Regulatory Risk Log

January 2020

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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. Comprehensive submissions were made by ASISA and the Banks Association, we await further developments.
2. FAIS Act (amendments)		**Fit and Proper amendments now fully in force**
		<u>Proposed amendments of the General Code of Conduct (GCOC)</u>
		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must approve advertisements; • Where the advertisement is not in line with principles in the FAIS GCoC, it must be withdrawn and a notification must also be sent to persons who the FSP knows to have relied on the advertisement.

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		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 Conduct of Business Reports
		Last indication from the FSCA is for Implementation planned in 2020. This report was published for comment and the draft report was ready for implementation in 2019 The FAIS Conduct of Business Report was not implemented in 2019 but replaced by a Request for Information (RFI) requested from certain FSPs to compare relevant registration information. 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) replaced 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..
		The Financial Sector Conduct Authority (FSCA) has published the following amendments to the respective exemptions on its website in order to extend the dates of expiry thereof
		1. Amendment of the Notice on Exemption of Particular FSPs from s 13 of the General Code of Conduct, 2019 FSCA FAIS Notice 86 of 2019 - This exemption date has now been amended to 28 February 2021. Category I or IV FSPs that are underwriting managers and only render specific services referred to in the definition of 'underwriting manager' in the Long-term and Short-term Insurance Regulations, are exempted from the requirement to maintain suitable guarantees or professional indemnity or fidelity insurance cover, subject to certain conditions being met. **2. Amendment of the Notice on Exemption of Particular FSPs from s 19(3) Audit Report and Liquidity Requirements, 2019** FSCA FAIS Notice 87 of 2019 - This exemption date has now been amended to 28 February 2021. Category I FSPs that only collect, account, receive or hold premiums on behalf of an insurer in respect of a financial product of that insurer are exempted from s 19(3) of the FAIS Act and from s 9(3)(b) and (c) of the Fit and Proper Requirements, subject to certain conditions being met. This means that if these FSPs comply with the conditions of the exemptions, they: • will not be required to submit the s 19(3) report, which is also known as the auditor's report of the separate banking account into which premiums are paid; and • they will not have to maintain current assets that are at least sufficient to equal current liabilities or liquid assets as prescribed.

		3. Amendment of the Notice on Exemption of Juristic Representatives from s 13(1)(c) of the Act, 2019 FSCA FAIS Notice 88 of 2019 - This exemption date has now been amended to 28 February 2021. Juristic representatives, of Category I or IV FSPs that are also insurers, who collect, account for, receive or hold premiums on behalf of that insurer in respect of financial products of that insurer, are exempted from the requirements of s 13(1)(c) of the FAIS Act. Section 13(1)(c) prohibits any person from contracting in respect of a financial service or rendering a financial service other than in the name of the FSP of which that person is a representative. It is important to note that both the insurer and the juristic representative must meet certain terms and conditions for the exemption to apply. **4. Amendment of the Notice on Exemption of Compliance Officers from s 4(4) of the Notice on Compliance Officers, 2019** FSCA FAIS Notice 89 of 2019 - This exemption date has now been amended to 28 February 2021. Contains details of changes to the minimum prescribed intervals of visits and reports by compliance officers as contained in s 4(4) of the Notice on Compliance Officers. These changes are as a result of feedback from the industry in response to an invitation by the Regulator. The continued exemption places the onus for determining the number of branch visits and reports on the compliance officer, who has to have due regard for a FSP's specific circumstances which include: • the nature, scale and complexity of the provider's business and nature and range of financial services, activities and ancillary services offered; • compliance risks of the provider having regard to the financial services, activities and ancillary services offered, as well as the types of financial products in respect of which the services are rendered and the market in which it operates; • availability and adequacy of off-site monitoring tools; and • off-site access to data from the business premises, business units and/or branches of the provider; The CO is also obliged to establish and implement a monitoring programme that takes into consideration all areas of the provider's financial services, activities and any relevant ancillary services to ensure that compliance risks and changes to those risks are comprehensively monitored; The CO should also review the monitoring programme on a regular basis, as well as ad-hoc when necessary, to ensure that emerging risks are taken into consideration and, on a regular basis, report to the provider on at least the following:

