 sets out the disclosures that must be made to a financial customer in order to ensure that the customer understands the financial product or financial service and is able to make informed decisions in this respect. 4. TCF Outcome 4: *Where advice is given, it is suitable and takes account of customer circumstances.* Section 7 of the draft Conduct Standard identifies the factors that need to be taken into account when making disclosures to financial customers, such as the nature and complexity of the financial product in order to ensure that a financial customer is given appropriate information about a financial product or financial service at the point at which the information will be most useful to the financial customer's decision-making in relation to entering into, using, or maintaining the product or service. 5. TCF Outcome 5: *Products perform as firms have led customers to expect, and service is of an acceptable standard and as they have been led to expect.* Section 5 of the draft Conduct Standard is only applicable to retail financial customers and sets standards for the prohibition of unfair product terms and conditions, including additional product design standards applicable to this market segment. 6. TCF Outcome 6: *Customers do not face unreasonable post-sale barriers imposed by firms to change products, switch providers, submit a claim or make a complaint.* Section 8 of the draft Conduct Standard is more rules-based than the rest of the draft Conduct Standard and deals with the Complaints Management Framework that a bank must establish, including appropriate training of responsible staff, the categorisation of complaints and other procedures that need to be in place. Sections 9 and 10 of the draft Conduct Standard deals with account closure and switching, both initiated by the bank as well as by the financial customer themselves.

	Inherent Risk Rating	Status in the industry / market
The Financial Sector Regulation Act. **Financial Services Tribunal** **Replacement of the Policyholder Protection Rules**		Submissions on the draft Conduct Standard may be submitted in writing **on or before 18 June 2019 to the FSCA, at FSCA.RFDConductStandardBanks@fsca.co.za** **The Financial Services Tribunal** rules have been issued by the Chairperson of the Tribunal in terms of section 227 of the Financial Sector Regulation Act 9 of 2017. According to the Financial Services Tribunal rules, the right to apply to the Tribunal for a reconsideration of a decision by a decision-maker is derived from section 230 of the Act, and the Chairperson or the Panel Chairperson may deviate from these rules to the extent permitted by any applicable law. Only a person who is 'aggrieved' by a 'decision' of a 'decision-maker' may apply to the Tribunal for a reconsideration of the decision. The first term has specific legal meaning, and the last two terms are defined in section 218 of the Act. Particular regard must be had to the following under **the Act**: 4 the Act, Chapter 15 - sections 218 to 236, 271, 298, 299 and 300; 5 the relevant financial sector laws; and the regulations. 6 Transformational goals will be included in all FSP's license conditions when the planned re-licensing takes place. No specifics were available but during Q&A it was stated that aspects such as BBBEE, Employment Equity and Financial Sector Charter requirements would be used to set goals for FSPs as part of the license approval process and would also be assessed when making profile changes. 7 Education will become a legal requirement of the Financial Sector Conduct Authority (as distinct from the FSCA's role). 8 Conduct of Financial Institutions Bill: First draft to be released within six months. **The Financial Sector Regulation Bill was passed by Parliament and signed by the President on 21 August 2017. The Act provides the architecture for the new twin peaks method of regulation to be adopted across the South African financial services industry** **POLICYHOLDER PROTECTION RULES (PPRs)**

		The **policyholder protection rule 17 (claims management) and rule 18 (complaints management)**, in so far as it relates to group schemes, will **commence on 1 July 2019.** The notice for the new long-term and short-term policyholder protection rules (PPRs) published on 15 December 2017 in the *Government Gazette* (with 18 month implementation). The PPRs apply to natural persons and juristic persons whose asset value or annual turnover is less than R2 million. Insurers should already have pre-existing claims management processes that have been updated to include TCF principles and any additional requirements mentioned in the rule. Likewise, insurers should already have pre-existing complaints management processes that have been updated to include TCF principles and any additional requirements mentioned in the rule. An insurer must implement a comprehensive complaints management framework with policies, procedures that include escalation and review mechanisms, registers, the allocation of responsibilities to a competent person and reporting to the appropriate forums. The Financial Sector Conduct Authority (FSCA) has released FSRA Compliance Extension Notice 1/2018 (LTIA) and FSCA Communication 1 in terms of the Financial Sector Regulation Act 9 of 2017 (FSRA), in respect of compliance with Rule 19 of the Policyholder Protection Rules (PPRs - long term insurance) regarding replacements. The FSRA Compliance Extension Notice extends the period for compliance with Rule 19 of the PPRs to 1 July 2019. Given the scale of the feedback received, the FSCA is in the process of further refining the replacement advice record template with the intention of publishing an updated format for additional consultation during February 2019. Rule 19 of the PPRs sets out the prerequisites for a long-term insurer when entering into an individual risk policy that constitutes a replacement as defined in the PPRs. In terms of the said rule an insurer must, prior to auctioning a replacement transaction, obtain a copy of the record of advice that the intermediary is required to provide to the policyholder in accordance with the General Code of Conduct and satisfy itself that the record complies with the disclosure requirements. **The FSCA published proposed amendments to the Policyholder Protection Rules (“PPRs”) made under the Long-term Insurance Act, 1998 and the Short-term Insurance, 1998, respectively, for public comment.** The proposed amendments form part of Tranche 2. Comments are due by 13 April 2018. The proposed amendments to the PPRs are necessary to: •align the PPRs with the Insurance Act, 2017 (Act No.18 of 2017) (“Insurance Act”);

		•provide for certain conduct of business related requirements that will be repealed from the LTIA and the STIA through Schedule 1 to the Insurance Act, once the latter Act commences, as these conduct requirements are better placed in subordinate legislation; and •provide for microinsurance product standards by giving effect to the National Treasury's Microinsurance Policy Document released in July 2011. Anticipated that the proposed amendments to the PPRs will come into operation on 1 July 2018 to coincide with the expected commencement date of the Insurance Act and Prudential Standards**.** **Background** • A 2-year process from December 2016. • Replacement PPRs were published for two rounds of public comment. • 2 November 2017: Final rules were submitted to Parliament. • 1 January 2018: They took effect but with transition periods/transitional arrangements. • Different rules have different implementation dates allowing for 6- and 12-month transitional periods in some cases. The underlying themes are (a) customer fairness and (b) the increased accountability of Insurers. In many instances, compliance by Insurers is going to be a challenge. Their application to new versus existing policies is clarified for each rule. The general principle is that the PPRs apply to all new and existing policies except where otherwise indicated in a rule (transition allowed in Chapter 8). **RULE 1 FAIR TREATMENT OF POLICYHOLDERS** • The Insurer remains responsible irrespective of outsourcing or the use of representatives. • The Insurer is expected to constantly monitor and mitigate the risk to policyholders. • The definition of outsourcing is clarified. It widens the net of who the policyholder is, i.e. clarifies and extends the application of the Rules. • Insurer responsibility when an intermediary is involved o This rule also applies to group scheme and provides clarity around how to deal with a situation when members of group schemes cannot be contacted/communicated with directly by the Insurer. o In some cases, imposes a positive obligation on the Insurer to oversee the compliance by its intermediaries (including the risk of unsuitable advice) and other service providers involved with the marketing, distribution, administration or provision of policies. **RULE 2 – PRODUCT DESIGN** • Applies to the design of new products or any changes to existing products. • It is considered a victory that sign off is required from managing executives re new products – upping the ante. It's no longer okay for the executive to blame a marketing/compliance department for an incorrectly targeted/designed product. There are white labelling requirements.

	Inherent Risk Rating	Status in the industry / market
		• Appropriateness of the design of products and the disclosures relative to target markets (bringing in the TCF outcomes). **RULE 3 – CREDIT LIFE AND CONSUMER CREDIT** • All new mandatory credit life policies must comply with the National Credit Act from the date that the rule and not the credit life regulations take effect. • Imposes onerous obligations on Insurers to assist policyholders with compliance with the NCA/Terms of Credit Provider. **RULE 4 – COOLING OFF RIGHTS** • Applies to all new policies or any variations of existing policies. • An interesting change is that in respect of voluntary group schemes, the policy must place an obligation on the policyholder to ensure that the member of the scheme has the right to cancel participation similar to cooling off rights. **RULE 5 – NEGATIVE OPTIONS SELECTION** • Strictly prohibited, except for certain default terms/conditions but in those instances the Insurer must be able to demonstrate that the term/condition is reasonably required for the fair treatment of a policyholder. • There needs to be clear and prominent disclosure in advance. **RULE 6 - DETERMINATION OF PREMIUM AND EXCESSES** • Applies to all new policies or changes to the premium or fee structure of an existing policy. • Applies to all new policies/changes to premium/fee structure of existing, including members. • Premium or excesses (ST) must reasonably balance interest of Insurer and expectation of policyholder. • Prohibits the Insurer from charging a policyholder any fee in addition to premium. • This does not apply to a fee deducted from an investment value that is explicitly provided for or that is permitted by legislation or a claims administration fee. • Must be prominently disclosed. **RULE 10 – ADVERTISING** • Broad definition of “advertisement” and “related services”. All advertisements need to be consistent with the Rules. • General duties of the Insurer: o Sign-off of advertisements by a managing executive or delegated person. o Duties that are imposed on the managing executive extend to any person with the appropriate seniority to whom the services have been delegated.

	Inherent Risk Rating	Status in the industry / market
		o There must be objective internal review of advertisements (where practical) but a review of advertisements by an independent person is no longer required. o The Insurer must take responsibility for advertisements produced by third parties – extremely onerous obligations on the Insurer. o An Insurer must be identifiable and not necessarily by its name but also its trademark. o Records must be kept for 5 years. o Actors may not be used for testimonials and endorsements. o Includes general principles on advertising: ♣ Must be factually correct, balanced and not misleading (public interest); ♣ Specific requirements on identification of Insurer; ♣ Appropriate language and medium – definition of plain language; ♣ Recordkeeping - 5 years; ♣ Prohibition on negative option marketing comparative marketing and puffery; ♣ Unwanted direct advertising must allow the policyholder an opportunity to 'opt-out' - no fees may be charged for 'opting out' by Insurer or service provider (e.g. mobile network service provider); ♣ Provisions relating to testimonials and endorsements must be actual experience of person (allows for actors and pseudonyms); ♣ Advertising of loyalty benefits and no-claim bonuses; ♣ Disclosure of cost impact, whether benefit is free or optional or not; ♣ Must clearly state if benefit is contingent on policyholder behaviour or external events; ♣ Prominence: ⎱ Information must be disclosed prominently, what impedes prominence; ⎱ Detailed considerations given of "prominence" of Insurer identification; ⎱ Requirements for white labelling, relaxation within financial services groups. RULE 11 – DISCLOSURE • Different stages of disclosure are highlighted: o Disclosure before policy is entered into; o Disclosure after inception of a policy; o Ongoing disclosure. • Respective responsibilities of Insurer and intermediary provided for. • Specific clarity provided in respect of members of groups schemes and funds. • Identification of the Insurer required in all disclosure material. • Detailed disclosures aligned to FAIS but are not identical. • Policyholder has the right to request recordings of telephone disclosures. • Obligation to provide written notification of the non-payment of premium. RULE 12 - ARRANGEMENTS WITH INTERMEDIARIES AND OTHER PERSONS (The interpretation of this rule is problematic).

		• The Insurer may only have an intermediary agreement with a FSP and a person who is appointed as a representative. These are the only parties that may earn commission. • It is the Insurer's responsibility to satisfy itself that the intermediary, persons acting on behalf of the intermediary and representatives of the Insurer, meet FAIS product knowledge competency requirements. • Intermediary agreement must be entered into directly between Insurer and intermediary. • The rule allows for request for information by intermediary on behalf of policyholder or member. • The rule provides for a facilitation of fees payable by the policyholder to an intermediary or any other person (replace s.8(5) STIA). • Prohibition on Insurer facilitating deduction or charging of fees payable to 3rd party unless satisfied that: o fee appropriately disclosed to and explicitly agreed with policyholder in writing; o relates to actual service provided, and not intermediary services; o it does not result in payment for the same service twice; and o it is reasonable and commensurate. RULE 13 - DATA MANAGEMENT (It is considered a small victory that the proposal of "continuous access" to data has been changed to "access as and when required"). • The Insurer must, at minimum, have access to the names, identity numbers and contact details of all its policyholders. • It must have sufficient organisational resources and operational ability to ensure effective data management. • It must regularly review its data management framework and document any changes. A policyholder in this rule includes a member. • The Insurer must: o have access to up-to-date, accurate, reliable, secure and complete as and when required; o properly identify, assess, measure and manage risks; o comply with relevant legislation (POPI Act); o comply with reporting requirements (CBRs); o assess liability under policies; o categorise end report on complaints; o Access to any other relevant data as prescribed by the Registrar. **RULE 14 - ONGOING REVIEW OF PRODUCT PERFORMANCE** • Continuous monitoring of performance. • Review of appropriateness of distribution channels. • Fair outcomes and product meets needs of target market. • Applies to all new and existing policies. **RULE 17 – CLAIMS MANAGEMENT (NB: Outsourcing does not diminish Insurers' responsibility).**

		• A claim received by an independent intermediary is deemed to be received by the Insurer. • An Insurer may charge for the administration of claims, subject to the condition that the fee must be disclosed and must be fair and reasonable. **RULE 18 - COMPLAINTS MANAGEMENT** • Requirements aligned to claims management framework. • Similarities to Claims Management rule: o Requirements for complaints management framework; o Allocation of responsibilities; o Complaints escalation and review process; o Decisions relating to complaints; o Recordkeeping, monitoring and analysis of complaints; o Communication with complainants; o Reporting complaints information. **RULE 19 - REPLACEMENT (Onerous obligations on Insurers).** • There is an extended definition of replacement which now includes where a policy is terminated by a policyholder. • Requires Insurer to obtain copy of Record of Advice from intermediary unless intermediary confirms that no advice was given. • Managing Executive or delegate sign off. • Replacing Insurer must provide copy of Record of Advice to replaced Insurer within 14 days of receipt. **RULE 20 - TERMINATION** (The position has been clarified in terms of group scheme policies). • On group policies, there are specific rules around termination by the Insurer and rules around termination by the policyholder. • Where the termination is done by the Policyholder, there are onerous obligations on the new Insurer to check whether the policy is a replacement or substitution policy and if so, the new Insurer must consider the terms of the replacement policy and whether these terms and equally or more favourable to the members. **CHAPTER 8 – ADMINISTRATION** • Penalties clause deleted - i.e. contravention of the Rules will not constitute an offence but can attract administrative/enforcement action. • 12- or 24-month period saving of certain existing PPRs. • Transitional periods range between immediate, 6-, 12-, 18-, 24-months.
		New standard for financial institutions' significant owners

		Comment is sought by 4 September 2019 on a draft standard on fit and proper requirements for the significant owners of financial institutions. Developed jointly by the Prudential and Financial Sector Conduct Authorities, the draft is underpinned by s 159(1)*(b)*of the Financial Sector Regulation Act (standards in respect of, and the regulator's directives to, significant owners) and should be read with s 158(4) and (7). Together, these provisions seek to prevent any individual from prejudicially controlling or influencing the business or strategy of a financial institution or impacting negatively on its prudential management and financial soundness – either alone, or in collaboration with any other related or interrelated person. The draft reflects stakeholder input on a discussion document released last October, which is summarised in a matrix, together with the authorities' position on each recommendation made. Drafts of separate exemption notices (Exemption Notice 1/2019 and Exemption Notice 2/2019), to be issued by the Prudential and Financial Sector Conduct Authorities in conjunction with the standard once it has been finalised, were also released, along with proposed amendments to the Prudential Authority's existing standard on the fitness and propriety of key persons and the significant owners of insurers. Input should be submitted using the comments template (download here) provided.
5. Conduct of Financial Institutions Bill (CoFI)		***The Conduct of Financial Institutions (COFI) Bill is expected* to be presented to Cabinet 'during the latter half' of 2019.** This is according to a briefing document posted recently on the National Treasury website and apparently used as the basis of discussions during workshops in Pretoria and Cape Town in March. It was mentioned that the 2019 elections may affect target dates and 'further focused engagements will be scheduled as necessary'. Several issues for 'further consultation' feature in the briefing document, including the scope of the Bill's application; the licensing approach envisaged; the link between market conduct and market integrity; pension fund regulation; and the merits or otherwise of repealing the 2002 Collective Investment Schemes Control Act. Released in draft form last December for comment, the proposed new piece of legislation is part of a broader reform process that will include the 'ombuds system'. It is being finetuned in line with ongoing reviews of the 2012 Financial Markets Act, the 1998 National Payment System Act and the development of a Special Resolution Bill **A draft Conduct of Financial Institutions Bill was published for comment on 11 December 2018.** When the Financial Sector Conduct Authority (FSCA) was launched in June, former Finance Minister Nhlanhla Nene warned that its regulatory and supervisory operations will be 'more intensive and intrusive' than those associated with the Financial Services Board – nevertheless building on the 'momentum' it created (Polity). 'A market conduct regulator needs to be tough and take strong action against those who abuse their customers but … must exercise its powers with great care, so as not to inadvertently destabilise the financial system,' Nene said. In addition, given SA's 'developmental challenges' it needs to encourage an 'ambitious' financial sector approach towards lending that is nevertheless 'not reckless' when it deals with 'lower

	Inherent Risk Rating	Status in the industry / market
		income groups, rural households, and small businesses'. To that end, the draft Bill seeks to enable the authority to take 'a proactive, proportionate and risk-based approach' in entrenching the principles of 'fair customer outcomes' across the entire financial sector. National Treasury invited public comments on the **draft Conduct of Financial Institutions (COFI) Bill, 2018**, published on 11 December 2018, together with an explanatory policy paper that sets out the policy rationale for the COFI Bill. The COFI Bill is the next phase of the legislative reforms aimed at strengthening the regulation of how the financial services industry treats its customers. The Bill follows the Financial Sector Regulation Act (FSR Act) 9 of 2017, which established two new authorities with dedicated mandates. The two new authorities are the Prudential Authority (PA) which manages prudential risk (financial health), and the Financial Sector Conduct Authority (FSCA) which manages the market conduct risk across all financial institutions. Both regulators became operational on 1 April 2018. The FSR Act gives consumers and financial institutions an indication of what to expect of financial sector regulators, while the COFI Bill will outline what customers and industry players can expect of financial institutions. The Bill aims to significantly streamline the legal framework for the regulation of the conduct of the financial institutions, and to give legislative effect to the market conduct policy approach, including implementation of the Treating Customers Fairly (TCF) principles. These principles currently have little legal backing. Improving market conduct and customer protection in the South African financial sector extends beyond the establishment of a new regulator. The 2014 discussion document (published along with the Financial Sector Regulation Bill), 'Treating Customers Fairly in the Financial Sector: A Draft Market Conduct Policy Framework for South Africa', sets out the following pillars for improving market conduct and customer protection: **Structural reform of regulatory agencies.** Revised legal framework for market conduct (significantly streamlining the current range of different laws applicable to the financial sector). Responding to poor conduct practices in the financial sector. Better empowered customers (including through improved consumer education initiatives, and improved dispute resolution channels through which customer complaints can be resolved). **The Bill, which intends to replace the conduct requirements in existing financial sector laws, is designed to be:** **Principles-based**

		A principles-based approach seeks to set principles that specify the intention of regulation, rather than set rules for financial institutions. A focus on principles should see a shift in both industry and the regulator toward ensuring that their actions are geared toward driving the attainment of certain principles in the financial sector, not only on technical compliance with the law. **Outcomes-focused** Linked to the above, outcomes-focused supervision allows the supervisor to test financial institutions on their delivery of the actual outcomes, testing the financial sector's effectiveness not only in providing the correct customer outcomes, but in supporting the real economy too. **Activity-based rather than institutionally driven** Shifting away from the institutionally-driven approach, the law will look at defining the activities undertaken in the financial sector. The same regulation will apply to similar activities, regardless of the institution performing the activity. This will create level playing fields among stakeholders. **Risk-based and proportionate** The new framework will enable the regulator to monitor the financial sector, identify areas that pose greatest market conduct risks, and use proportionate regulatory capacity to address this these risks. Proportionality will affect the regulator's supervisory approach, the standards it sets, and the enforcement action it takes. Furthermore, the Bill aims to better support the participation of black businesses in the provision of financial products and services, and strengthen the protection of vulnerable consumers. Because it will apply to all financial institutions, it is well placed to support the Financial Sector Code issued under the Broad Based Black Economic Empowerment (BBBEE) Act, by requiring financial institutions to comply with that Code. The Bill aims to establish a consolidated, comprehensive and consistent regulatory framework for the conduct of financial institutions that will: • protect financial customers; • promote the fair treatment of financial customers by financial institutions; • support fair and efficient financial markets; • promote innovation and the development of and investment in innovative technologies, processes and practices; • promote competition; • promote financial inclusion; and • promote transformation of the financial services sector.

		Also accompanying the COFI Bill is an explanatory policy paper to assist in interpreting the provisions of the Bill. Comments on the Bill will be accepted until 1 April 2019 to marketconduct@treasury.gov.za. Public workshops will also be arranged and further information on these will be communicated in early 2019.
6. National Credit Act		**The 2018 National Credit Amendment Bill's 'B' version was adopted the first week of March 2019 week by the NCOP's Trade and International Relations Committee and will soon be on its way to President Cyril Ramaphosa for signature.** **Once in force the Bill will introduce: 'a new, long-term debt intervention measure … for qualifying consumers', rearranging their obligations much as a debt counsellor would 'during the debt review process'.** To that end, the impending new piece of legislation provides not only for the 'suspension or part-suspension of a credit agreement' and 'an alteration or extension of that suspension', but also for 'the extinguishing of the whole or a portion of the total of the amounts contemplated … under a qualifying agreement'. The term 'debt intervention applicant' refers to anyone whom – at the time of applying – either receives no income at all (or whose monthly income during the preceding six months was less than R7500) and whose total unsecured debt does not exceed R50 000. The Bill's clause 29(b) provides for these caps to be increased by the Minister when necessary. The Bill also requires debt counsellors to: • report to the National Credit Regulator 'any suspected reckless credit agreements' identified when an over-indebted consumer applies for debt review; • empowers Magistrates' Courts to lower the rate of interest, fees or other charges under credit agreements as a debt rearrangement measure; and; • empowers the Minister of Trade and Industry, after consultation with the Minister of Finance, to introduce regulations for 'targeted credit life insurance for all unsecured credit', capped 'lower than … existing insurance'. New enforcement measures make it a criminal offence to intentionally misrepresent information when applying for debt intervention; engage in prohibited conduct in respect of credit agreements; and not to register as a credit provider, credit bureau, debt counsellor, payment distribution agency or alternative dispute resolution agent. Both the National Credit Regulator and National Consumer Tribunal 'will require additional capacity' to process the number of debt intervention applications likely to be made once the proposed new measures are in force. In this regard, plans and related funding requirements 'can only be finalised once the Bill has become law'.

		New credit life rules to apply from August 2017 The final credit life insurance regulations were published in the Government Gazette on February 10 and are scheduled to come into force on the 10th August 2017. Only credit agreements concluded on or after the commencement date will be affected by the new regulations. From August, the maximum amount that companies can charge consumers for credit life cover will be R4.50 a month on each R1 000 borrowed. For example, if you open a R10 000 furniture account, you can be charged a maximum of R45 a month for cover, but the limit will apply only to new accounts. Credit life can be issued under either a short-term or a long-term insurance policy. In terms of the Long Term Insurance Act, credit life insurance is classified as a long-term policy by virtue of its paying out upon a life or disability event. The Minister of Trade and Industry, with the Minister of Finance, has issued and published the final Credit Life Insurance Regulations. One of the aspects set out in the Regulations is the maximum cost a credit provider may charge a consumer. This maximum cost includes the cost of any commission, fees or expenses in relation to that credit life policy. This may therefore impact the earning potential of credit providers. The Regulations clearly prescribe that all exclusions and limitations in a credit life insurance policy must be explained to the consumer on the date the agreement is entered into. The Regulations also stipulate that the exclusions and limitations must be communicated to the consumer at regular intervals after the date that the agreement is finalised. In terms of the Regulations, consumers may exercise their right to substitute a credit life insurance policy to that of the consumer's choice at any time after the credit agreement was entered into. The credit provider must accept such substitution provided that the consumer's new and preferred policy provides the benefits set out in section 3 of the Regulations. The Regulations will take effect from August 2017, six months from the date of publication, and will only affect credit agreements entered into on or after the commencement date. Click here to read the Final Regulations
7. Protection of Personal Information Act		**Media Reports suggest that promulgation will only happen in 2019.** Regulations relating to the protection of personal information were gazetted in December 2018 but have yet to come into effect.

Regulatory Risk Log

August 2019

	Inherent Risk Rating	Status in the industry / market
Objective is to govern the: • collection, use, dissemination/processing/storing of client and employee data, use of client information/IT systems • Sharing of information from providers and clients. • Informing clients of breaches of data loss.	M	Released in draft form in September 2017 for comment, the final regulations include forms to be completed for every situation likely to be encountered, including when requesting consent to process personal information, objecting to the processing of personal information, requesting its correction or deletion and submitting a complaint. The regulations also: spell out the responsibilities of information officers; prescribe the procedures to be followed when the regulator assumes the role of conciliator during an investigation; and deal with the broader investigation process, assessments and complaints settlement**.** **In summary the regulations deal with:** • How a data subject can object to the actual processing of their personal information. • How a data subject can request a correction or deletion of information. • The responsibilities of an information officer to develop, implement and monitor a compliance framework and other undertakings of importance. • How to apply to the Regulator to issue a code of conduct. • How to request marketing consent, specifically highlighted in Regulation 6. • How to submit complaints to the regulator. • How the regulator will act as a conciliator in investigations. • What the regulator must do before it investigates you. • How the regulator will try to settle complaints. • How the regulator will conduct risk-based assessments. • How the regulator will notify parties during investigations. Formal complaints about unsolicited marketing calls or messages be dealt with in 2019 with the aim to be fully operational in the first half of 2019. with about 100 personnel to handle complaints about direct marketing. **Comment (11 September 2017)-** Draft regulations on protecting personal information have been released for comment, although there does seem to be a mismatch between their contents and the *Government Gazette* notice inviting input. The notice refers to health-related personal information required by specific organisations and institutions, while the draft regulations appear to be more generalised. Comment closed on **7 November 2017**. The regulator is making steady progress towards the effective implementation of the POPI Act. They are only five pages long (plus 26 pages of example forms). These regulations are largely administrative in nature and do not help organisations to interpret POPIA or make it easier for them to comply. There are no clear controls and the accountability is still left with the responsible party to apply the conditions to their circumstances. The regulations

	Inherent Risk Rating	Status in the industry / market
		will not substantially change what you must comply with. However, the forms might be useful to some because they set out how to do certain things. For example, form 4 sets out how to get consent to direct market to a data subject. What do the POPIA regulations deal with? (Source- Michalson's) •How a data subject can object to processing •How a data subject can request the correction or deletion of information •The duties of an information officer (Important!) •How to apply for the regulator to issue a code of conduct •How to request marketing consent (Important!) • How to submit a complaint to the regulator •How the regulator will act as a conciliator in investigations •What the regulator must do before it investigates you •How the regulator will notify people during investigations •How the regulator will conduct assessments The duties of Information Officers Regulation 4, an information officer must: 1. Develop, implement and monitor a compliance framework, 2. Ensure that adequate measures and standards exist, 3. Conduct preliminary assessments, 4. Develop a manual and make it available for a cost of no more than R3.50 per page, 5. Develop internal measures and adequate systems to process requests for access to information, and 6. Conduct awareness sessions. Given the sensitivities implicit in revealing personal information and the measures required to protect data subjects, more work may need to be done to ensure that the final version of the proposed new regulations serve the purpose for which they are presumably intended. The Regulator is making steady progress towards the effective implementation of the POPI Act.

	Inherent Risk Rating	Status in the industry / market
		Michalsons reported that 'for those who were hoping that these POPI regulations were going to provide practical guidance on how to comply with POPIA, I'm afraid you will be disappointed. They are only five pages long (plus 26 pages of example forms). These regulations are largely administrative in nature and do not help people to interpret POPIA or make it easier for them to comply. There are no clear controls and the accountability is still left with the responsible party to apply the conditions to their circumstances. This is very much in line with what we have been saying for years – the regulations are not going to substantially change what you must comply with. ' **The POPIA regulations does not create too many additional compliance requirements**. There are very few extra requirements, except for the impact that the forms might have. Former IEC chairwoman Pansy Tlakula was appointed as Chairperson of Information Regulator together with four members of the committee, to commence duties on 1 December 2016. POPI effective dates are expected toward the end of 2017 to mid 2018. Currently the appointment of the Information Regulator is being attended to after a call for nominations of the 5 candidates of the Information Regulator, which closed on 14 August 2015. The President assented (signed) the Protection of Personal Information Act on 19 November and it was gazetted on 26 November 2013. Although the President has signed the Act, it will only commence on a date to be proclaimed by the President... The Information Regulator needs time to establish itself. The commencement could also be staggered. The Information Officer of an organization will become an important person. By default, every single organization in South Africa has one due to PAIA (Promotion of Access to Information Act or PAIA). Section 1, Chapter 5 part A and sections 112 and 113 of the Act commenced on 11 April 2014. These are the enabling sections for the establishment of the Regulator. A commencement date must still be gazetted for the remainder of the Act, and different commencement dates may be gazetted for different sections. There will be a grace period for implementation of one year from the date of commencement. Areas affected include: • Holding client information/provider information, IT systems.

		• Use of own/external client information for leads/cross-selling. • Adhering to client confidentiality principles, ensuring proper business practices, appropriate use of client data. • Record management system accuracy and consistency – retention, retrieval & destruction. • Purpose specific use and obtaining client consent for other use. • Responsible and transparent use of client data. • Ensure business policies for dealing client personal information. • Proper staff training and communication. Registration with the Information Protection Commissioner.
8. FICA **Action required- FICA compliance & FSCA's supervisory approach to compliance with the FIC Act post 2 April 2019**		**The Financial Sector Conduct Authority (FSCA) sent out a general communication to accountable institutions (AIs) supervised by it on 6 April 2018,** reminding the institutions of the supervisory approach regarding implementation of the amendments to the Financial Intelligence Centre Act (the FIC Act). In the communication, the FSCA afforded AIs until 2 April 2019 (2 October 2017 to 2 April 2019 i.e. 18 months) to fully implement the provisions of the amendments to the FIC Act**.** **The FSCA has commenced with FICA inspections;**

Regulatory Risk Log August 2019		
	Inherent Risk Rating	Status in the industry / market

		• **All Risk Management Compliance Programmes (RMCP)** should have been in place by 2 April 2019 and approved by the Board/ senior management. Material non-compliance may result in an administrative penalty being imposed; • **The RMCP** must at least provide the following- the process followed to identify and assess the ML/TF risks for the AI**; the risk scales used; risk mitigation- customer due diligence performed on different categories of clients based on risk classification; and risk classification of categories of existing clients on boarded from 2 October 2017** must urgently be completed**;** • **Compliance deadlines for the risk rating and KYC of existing clients. Clients on boarded prior to 2 October 2017-** a process needs to commence to align the accountable institution's risk classification for these clients. Where an AI has rated a client as high risk, it should have started to obtain any additional information from those clients in accordance with the firm's RMCP and conduct enhanced monitoring of all transactions for the client**.** • **31 May 2019** is the **compliance deadline in respect of targeted financial sanctions (TFS).** Firms can subscribe to the TFS list on the FIC website; AIs must have a process to identify whether persons listed on the **United Nations sanctions** listings are clients of the AI; and account for **how the AI intends dealing with property, financial services of persons so listed.** **Link to Targeted Financial Sanctions page on the FIC website** **The Targeted Financial Sanctions (TFS) List, developed by the Financial Intelligence Centre (FIC),** contains the available identity particulars of persons and entities referred to in the Notice published by the Director**. The FIC will maintain an updated TFS List** on its website of any additions or deletions to the information as and when information to that effect is received from the **United Nations Security Council.** **The TFS measures restrict sanctioned persons and entities from having access to funds and property under their control and from receiving financial services in relation to such funds and property in accordance with s 26B of the FIC Act.**

	Inherent Risk Rating	Status in the industry / market
		Sections in the Financial Intelligence Centre Act 38 of 2001 (FIC Act), relating to TFS, came into effect on 1 April 2019. **The FIC page contains information on TFS, the aim of TFS is to enforce the South African legal requirement for the implementation of TFS and applicable TFS regimes under the United Nations Security Council, Chapter VII, Article 41 of the UN Charter.** **1 April 2019** **Directive issued on suspicious transaction monitoring** **The Financial Intelligence Centre has issued a directive** (https://www.fic.gov.za/Documents/190327%20FIC%20Directive%205%20ATMS.pdf) to all accountable institutions using an automated transaction monitoring system (https://www.fic.gov.za/Documents/1903029%20Website%20Notice%20Directive.pdf) to submit regulatory reports in terms of section 29 of the Financial Intelligence Centre Act (suspicious and unusual transactions) and related money laundering and terrorist financing control https://www.gov.za/sites/default/files/gcis_document/201409/24176d0.pdf regulations. This is noting the need for a ‘proper governance arrangement’ regarding alerts generated by the system. Gazetted on 29 March 2019, the directive became immediately effective. The directive prescribes the conditions in terms of which an automated transaction monitoring system may be used. It also draws attention to the importance of delegating the responsibilities concerned to appropriately skilled personnel; documentation requirements; system development obligations; the importance of responding to alerts timeously; the system’s interface with manual reports; ensuring that it monitors all departments, branches and partnering agents; system testing and review; risk assessment; and detection methodology. Where a reporting institution is a subsidiary or branch of a foreign-based organisation using such a system, it must be ‘adequately customised’ to accommodate SA’s reporting regime. **UN financial sanctions in force via FICA**

		Section 17 of the 2017 Financial Intelligence Centre Amendment came into force on Monday 1 April, along with several sub-sections inserted into the principal statute to deal with individuals and entities identified by the UN Security Council for the purposes of imposing financial sanctions. The provisions concerned include steps to be taken in notifying such persons and entities, prohibitions and permitted financial services in their regard and related property matters. Also in effect is a revised guidance note to assist accountable institutions with compliance. It was developed in keeping with the requirements of sub-section 3(c) of the amendment Act, which is also now in force. **Other sub-sections effective from 1 April are** • 2(a) and (c) (amending section 3 of the principal Act to broaden its primary objective and to provide for accountable institutions to freeze property and transactions) and • 21(b) (amending section 29 of the principal Act to take account of council resolutions on financial sanctions in the context of reporting suspicious and unusual transactions). • 24 (amending section 35 of the principal Act to allow a designated judge to order an accountable institution to report to the Financial Intelligence Centre on a wide range of activities and transactions pointing to money laundering or terrorist financing); • section 39 (making it an offence to provide services prohibited in respect of persons and entities identified by the UN Security Council); and • section 42, imposing administrative penalties for non-compliance with reporting requirements. **Other important releases** **NOTICE BY THE DIRECTOR IN TERMS OF SECTION 26A(3) OF THE FINANCIAL INTELLIGENCE CENTRE ACT, 2001.** The Minister of Finance has announced the date of 1 April 2019 as the date that the sections in the Financial Intelligence Centre Act, 2001 (FIC Act) relating to targeted financial sanction (TFS) come into effect. **SOUTH AFRICA IMPLEMENTS TARGETED FINANCIAL SANCTIONS.** South Africa's measures for combating the financing of the proliferation of weapons of mass destruction and related acts have been enhanced with the launch of the list containing particulars of persons and entities identified for targeted

		financial sanctions (TFS). South Africa's measures for combating the financing of the proliferation of weapons of mass destruction and related acts have been enhanced with the launch of the list containing particulars of persons and entities identified for targeted financial sanctions (TFS). The searchable TFS list is available on the Financial Intelligence Centre (FIC) website (www.fic.gov.za). The FIC is responsible for administering TFS measures as adopted by the United Nations Security Council in its Resolutions. The TFS measures contained in the FIC Act relate to combating the financing of the proliferation of weapons of mass destruction as well as other instances of TFS-related to threats to the peace, breaches of the peace and acts of aggression. I t is prohibited to acquire, collect or use of property of persons or an entity whose names appear in the TFS list. This includes providing financial services and/or products to those persons or entities. No person may transact with a sanctioned person or entity, or process transactions for such a person or entity. Accountable institutions, listed under Schedule 1 of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001), are encouraged to use the searchable TFS list to determine whether they have a sanctioned person or entity as an existing or prospective client. The TFS list is available to all FIC website visitors. **Subscriptions are open to receive alerts each time there are changes to the list (e.g. names added or amendments made to the listing information).** **MONEY LAUNDERING, TERROR FINANCING UNDER SPOTLIGHT WITH SOUTH AFRICA REVIEW. A** panel of experts from the International Monetary Fund (IMF), the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) and the Financial Action Task Force (FATF) is due to test the effectiveness of South Africa's legislative and institutional capability to detect and combat money laundering and terrorist financing **Revised FICA reporting guidelines published.** The Financial Intelligence Centre published two revised guidance notes this week on the reporting requirements of accountable institutions. • One deals with suspicious and unusual transactions and activities 'that may be relevant to the investigation of an evasion or attempted evasion of a duty to pay any tax, duty or levy imposed by legislation administered by the Commissioner for the South African Revenue Service'

	Inherent Risk Rating	Status in the industry / market
		• The other focuses specifically on financial services and property in respect of persons and entities identified by the UN Security Council and will only take effect upon the commencement of sections 26A, 26B and 26C of the amended Financial Intelligence Centre Act. Inserted into the principal statute by the 2017 amendment Act, these sections respectively deal with persons and entities identified by the UN Security Council, financial services and property-related prohibitions in their regard and circumstances in which such prohibitions fall away. **March 2019** **Updated FIC guidance relating to terrorist property reporting (TPR) in terms of s 28A of the FIC Act / and OTHER NEWS FROM FIC** The Financial Intelligence Centre (FIC) has updated existing guidance relating to terrorist property reporting (TPR) in terms of s 28A of the Financial Intelligence Centre Act 38 of 2001 (FIC Act). The updates in the draft Guidance Note 6A (GN 6A), which provides guidance to accountable institutions in meeting their reporting obligations in terms of the FIC Act, includes the inclusion and discussion of s 28(1)*(c)* regarding the financial sanctions reporting obligation. It has been released for consultation in terms of section 42B of the FIC Act. Note that all additions to the previous Guidance Note 6 appear in [brackets] while deleted text has been underlined. *Background* Section 28A of the FIC Act requires an accountable institution, listed in Schedule 1 to the FIC Act, to file a report with the Centre if the accountable institution knows that it possesses or controls property linked to terrorism or to entities that are sanctioned pursuant to the provisions of the Protection

		of Constitutional Democracy against Terrorist and Related Activities Act 33 of 2004 (the POCDATARA Act), and/or a person or an entity identified pursuant to a UN resolution as contemplated in a notice referred to in s 26A(1) of the FIC Act. Section 25 of the POCDATARA Act states that the President must give notice, by Proclamation in the *Gazette*, in respect of any entity that has been designated by the United Nations Security Council (the UNSC) in order to combat or prevent terrorist and related activities. The above-mentioned conditions are met in respect of the sanction lists issued pursuant to the United Nations Security Council Resolution (UNSCR) 1267 (1999), and its successor resolutions. An up-to-date list can be accessed on the United Nations website. These UNSC Resolutions are the only sanctions lists related to terrorist activities which are legally recognised within the Republic of South Africa. The FIC is set to make available a list on its website, specifically under the category as mentioned in s 26A(1) of the FIC Act. This list is referred to as the Consolidated List and will be made available on the Centre's website. The Consolidated List as contemplated in s 26A(1) of the FIC Act, refers to persons or entities identified by the United Nations, that are involved in terrorist acts and/or are connected to the proliferation of weapons of mass destruction. These persons or entities are linked to country regimes which include Democratic People's Republic of Korea (DPRK), Yemen, South Sudan, Libya and Lebanon, amongst others. No person may enter into any transaction with persons or entities on the South African Consolidated List. Should the Accountable Institution identify that they have a client or a prospective client on this list, they would have a reporting obligation. ***The Financial Intelligence Centre (FIC) has issued Public Compliance Communication* 40 (PCC 40)**:

		to provide guidance to supervisory bodies regarding the conditions of their licence conditions, registration, approval or authorisation processes in meeting their responsibilities to supervise and ensure compliance with the Financial Intelligence Centre Act 38 of 2001 (FIC Act), by the respective accountable institutions regulated by them, as required by ss 45 and 45(1B)*(e)* of the FIC Act. Every supervisory body is responsible for supervising and enforcing compliance with the FIC Act or any order, determination or directive made in terms of the FIC Act, by all accountable institutions regulated or supervised by it – **Section 45(1).** In this regard, **supervisory bodies may conduct inspections** to determine the level of compliance by accountable institutions with the FIC Act or any order, determination or directive made in terms of the FIC Act - s 45B(1). **Section 45(1B)*(e)*(i)** and (ii) provides that a **supervisory body**, in meeting its responsibility referred to in s 45(1) **may issue or amend any licence**, registration, approval or authorisation that the supervisory body may issue or grant in accordance with any Act, to include that an accountable institution is to comply with the provisions of the FIC Act; and has in place adequate human, financial, technical and other resources to ensure such compliance. *Given that 'an accountable institution incurs increased money laundering and terrorist financing risk* when it receives funds from an unidentified person who may or may not become a prospective client', the Financial Intelligence Centre 'strongly recommends that accountable institutions (do) not make their bank account details public'. According to the latest compliance communication document providing guidance on accepting funds before completing the necessary customer due diligence process, 'the practice of depositing unsolicited funds into an accountable institution's bank account can easily be manipulated to perpetrate money laundering or terror financing'. In the context of the guidance provided, the term 'acceptance' indicates the intention of an accountable institution to receive funds from a prospective client either to form a business relationship or to conclude a single transaction. Noting the requirements of section 21 of the 2001 Financial Intelligence Centre Act, in the centre's view an accountable institution should not accept funds from a prospective client prior to completing the customer due diligence process – or 'request funds from a prospective client before it has completed the process of establishing and verifying that person's identity and has made a decision to enter into a business relationship with that prospective client'. An application from a prospective client to conduct business with an accountable institution should not be perceived to amount to an agreement. Neither should it be the basis of a request that the prospective client provides funds to the institution before his/her identity has been established and verified.

	Inherent Risk Rating	Status in the industry / market
		With all this in mind, the centre recommends that an accountable institution include in its risk management and compliance programme comprehensive measures to reduce the possibility of receiving funds from an unidentified person or entity. Where a reporting institution has not followed the guidance provided, 'it must be able to demonstrate that it has complied with the relevant obligations under the … Act in an equivalent manner' **Draft cash, EFT FICA regulations out for comment** Draft money laundering and terrorist financing control regulations have been released for comment by 1 April 2019. Their purpose is to amend regulations on cash transactions above a prescribed threshold (section 28 of the 2001 Financial Intelligence Centre Act); and to operationalise section 31 of the Act, which focuses on 'moving funds electronically across the borders of SA'. Both sections deal with the reporting obligations of accountable institutions conducting transactions on behalf of their clients. Summarising the draft notes a proposal to double the cash transactions threshold, 'dispense with the aggregation requirement' and increase the reporting timeframe. Regarding cross-border electronic fund transfers, it is envisaged that any transaction of R5 000 or more should be reported to the Financial Intelligence Centre. Both proposals are made in the context of issues unpacked in an accompanying consultation paper. The FIC has also issued two draft guidance notes for comment. **Draft Guidance Note 104 relates to international funds transfer reporting**, and **Draft Guidance Note 5C relates to cash threshold reporting**. **Draft Guidance Note 104 relates to international funds transfer reporting** The Financial Intelligence Centre (the Centre) has embarked on a process to bring section 31 of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act) into operation. Section 31 of the FIC Act requires those accountable institutions that move funds electronically, across the borders of South Africa, on behalf or on the instruction of another person, to report the information that is prescribed by regulation pertaining to a transaction through

		which funds are transferred, to the Centre. The section 31 report is to be called an **"International Funds Transfer Report" (IFTR)**. This consultation paper seeks to elicit comments on a number of aspects relating to the implementation of this reporting obligation. The FIC is also considering how the implementation of reporting on cash transactions pursuant to section 28 of the FIC Act can be improved. The obligation to submit an IFTR will be triggered by the fact that a transaction has taken place by means of which an amount of funds exceeding a prescribed threshold have been transferred electronically into or out of South Africa. Examples of transactions of this nature include remittances through which funds are sent or payments are made to persons located outside of South Africa, remittances through which persons in South Africa receive funds (including payments) from persons located outside of South Africa, credit and debit card transactions with a merchant located outside of South Africa and credit and debit card transactions by a person located outside of South Africa with a merchant in South Africa. When section 31 of the FIC Act comes into operation, section 56 of the FIC Act will also take effect. Section 56 deals with the failure of accountable institutions to report electronic transfers. A person that fails to report such transactions may be found guilty of an offence or may be found non-compliant and subject to an administrative sanction. Section 68 of the FIC Act states that a person convicted of such offence is liable to imprisonment for a period not exceeding 15 years or to a fine not exceeding R100 million **Guidance Note 5C relates to cash threshold reporting.** It is proposed that the prescribed threshold amount that should trigger a cash transaction report be **increased to R49 999,99**. This means that the obligation to report information concerning cash transactions in terms of section 28 of the FIC Act will arise when a transaction is concluded with a client by means of which cash in the amount of R50 000,00 and above: is paid by the accountable or reporting institution to the client, or to a person acting on behalf of the client, or to a person on whose behalf the client is acting; or is received by the accountable or reporting institution from the client, or from a person acting on behalf of the client, or from a person on whose behalf the client is acting

		A draft guidance note on reporting 'suspicious and unusual transactions and activities' to the Financial Intelligence Centre was released for comment by 4 February 2019. This will align the original note with the requirements of section 29(1)(b)(iv) of the amended Financial Intelligence Centre Act 38 of 2001. The section makes it mandatory to report any transaction or series of transactions to which a business is party 'that may be relevant to the investigation of an evasion or attempted evasion of a duty to pay any tax, duty or levy imposed by legislation administered by the Commissioner for the South African Revenue Service'. Reference is made to provisions in section 26A, which was inserted by section 17 of the 2017 Financial Intelligence Centre Amendment Act 1 of 2017. Yet to come into effect, section 26A deals with sanctions against 'persons and entities' identified by the UN Security Council The **Financial Intelligence Centre** (FIC) has published on its website a Financial Action Task Force (FATF) statement on jurisdictions with strategic anti-money laundering and counter-terror financing deficiencies. Countries with major deficiencies include the Democratic People's Republic of Korea and the Islamic Republic of Iran. **The FIC has advised accountable institutions to consider the risks identified by the FATF in relation to Iran when entering into business relationships**, or conducting transactions with persons and entities in Iran and to apply enhanced due diligence in this regard, in particular where there may be an increased risk of terrorist financing. In another public document, concerning the on-going process to improve global compliance with international standards on measures to combat money laundering and terror financing, issued on 19 October 2018, the FATF updated the information relating to a number of jurisdictions that have strategic deficiencies in relation to these standards. These jurisdictions are the Bahamas, Botswana, Ethiopia, Ghana, Pakistan, Serbia, Sri Lanka, Syria, Trinidad and Tobago, Tunisia and Yemen **FICA Amendments, Roadmap and Regulations.** Accountable Institutions will be required to indicate the key milestones that need to be achieved for successful implementation. It will be required that milestone dates be set starting from **June 2018**, indicating which provisions of the amendments to the FIC Act will be implemented by which milestone date. Accountable Institutions are afforded until **2 April 2019** to fully implement the new requirements of the FIC Act as amended.

		The new Regulations provide detail regarding reporting procedures, manner of reporting and relevant administrative sanctions and offences. The Minister has also withdrawn exemptions made in terms of the Financial Intelligence Centre Act, 2001 (FIC Act), including Exemption 4. The Financial Intelligence Centre (FIC), in collaboration with National Treasury, the South African Reserve Bank and Financial Services Board, has issued guidance in Guidance Note 7 in this respect, which will be of assistance to FSPs. Current exemptions were withdrawn effective 2 October 2017. Treasury said while the withdrawal of exemptions may impact institutions' compliance approach to the customer due diligence requirements of the FIC Act, institutions may continue to be guided by the content of the withdrawn exemptions in the implementation of their compliance approaches. The FIC Act incorporates a risk-based approach to compliance elements such as customer due diligence (CDD) into the regulatory framework. A risk-based approach requires accountable institutions to understand their exposure to money laundering and terrorist financing risks. By understanding and managing their money laundering and terrorist financing risks, accountable institutions not only protect and maintain the integrity of their businesses but also contribute to the integrity of the South African financial system. The risk-based approach further allows accountable institutions to simplify the due diligence measures applied where they assess Money Laundering/Terrorist Finance risks to be lower. Instead of relying on rigid requirements in regulations and exemptions granted at the executive level, accountable institutions will have greater discretion to determine the appropriate compliance steps to be taken in given instances, in accordance with their internal anti-money laundering "AML" and combating of terrorist financing "CFT" compliance and risk management programmes. The commencement and operationalisation dates of the two remaining set of provisions in the FIC Amendment Act, namely sections 26A to 26C dealing with the freezing of assets in terms of the UN Security Council Resolutions on targeted financial sanctions, and Schedule 3A dealing with the setting of a monetary value threshold for companies doing business with the State, will be determined after October 2017. The delay on sections 26A to 26C is to enable consultations within Government, and allow for internal systems development

9. Insurance Acts.	M	**FSCA publishes draft exemption notice proposing an exemption of microinsurers that offer credit life microinsurance policies** **The Financial Sector Conduct Authority (FSCA) has released Communication 6 of 2019 advising stakeholders of the draft exemption and has asked for all comments to be submitted by 26 August 2019.** Rule 2A of the Policyholder Protection Rules (Long-term Insurance), 2017 (PPRs) sets out the microinsurance and funeral policy product standards applicable to microinsurers as defined in the Insurance Act 18 of 2017 (the Insurance Act), and insurers licensed for the funeral class of life insurance business referred to in Table 1 of Schedule 2 to the Insurance Act. In terms of Rule 2A.10.1 a microinsurance policy or a funeral policy may not prescribe that a policy benefit payable as a sum of money is payable directly to a service provider. The definition of service provider as set out in the PPRs could be interpreted to include a credit provider. Credit life policies offer policy benefits to satisfy all or part of a financial liability to a credit provider on the happening of a death event, health event or a disability event, in the event of unemployment, or other insurable risk that is likely to impair a person's ability to earn an income or meet credit obligations. Accordingly these policies are often structured to pay all of part of the policy benefits directly to a credit provider. A practical challenge exists in complying with Rule 2A.10.1 in the context of microinsurance policies underwritten under the credit life class of life insurance business as set out in Table 1 of Schedule 2 to the Insurance Act. The FSCA believes that there is justification in departing from the requirements of Rule 2A.10.1 in the context of such policies. As a result, the FSCA intends to exempt microinsurers from compliance with Rule 2A.10 insofar as it relates to a microinsurance policy underwritten under the credit life class of life insurance business as set out in Table 1 of Schedule 2 to the Insurance Act. The FSCA believes that the exemption will not be contrary to public interest nor will it prejudice the achievement of the objects of the PPRs **FSCA publishes exemption for certain insurers from Rule 19 of PPR**

	Inherent Risk Rating	Status in the industry / market
		The **Financial Sector Conduct Authority** (FSCA), under s 281(1) of the Financial Sector Regulation Act 9 of 2017, has **exempted insurers that offer assistance policies, funeral policies or microinsurance policies from the requirements of Rule 19 of the Policyholder Protection Rules** (Long-term Insurance) read with Regulation 3.9A of the Regulations under the Long-term Insurance Act, 1998. **26-Mar-2018** **Comment is sought by 23 April on draft amendments to short and long-term insurance regulations. Gazetted on Friday 23 March 2018, according to an accompanying National Treasury media statement. The changes envisaged seek to: 'further strengthen policyholder protection by providing for more robust legislative requirements.** The Financial Sector Conduct Authority (FSCA) released an update on its technical work aimed at further refining the premium collection regulatory framework for short- and long-term insurers in December 2018. On **28 September 2018**, **National Treasury** published amendments to the **Regulations under the Short-term Insurance Act 53 of 1998, and the Long-term Insurance Act 52 of 1998** (the Regulations). The amendments to Regulation 4 of the Short-term Insurance Regulations, in particular, signalled a change in the regulatory approach to premium collection by, among other things, removing the security or guarantee requirement and introducing enhanced governance and monitoring requirements that place greater accountability on insurers that allow intermediaries to collect premiums on their behalf. The new requirements take effect 12 months after the effective date of the amendments to the Regulations, with the exception of Regulation 4.1(5) which took effect immediately and provides as follows: 'An insurer must, before it authorises an independent intermediary under section 45, and at all times thereafter, be satisfied that- (a) the independent intermediary is fit and proper and has the necessary operational ability to satisfactorily perform the functions or activities contemplated in the authorisation; (b) such authorisation will not materially increase the risk to the insurer; and (c) such authorisation will not compromise the fair treatment of or continuous and satisfactory service to policyholders.' On **3 October 2018**, FSCA and the Prudential Authority (PA) issued **Joint Communication 3 of 2018**, which related to the **temporary continuation of the insurance business of the Intermediaries Guarantee Facility (IGF)**. The communication indicated that the PA **will allow the continued operation of the IGF until 31 March 2019**, with the purpose of providing industry with sufficient time to phase out the previous security or guarantee approach and to

		align with the new requirements contained in Regulation 4. It was however confirmed that, notwithstanding this extension of time, insurers should immediately be able to demonstrate what steps they are taking to ensure compliance with the new requirements contained in Regulation 4.1(5) **The Insurance Act, 18 of 2017 was passed into law with the effective date of implementation anticipated for 1 July 2018.** In the circumstances, the Board of Intermediaries Guarantee Facility Limited (IGF) has resolved to cease operations with effect from 1 July 2018, resulting in the run-off of the existing guarantees and the relevant prescription periods attaching to these guarantees, following which the winding up of the legal entity will take place: • All existing guarantees issued by the IGF will remain in force to their respective natural expiry dates. • The IGF will not entertain the renewal of and or any new guarantees with effect from the 1st July 2018. • The guarantees that have been extended before 1 July 2018, for audit purposes, will still be issued post 1 July 2018 and run to their respective natural expiry dates. • Each guarantee has a three year run-off period following the natural expiry date of the contract. **Charles Hitchcock, SAIA Chief Operations Officer, South African Insurance Association (SAIA)** The repealing of Section 45 and Regulation 4 of the Short-term Insurance Act 1998 by the new Insurance Act will see a change from a legislated requirement for credit intermediaries to hold a Section 45 guarantee to an unregulated market solution: commercial considerations between transacting parties, placing responsibility for the management of credit risk squarely at the foot of the insurer. The current understanding of the Regulations in relation to the collection of premiums in the new Insurance Act, is that, as is currently the requirement, once an insurer authorises a person in writing to collect premiums on its behalf, that insurer is responsible for the actions of the person it so authorises, and furthermore, that once the premium is paid to the intermediary, the insurer is on risk. The repealing of the section is expected to be by way of Prudential Standards that will be implemented once the new Act has gone live – best estimate of date remains July 2018. The exact date that the Standard will take effect is not yet known. The repealing of section 45 will result in several potential alternative scenarios, one being **the cessation of business activities by Intermediaries Guarantee Facility Limited once the Standards become effectiv**e, resulting in a run-off period of the guarantees still in force and a prescription period of three years after the expiry of the last current guarantee, and the eventual de-registration of the legal entity. **Short-term Act Regulations Key amendments** include:

		• Remuneration limitation for services as an intermediary • Remuneration limitation for binder functions. This section includes: –– Principles for determining remuneration for binder functions –– Remuneration that may be offered or provided to a binder holder (binder capping) These caps take effect immediately for new agreements, within six months of 1 January 2018 for agreements entered into during 2017, and within 12 months for all agreements entered into before 2017. Notification of certain arrangements with independent intermediaries. This section includes: –– Requirement for the insurer to report new agreements to the FSCA –– an expanded definition of "associate" –– Governance and oversight requirements (of insurer over binder holders) **Long-term Act regulations The key amendments (differing from the Short-term regulations) include:** • Equivalence of reward standards • Commission on credit life schemes • Replacement of risk policies • Limitation on provisions of certain policies • Causal event charges **Insurance Bill 'explicitly' promotes transformation**- revised 2016 Insurance Bill tabled this week, 28 November 2017, in the National Assembly for a second reading debate. 'explicitly' promotes transformation and financial inclusion, according to an accompanying Standing Finance Committee report. To that end, it empowers the prudential authority established in terms of the Financial Sector Regulation Act to 'impose licensing conditions' and associated standards aimed at facilitating 'progressive or incremental compliance' with transformation imperatives now included as one of the Bill's overarching objectives. **Report of the Standing Committee on Finance on the Insurance Bill,** dated 22 November 2017. The Standing Committee on Finance, having considered and thoroughly examined the Insurance Bill, reports the Bill with amendments.

Regulatory Risk Log August 2019		
	Inherent Risk Rating	Status in the industry / market
		1. The Insurance Bill of 2016 (“the Bill”) is part of the tranche of Bills giving effect to the new “Twin Peaks” model that seeks to transform the financial sector to reduce the prospects of the negative consequences of the 2008 global financial and economic crisis recurring, especially for financial customers. It is the lower income earners that usually suffer disproportionately when financial institutions fail – and in South Africa these are mainly Black people. 2. The Bill provides a consolidated legal framework for the prudential supervision of insurers that is consistent with international standards for insurance regulation and supervision and takes into account the specific conditions in South Africa. It also seeks to replace and consolidate substantial parts of the Long-term Insurance Act, 1998 (Act No. 52 of 1998) and the Short-term Insurance Act, 1998 (Act No. 53 of 1998) relating to prudential supervision. 3. The Bill seeks to promote the maintenance of a fair, safe and stable insurance market by establishing a legal framework for insurers that – • Enhances financial soundness and oversight through higher prudential standards, group supervision and stronger reinsurance arrangements; • Increases access to insurance through a dedicated micro insurance framework; • strengthens the regulatory requirements in respect of governance, risk management and internal controls for insurers; and • aligns with international standards and is in accordance with South Africa’s G20 commitments, while taking into account the specific conditions in South Africa. 4. The insurance sector plays an important role in supporting a sustainable inclusive economy. Insurance provides the necessary protection for households and corporates to mitigate against unexpected losses. In the absence of such protection, vulnerable households and corporates could be pushed into a vicious cycle of debt and poverty. 5. The Committee supports Government’s policy priorities to ensure that all South Africans have access to affordable and appropriate insurance coverage (financial inclusion), consumers are treated fairly, and are protected from poor outcomes arising from market failures (market conduct). Insurers must meet their long and short-term promises to consumers and must remain financially stable, in order to be in a position to continue to pay claims (prudential soundness). 6. The 2008 global financial and economic crisis highlighted the importance of having higher prudential and market conduct standards on both banks and insurance companies, to enhance their financial soundness and ultimately support consumer protection and financial stability. 7. In South Africa, a new prudential framework for the insurance sector called the Solvency Assessment and Management (“SAM”) framework has been developed to improve policyholder protection and contribute to financial stability through aligning insurers’ regulatory capital requirements with the underlying risks of the insurer. 8. The enhanced prudential framework for insurers forms part of Phase 2 of Twin Peaks reforms. Phase 1 was the passage of the Financial Sector Regulation Act, 2017. These reforms seek to significantly enhance South Africa’s financial regulatory and supervisory framework, by also enabling an intensive, intrusive and effective system of regulating the financial sector.

		9. The Bill facilitates a seamless transition into the Twin Peaks model that is envisaged in the Financial Sector Regulation Act, in respect of prudential supervision of insurers, which will be enforced by the new Prudential Authority under the South African Reserve Bank. 10. As an important part of the overall transformation of the financial sector, the Bill seeks to encourage new entrants in the highly monopolized insurance industry and contribute towards deracialisation and other aspects of the transformation of the insurance sector. Public Consultation Process. 16. During the Insurance Bill public hearings, a number of emerging entrepreneurs in the insurance sector argued that the Bill does not deal adequately with transformation of the insurance sector. At the FST public hearings, as the FST Report notes, there was extreme frustration expressed about the lack of transformation. 17. The Committee's overall approach to the Bill was that new entrants need to be encouraged in the sector and that it needs to be deracialized and diversified, while at the same time ensuring that the needs and interests of the policyholders are protected. **Continuation of previously registered insurers** 21. Emerging insurers expressed concerns about the relicensing process as set out in the Bill, given that they are likely to be at greater risk, since that they do not have the capacity of the major institutions to resort to legal action if the re-licensing process weakens current property rights. 22. The original wording used in the Bill – **"relicensing" - does not reflect the actual process envisaged,** which is the **conversion of current insurance licenses to reflect more accurately the type of insurance activity for which an entity is operating under its current license**. The conversion process is not meant to take away any license, which could be regarded as a possible deprivation of property rights. To alleviate this risk and provide greater certainty, amendments were made to guide the conversion process. Micro-insurance
		The policyholder protection rule 17 (claims management) and rule 18 (complaints management), in as far as it relates to group schemes, commenced on 1 July 2019. The notice for the new long-term and short-term policyholder protection rules (PPRs) was already published on 15 December 2017 in the *Government Gazette* (with 18 month implementation). The PPRs apply to natural persons and juristic persons whose asset value or annual turnover is less than R2 million. Insurers should already have pre-existing claims management processes that have been updated to include TCF principles and any additional requirements mentioned in the rule. Likewise, insurers should already have pre-existing complaints management processes

		that have been updated to include TCF principles and any additional requirements mentioned in the rule. 6 ComplianceMATTERS 1 August 2019 062019 An insurer must implement a comprehensive complaints management framework with policies, procedures that include escalation and review mechanisms, registers, the allocation of responsibilities to a competent person and reporting to the appropriate forums.
		REVISED DRAFT DETERMINATION - FORMAT FOR REPLACEMENT ADVICE RECORD (INDIVIDUAL RISK POLICIES) **27 March 2019. The Financial Sector Conduct Authority invited submissions on the revised draft Determination - Format for replacement advice record (individual risk policies)** to be determined in terms of rule 19.2.6 of the Policyholder Protection Rules made under section 62 of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), as set out in the Schedule. The revised draft Determination - Format for replacement advice record (individual risk policies) is available on the FSCA website at https://www.fsca.co.za. Submissions on the draft Determination were allowed by 30 April 2019.
		IGF Cover terminated On **3 October 2018**, FSCA and the Prudential Authority (PA) issued **Joint Communication 3 of 2018**, which related to the **temporary continuation of the insurance business of the Intermediaries Guarantee Facility (IGF)**. The PA **allowed the continued operation of the IGF until 31 March 2019**, with the purpose of providing industry with sufficient time to phase out the previous security or guarantee approach and to align with the new requirements contained in Regulation 4. The **Financial Sector Conduct Authority** (FSCA) has now released FSCA Communication 3 of 2019, to inform stakeholders that a Position Paper containing proposals on the future regulatory framework for the collection of insurance premiums has been published. Interested parties can **submit written comments on the proposals outlined in the Position Paper by 10 May 2019** to: FSCA.RFDPremiumCollectionPaper@fsca.co.za On 14 December 2018, FSCA published FSCA Communication 2 of 2018: Update on the future of the premium collection regulatory framework under the Short- and Long-term Insurance Acts (the Communication). The Communication highlighted the various regulatory interventions being considered to address specific risks inherent in third party premium collection business models and confirmed that further industry engagements would be held early in 2019 to help inform FSCA's policy position on the future of the premium collection regulatory framework.

		Based on these industry engagements, FSCA has formulated a number of proposals to address the specific risks identified to date with a view to eliciting more detailed industry inputs in order to confirm its policy position on the future of the premium collection regulatory framework. ***Overview*** The Position Paper confirms FSCA's current thinking on a future regulatory model for the collection of insurance premiums in South Africa within the context of key regulatory and industry developments to date. The Position Paper puts forward a number of regulatory proposals focusing on the following: • identification and classification of premium collection related activities and the determination of appropriate remuneration for such activities; • criteria for qualifying intermediaries who wish to collect premiums on behalf of insurers; • treatment of premiums as trust monies; • reduction in the allowable period for the remittance of premiums by third parties; and • interim remuneration arrangements for intermediaries who
		REGULATORY DEVELOPMENTS- L & ST INSURANCE ACTS- Binders/ PPR The second round of the proposed PPRs were published for public comment on 1 September 2017 The 2nd drafts of the amendments to the binder regulations WERE published by the FSCA to industry this week with a 2 week comment period. (Up until 4 August after which the proposals will be submitted to National Treasury.) The 2nd draft of the amendments to the PPR will also published for final comment by industry. FSCA- "A particular focus of the comments received was on the amendments relating to the introduction of binder fee caps for financial advisers. To help inform an alternative proposal, the FSCA worked with the main commentators on this issue – namely the South African Insurance Association (SAIA), the Association for Savings and Investment South Africa (ASISA), the Financial Intermediaries Association (FIA) and the South African Underwriting Managers Association (SAUMA) – to provide further substantive insight into how activities are segmented and to make proposals on what would constitute reasonable and commensurate remuneration for the performance of such activities so as to mitigate any risk of the remuneration potentially resulting in conflicted advice. "

		Based on the comments received and the further technical input from the main commentators, the FSCA is in the process of formulating proposed revisions to the draft Regulations to be submitted to the NT for consideration. In this regard, the FSCA would like to request commentators to provide inputs on the proposed revisions to the draft amendments to the Regulations that will inform the FSCA's submission to NT. Written inputs by 4 August 2017. All proposed amendments to the existing Regulations contained in the December 2016 draft Regulations were accepted, and only the further proposed revisions are reflected in tracked changes. The Treasury has agreed to changes to the insurance Bill in a bid to accelerate the transformation of the industry. National Treasury and the Financial Services Board (FSCA) has published the amendments to the Insurance Regulations that give effect to other conduct of business reforms. As stated above, this should be read together with the replacement PPRs. These Regulations and PPRs are geared at supporting Government's objective to ensure that the right insurance products are available and accessible to all South Africans. The proposed reforms include conduct of business risks and abusive practices that have been identified through supervision and this will be given effect within the existing regulatory framework. A comprehensive review of the Regulations will form part of the review of all conduct of business frameworks which will be done by the future Financial Sector Conduct Authority as part of the Twin Peaks reforms
		Insurance policy holder protection (PPR) rules fully in force. Short- and long-term insurance policy holder protection rules released in draft form during March for comment are now in force. Their purpose is to assist licensed insurers subject to the 2017 Insurance Act in their efforts to interpret the rules in the context of the Long- and Short-term Insurance Acts – responding to the need for consistency across the insurance regulatory framework. According to a statement issued in March, this is expected to 'ensure a smooth transition from regulated insurers under the current framework to licensed insurers under the (new) Act' when their registrations are converted. It is not clear from the accompanying Government Gazette notice whether amendments to regulations under the Long-term Insurance Act and now in force are related to the new rules. The amended rules came into effect on Monday 1 October 2018, Gazetted on Friday 30 September 2018. The revised rules reflect provisions in the 2017 Insurance Act – providing for certain conduct-of-business-related requirements in the Long- and Short-term Insurance Acts pending their repeal once the 2017 Act is operational. They incorporate conduct of business requirements for micro-insurance products. The proposed amendments do not impose

		any new regulatory obligations on insurers and seek to assist licensed insurers subject to the 2017 Act in their efforts to interpret the rules in the context of the Long- and Short-term Insurance Acts – responding to the need for consistency across the insurance regulatory framework.
		FSCA statement Tranche 2 amendments to PPR Amendments to the Policyholder Protection Rules made under the Long-Term Insurance Act, 1998 and the Short-Term Insurance Act Statement from the FSCA supporting Tranche 2 amendments to PPR Amendments to the Policyholder Protection Rules made under the Long-Term Insurance Act, 1998 and the Short-Term Insurance Act The Financial Sector Conduct Authority (FSCA) INTRODUCTION. This statement is published in relation to the proposed amendments to the Policyholder Protection Rules (“PPRs”) made under the Long-term Insurance Act, 1998 (“LTIA”) and the Short-term Insurance, 1998 (“STIA”) (“proposed amendments”), respectively published for public comment by the Registrar Long-term insurance and Short-Term insurance on 2 March 2018. The statement provides an overview of and the rationale for the proposed amendments to the PPRs. It also explains the need for, and the intended operation and expected impact of the proposed amendments to the PPRs. THE SCOPE OF THE PROPOSED AMENDMENTS TO THE PPRs The proposed amendments to the PPRs are necessary to – • align the PPRs with the Insurance Act, 2017 (Act No.18 of 2017) (“Insurance Act”); • provide for certain conduct of business related requirements that will be repealed from the LTIA and the STIA through Schedule 1 to the Insurance Act, once the latter Act commences, as these conduct requirements are better placed in subordinate legislation; and • Provide for microinsurance product standards by giving effect to the National Treasury’s Microinsurance Policy Document (“Policy Document”) released in July 2011, which is available on the National Treasury’s website https://www.treasury.gov.za

	Inherent Risk Rating	Status in the industry / market
		Cell Captive proposed Conduct Standards. Comment sought **on insurance conduct standard** Published: 14 September 2018.10.21; A draft conduct standard for **'cell captive insurance business** in relation to third party risks'. The document and a supporting statement provide some insight into protecting policy holders 'by ensuring that potential or actual conflicts of interest … are properly mitigated and managed' in circumstances where the cell owner is a non-mandated intermediary. 'These conflicts exist because of the profit sharing motivation underlying the cell arrangement, which could compromise the impartiality of the intermediary's advice – contrary to the … (his/her) primary duty to act in the best interest of the policyholder'. Once in force, the conduct standard is also expected to ensure that 'the products offered by cell captive insurers are suitably tailored and offer consistently fair value to policyholders'. This is noting the need to prevent 'possible regulatory arbitrage arising from the fact that non-mandated intermediaries who are cell owners are entitled to earn commission for … selling … policies and share in underwriting profits, without necessarily having a material interest or role to play in the technical underwriting functions of the business'. A comparison is made between non-mandated intermediaries and underwriting managers, 'who are entitled to a share in underwriting profits but are prohibited from earning commission for … selling … policies'. The proposed conduct standard nevertheless recognises the potentially 'significant role' envisaged for cell captive insurers in promoting insurance industry transformation – 'by allowing for a specific exemption process in instances where it can be shown that a proposed cell structure is intended to serve as an incubation hub, within a defined time period, for an emerging insurer'. Background notes included in the supporting statement refer to a process that began in 2013 with the release of a discussion paper developed by the former Financial Services Board. On 3 July, the Financial Sector Conduct Authority and the Prudential Authority apparently issued a joint communication confirming that 'certain of the regulatory policy proposals put forward in the discussion paper' have since been accommodated in the 2017 Insurance Act, financial soundness prudential standards for insurers issued under the Act, and policyholder protection rules issued under the 1998 Long-term Insurance and Short-term Insurance Acts. The joint communication also identified regulatory policy proposals in the discussion paper relating 'primarily to conduct of business matters' – including whom 'may be a cell owner'
10. Securities Lending	M	Conditions for securities lending local to South Africa to be introduced. (PFA Notice 2 of 2012 – this replaces Notice 5 of 20 December 2011) FSCA Work in Progress

	Inherent Risk Rating	Status in the industry / market
11. Retirement Fund Reform Retirement Fund Reform (RFR) aimed at the implementation of a comprehensive and integrated framework for the provision of income security for all South Africans	M	1. Potential negative impact on retirement savings industry. National Social Security Scheme (NSSS) could result in existing funds losing substantial numbers of members and contribution flows. 2. No significant developments since publication of second discussion paper in 2007. 3. Some limited practical changes have followed from proposals mooted, e.g. taxation of retirement benefits. 4. More detailed proposals included in budget proposals 2014. RFR was to be implemented by 2010 but given delays in the production of the government proposal papers, 2013/14 or later is a more likely date for the launch of the NSSS. **The fifth paper on retirement reform released June 2013.** Aimed at inefficiencies to ensure that funds "fulfill their objectives cost-effectively" to ensure best value from retirement savings. Builds on previous proposals dealing with compulsory membership of retirement funds, establishment of standardised funds, portability of retirement benefits, reduction of costs/penalties and functions/duties/accountability of trustees. Further actions were put on hold due to concerns from employ representative bodies.
12. Regulation 28 of the Pension Funds Act	L	**DRAFT NOTICE:** **REGULATION 28: CONDITIONS FOR INVESTMENTS IN HEDGE FUNDS** The Minister of Finance declared hedge funds to be collective investment schemes in 2terms of section 63(1) of the Collective Investment Schemes Control Act, 2002 (CISCA) on 25 February 2015 (the Declaration). The Registrar of Collective Investment Schemes determined requirements for hedge funds in Board Notice No. 52 of 2015 (BN 52 of 2015). Despite the declaration of a hedge fund as a collective investment scheme, any investment by a pension fund in a hedge fund is regarded as an investment in a hedge fund as defined in regulation 28. Pursuant to those requirements, the Registrar of Pension Funds intends to prescribe the conditions subject to which pension funds may invest in hedge funds. The conditions being that a pension fund may only invest in a hedge fund which is administered by a manager registered under the CISCA and

		authorised to administer a hedge fund. In addition, where a pension fund invests in a qualified investor hedge fund as defined in the Declaration, such qualified investor hedge fund must also comply with paragraph 12 of BN 52 of 2015 with regard to derivatives included in the portfolio, despite paragraph 12 not being applicable to qualified investor hedge funds. A fund must monitor compliance of the manager of the hedge fund with the requirements set out in paragraph 12. The Registrar of Pension Funds reminds funds that any investments in a hedge fund, 5whether it is a „qualified investor‟ hedge fund or a „retail‟ hedge fund, must comply with the principles set out in Regulation 28(3)(d) and limits referred to in paragraph 8.1(a) of Table 1 of Regulation 28. Regulation 28(3)(d) provides: 6 “A fund must not invest or contractually commit to invest in an asset, including a hedge fund or private equity fund, where the fund may suffer a loss in excess of its investment or contractual commitment in the asset. This does not preclude a fund from investing in derivative instruments subject to sub regulation (7). Hedge funds and private equity funds that may expose the fund to a liability must be held in a limited liability structure.” Pension funds are furthermore reminded that, in terms of Regulation 28(4)(c), any direct or indirect exposure to a hedge fund must be disclosed as an investment into a hedge fund, and that the fund need not apply the look-through principle in respect of the underlying assets of a hedge fund. In order to accommodate funds currently invested in hedge funds whose managers have not yet been registered as managers of collective investment schemes, the draft notice provides for transitional arrangements. Funds must ensure that the hedge funds they are invested in comply with the requirements and time periods set down by the Registrar of Collective Investment Schemes for applications. If, however, it is apparent to a fund that the person administering the hedge fund is not compliant with the requirements, the fund must inform the Registrar of Pension Funds of this without delay. After receiving such notification, the registrar may in terms of paragraph (2) of the Draft Notice instruct a fund to act in accordance with certain conditions.
13. Financial markets conduct proposals out for comment		**Published: 07 September 2018. National Treasury has called for input by 1 October 2018** on recommendations in a financial markets review released on Monday, focusing on measures for ‘protecting the integrity and effectiveness’ of SA’s wholesale financial markets. According to an accompanying media statement, once fine-tuned the measures envisaged will have implications for governance, market conduct, market structure, trading venues and

	Inherent Risk Rating	Status in the industry / market
		technology across SA's over-the-counter fixed income, currency, commodities and derivatives markets. They are also likely to inform the process of 'finalising' the 2015 foreign exchange review. An executive summary of the review alludes to 'reinforced' conduct standards, using 'specific tools' to strengthen implementation and governance. Conducted by a committee headed by former South African Reserve Bank senior deputy governor James Cross, the review covered regulated and unregulated standards and practices in the context of global trends, along with accountability and incentives as these relate to governance issues. Gaps identified in existing legislation, regulations and supervisory procedures apparently informed what the media statement describes as proposals for a 'pre-emptive, outcomes-focused and risk-based approach' to improving the integrity of the financial markets concerned and related conduct. Reference is made to developing 'a market conduct policy framework under the twin peaks model of regulation', as well as 'a market-led standards group'
14. Regulations in terms of Financial Markets Act 19 of 2012 published in the Government Gazette/ Commencement of some amendments to Financial Markets Act, 2012, as contained in Financial Sector Regulation Act proclaimed		**National Treasury reported in the week of 16 February 2018 that the Financial Markets Act regulations were published in Government Gazette 41433. The regulations were originally published for comment in 2016** According to a national treasury statement released at the time, the regulations are necessary to meet South Africa's commitment to the G20 decision to implement regulatory and legislative reforms to make financial markets safer. The reforms are also intended to regulate over-the-counter (OTC) derivatives markets. Included in the regulations are: • Requirements for the regulation of OTC derivatives; • Category of regulated person; • External central securities depositories links; • Assets and resources requirements for certain market infrastructures; • Central counterparties; and • Transitional arrangements and commencement. The regulations came into effect on the date of publication. Meanwhile, in Notice 99, treasury has announced the commencement of amendments to the Financial Markets Act of 2012 as contained in the Financial Sector Regulation Act of 2017**.**
15. Cybercrimes and Cybersecurity Bill		The Independent Communications Authority of SA (ICASA) will wait for the 2018 Cybercrimes Bill to complete its passage through Parliament before 'pronouncing on its role in the cybersecurity space', according to a position paper on cybersecurity governance gazetted on 29 March 2019 – informed by the findings of stakeholder consultations that began in September with the release of a discussion document. A 'B' version of the Bill now before the NCOP's Security and Justice Committee is expected to be the focus of public hearings once the sixth democratic Parliament begins its work.

	Inherent Risk Rating	Status in the industry / market
		Meanwhile, noting its obligations regarding information security and network reliability under s 2(q) of the 2005 Electronic Communications Act (objects), ICASA has called for a 'multi-stakeholder approach' in developing 'enabling legislation' that clarifies roles and avoids the 'duplication of resources'. As things now stand, the authority's involvement in cybersecurity governance is apparently limited in the absence of a definition in the Act of the term 'information security'. ICASA's position will apparently also be influenced by the 2017 Critical Infrastructure Protection Bill, a 'D' version of which was sent last month to President Cyril Ramaphosa for signature. A 'B' version of the 2017 Cybercrimes Bill was adopted early in November 2018 by the National Assembly's Justice and Correctional Services Committee, with two substantive amendments proposed by the DA and accepted by committee members. The as released in draft form during 2015 for comment, does not seek to criminalise identity theft. According to a statement from the Deputy Minister in 2017r, this matter will be further researched and possibly considered 'at a later stage'. Neither does the proposed new piece of legislation seek to empower the State Security Agency to 'control the Internet'. On the DA's recommendations – sub-clauses 32(2) and 33(3) respectively were removed from the Bill's 'B' version with the aim of ensuring that no computer system or data storage medium seized without a search warrant may be opened or read without authorisation. This is noting that the definition of 'seize' under clause 25 paragraphs (c) and (d) refers to making, retaining and/or obtaining a printout of data or a computer programme. The process of obtaining an emergency warrant from a magistrate or judge in chambers is quick and efficient – making it unnecessary to provide for accessing a computer system or data storage medium without a warrant to do so. Regarding sub-clause 52(6), the recommendations were rejected that the Minister of Police report annually on the functions and activities of SA's 'designated point of contact' not only to the National Assembly's Joint Standing Committee on Intelligence, but also to the committees responsible for justice and police. Certain information such as assistance received from a foreign state justifies the level of secrecy afforded by the Intelligence Committee, which is not open to members of the public. Once revised to reflect the changes to sub-clauses 32(2), 33(3) and other minor technical amendments, the Bill will be tabled in the House for a second reading debate before being sent to the NCOP for concurrence – at which point a final round of public hearing is likely to be arranged. The Cybercrimes and Cybersecurity Bill was formally tabled to, among other things pave the way for the introduction of measures to 'criminalise the distribution of malicious communications'. Once in force, the Bill will 'impose obligations on electronic communications service providers and financial institutions' not only to assist in the investigation of cybercrimes, but also to report them.

		The new and proposed Cybercrime and Cybersecurity Bill, aims to create offences and prescribed penalties related to cybercrime. The offences provided for in the bill aim to protect the confidentiality, integrity and availability of computer data and systems by means of the offences of unlawful access, interception of protected data, malware-related offences, interference with data and computer systems and password-related offences. The bill was made available for public comment in 2015 and comments were taken into account in the finalisation of a further draft of the bill. The bill criminalises cyber-facilitated offences by means of the offences of fraud, forgery, uttering and extortion, which were adopted specifically for the cyber environment. "Jurisdiction in respect of all offences which can be committed in cyberspace is expanded substantially in terms of the bill, mainly to deal with cybercrime which originates from outside SA borders. The bill also puts in place specialised procedures, with sufficient checks and balances to protect the rights of an accused person and other users of information communication technologies to deal with the investigation of cybercrimes. It is estimated that cyber-related offences are escalating and currently exceed a value in excess of R1 Billion annually. The development of the proposed legislation is a milestone towards building safer communities as envisaged in the National Development Plan. In this regards, government is committed to put in place measures to effectively deal with cybercrimes and address aspects relating to cybersecurity, which adversely affect individuals, businesses and Government alike. The draft Bill aims to put in place a coherent and integrated cybersecurity legislative framework to address various shortcomings which exist in dealing with cybercrime and cybersecurity in the country, and focuses, among others, on: • Creating offences and prescribing penalties related to cybercrime. • Regulating jurisdiction, as well as the powers to investigate search and gain access to or seize items in relation to cybercrimes. • Regulating aspects of evidence, relative to cybecrimes. • Regulating aspects of international cooperation in respect to investigations of cybercrimes. • The establishment of various structures to deal with cybersecurity. • The identification and declaration of National Critical Information Infrastructures and measures to protect these infrastructures. • Creating obligations for electronic communications service providers regarding issues that impact on cybersecurity.
16. Automatic Exchange of Information and the		With the infrastructure established through FATCA, and a widespread growing frustration with the hidden economy compounded by the significant public sector debt after the banking crisis, the OECD has galvanised 100 countries into action. As of 11 December 2015, this comprises 56 'early adopters', with

	Inherent Risk Rating	Status in the industry / market
Common Reporting Standards (CRS)		a further 41 countries following suit just a year later, and another three waiting in the wings (see the full list here: www.oecd.org/tax/transparency/AEOI-commitments.pdf). The list is not static, having doubled in number over 2015 alone **Timing** In terms of timing, without slippage and subject to domestic arrangements being in place, the first information from the 56 early adopters will be available for exchange in September 2017, for the calendar year 2016. The information will be available annually thereafter, with a rapidly growing number of participants. We should remember that holding wealth overseas is often perfectly legal. It is the non-disclosure of wealth where obliged to do so that is illegal and this is what the CRS is aiming to address.
17. OTC Derivatives Standards		**The Financial Sector Conduct Authority (FSCA) released a series of new Notices on over-the-counter derivatives provider (ODP) applications which seek to provide further clarity to applicants.** The submission period has been extended by a further 75 days from 1 April 2019 to 14 June 2019. All applicants must follow the relevant Application Index as guidance to submit a complete application. All applications are to be compiled in accordance with the Index and no items may be deleted or substituted. **Notes** ODPs have been granted an extension and will now have until 31 March 2019 to obtain authorisation in terms of Conduct Standard 1 of 2018. Conduct Standard 1 of 2018 sets out the authorisation criteria for ODPs and was published by the FSCA on 27 July 2018. After a number of enquiries from market participants who, according to the FSCA's notice 'were experiencing difficulties in completing and submitting the required information timeously', the two-month extension was deemed necessary. Note, only those clients who act as OTC/CFD principals who must make applications to capital markets for approval to render such services.

	Inherent Risk Rating	Status in the industry / market
		Two standards regulating the market conduct of over-the-counter derivative providers were published in the week of 22 March 2019, – **Conduct Standard 2** which is immediately effective – deals with general duties, the categorisation of clients and counterparties, the 'appropriateness' of information supplied by a client, disclosure to clients, client and counterparty agreements, timely confirmations, portfolio reconciliation, portfolio compression, safeguarding collateral, arrangements with an intermediary, advertising or solicitation, confidentiality and privacy, policies and procedures, waiver of rights, legal certainty and dispute resolution. An accompanying consultation report provides insight into the process followed since 2012, as well as input received from stakeholders**.** **Conduct Standard 3,** accompanied by a consultation report – prescribes reporting obligations in respect of transactions or positions in over-the-counter derivatives. It deals with asset classes, reporting entities, the contents of a report, reporting frequency, identification requirements and operational standards. Once in force, the new standard on reporting will allow a provider or counterparty six months to comply. All transactions entered into 18 months before the commencement date and still open will need to be 'back-loaded' within 180 days. Those concluded before the commencement date will need to be reported to a trade repository within five years**.**
18. King IV update		The Institute of Directors in Southern Africa (IoDSA) and the King Committee have made the draft version of the latest King Report—King V—available for public comment. WHY HAS THE DECISION BEEN MADE TO UPDATE KING III? There have been significant corporate governance and regulatory developments, locally and internationally, since King III was issued in 2009 which need to be taken into account. The other consideration is that whilst listed companies are generally applying King III, non-profit organizations, private companies and entities in the public sector have experienced challenges in interpreting and adapting King III to their particular circumstances. The enhancement will aim to make King IV more accessible to all types of entities across sectors. The latest iteration of King guidelines - released on 1 November - is nothing more than the next evolutionary step for corporate governance to remain relevant, assesses where we are, and point the way forward
19. Pension Funds Act		Comment is sought by 14 January 2019 on a draft conduct standard in respect of living annuities forming part of a default annuity strategy for pensioners, According to an accompanying statement, the proposed new conduct standard seeks to provide guidance on interpreting the term 'sustainable income' on a case-by-case basis, monitoring income sustainability in that context and regularly communicating the information concerned to each affected pensioner.

	Inherent Risk Rating	Status in the industry / market
		It also proposes maximum draw-down limits per pensioner age band and gender with the aim of preserving income sustainability throughout a pensioner's life – as opposed to sustaining 'a particular living standard'. This is noting that Regulation 39 under the 1956 Pension Funds Act requires the board of every pension, preservation and retirement annuity fund to develop and establish an annuity strategy by 1 March 2019, when the regulation is scheduled to come into effect. Input should be submitted using the template provided
20. Fintech		A discussion paper on crypto assets was released in January 2019 by the South African Reserve Bank as the next step in developing a policy on what is described as a 'technology-driven innovation' with the potential to 'materially impact financial services'. The paper provides an overview of the perceived risks and benefits associated with crypto assets, discusses available regulatory approaches – and presents policy proposals on which comment is sought by 15 February 2019. Informed by an 'in-depth analysis of … applicable use cases and implicit risks', the paper focuses on the purchasing and selling of crypto assets, as well as using them to pay for goods and services. This is noting that their 'economic function' was assessed rather than 'the specific technology applied or … entity involved' – and that proposals in the paper would apply to non-government or non-central-bank-issued crypto assets and not to central bank digital or crypto currencies. Given the 'existing landscape and … levels of adoption, acceptance and use', there is no intention to 'ban' the buying, selling or holding of crypto assets or to prohibit their use as a form of payment. However, according to the paper – and noting that using an unrecognised currency may expose customers to harm in an unregulated environment – the authorities 'reserve the right to amend their policy stance should crypto assets pose a material risk to their respective regulatory mandates'. Against that backdrop, the paper proposes that 'an appropriate regulatory framework' be developed over time, beginning with the registration of crypto asset service providers. These include trading platforms and entities facilitating crypto asset transactions, as well as digital wallet, safe custody and payment service providers – and merchants accepting payments in crypto assets. Compliance with the requirements of the Financial Intelligence Centre Act 38 of 2001, would be mandatory. While the imposition of 'market entry conditions for registered entities' is not envisaged 'at this stage', given 'the possible eventuality of crypto assets achieving systemic significance in future' the authorities will continue to monitor: their 'overall market capitalisation'; trading platforms domiciled in SA; volumes bought and sold by way of vending machines; payment service providers; and the number of merchants and retailers accepting crypto assets as payment locally and internationally. Following the registration process, existing applicable regulatory frameworks will be reviewed to determine the need for amendments or new requirements. The paper provides background and context for the review and provides the scope of the crypto activities assessed. At this stage, two crypto assets use cases (scenarios) have been analysed – buying and selling crypto assets, and making payments with crypto assets. The paper highlights the benefits and

	Inherent Risk Rating	Status in the industry / market
		risks of the related activities, reviews the approaches by other jurisdictions, and presents recommendations for dealing with crypto assets from a South African perspective. Caroline da Silva, Financial Sector Conduct Authority (FSCA) (shortened) comments in the FSCA Bulletin of Q2 2018/19 Financial Technology (FinTech) has become an increasingly popular phenomenon, with people familiarising themselves with crypto-currencies such as Bitcoin, SAFcoin and many others. The main issue with all these currencies is that they operate in a relatively unregulated environment; thus government is unable to either track or protect consumers from potential fraud that may be associated with these platforms. According to an article published on the official site of Moneyweb (http://www.moneyweb.co.za/), 'the South African Reserve Bank (SARB) issued a position paper on virtual currencies in 2014. At the time, the central bank opted not to oversee, supervise or regulate the virtual currency landscape as it posed no threat to financial stability. The SARB did, however, reserve its right to change its position, should the landscape warrant regulatory intervention.' The SARB later announced the establishment of the FinTech programme, designed to assess the emergence and regulatory implications of FinTech. FinTech is simply the process of infusing technology into financial services, which will potentially yield benefits, including improving financial inclusion - this a definition adopted by the various policymakers and key industry players in SA. The SARB has recently decided to establish a broader FinTech programme, with dedicated full-time staff members. Although it is at an early stage, this programme will be required to strategically review the emergence of FinTech and assess the related user cases. According to Francois Groepe, Deputy Governor of the South African Reserve Bank, 'The primary responsibilities are expected to include the facilitation of the development of refreshed policy stances for the SARB across the FinTech domain. This will be done by robustly analysing both the pros and the cons of emerging FinTech innovations as well as the appropriate regulatory responses to these developments. A critical success factor of the programme will be the ongoing collaboration with our fellow regulators.' The newly established Inter-Governmental FinTech Working Group (IFWG), which comprises the National Treasury (NT), the Financial Sector Conduct Authority (FSCA) and the Financial Intelligence Centre (FIC), introduced its inaugural market outreach workshop. The Working Group was formed to develop a common understanding among regulators and policymakers of FinTech developments and relevant policy and regulatory implications for the South African financial sector and economy. It also seeks to develop and co-ordinate an approach to FinTech policy making in the country.

	Inherent Risk Rating	Status in the industry / market
		The conference conceded that a robust regulatory framework would be beneficial to protect and educate investors against bad actors. Regulators have an option to either amend existing laws by changing current definitions to cater for emerging innovation or create a new overarching regulation that would cater for FinTech. To monitor the quality and credibility of issuers it was proposed that registering all ICOs with a central body would be ideal. The IFWG will host another industry workshop before the end of 2018. In this workshop there will be more discussion on issues that were not covered in the first workshop. The SARB National Payments Service Department will also host its payments and innovation workshop. The National Treasury has indicated that a FinTech framework will form part of the much-anticipated Conduct of Financial Institutions (COFI) Bill, which may also include the introduction of a 'regulatory sandbox'-type initiative to encourage innovation within a controlled environment. One of the FSCAs priority focus area in the newly released Regulatory Strategy is understanding new ways of doing business and disruptive technologies. This will assist the Authority to understand the impact this focus area will have on the consumers by institutions. Furthermore, research will need to be conducted to inform the FSCAs position in FinTech. There are discussions with the regulatory quarters to establish innovation hubs, acceleration hubs, and sandboxes, where financial institutions can approach the conduct authority for direction on how regulation impacts on new innovative developments and to test new innovations in a safe environment. Crypto assets to remain without legal tender status and not recognised as electronic money either. Phased approach to develop appropriate regulatory framework. Phase 1 - Registration process for crypto asset service providers (expected to be completed by Q1 2019). Details of registration process will be set out in policy paper to be published by SARB. FICA Compliance will be a requirement and these service providers will be made accountable institutions. No market entry conditions will be imposed at this stage. Phase 2 – Review of existing regulatory frameworks followed by new regulatory requirements or amendment of existing regulations.

		Phase 3 – Assessment of regulatory actions implemented
21. CISCA		CISCA – Delegation of Administration Functions FSCA sent the Final Conduct Standard to NT in December 2018 and NT must now submit it to Parliament. Date unknown. Will only be affective after it has been with Parliament for 30 days. CISCA – NAV Calculation and Pricing Conduct Standard & Valuation Guidelines In final rounds of FSCA review process. Once finalised, the Conduct Standard will be submitted to the FSCA Transitional Management Committee for approval. Thereafter the approved Conduct Standard will be transmitted to NT for submission in Parliament.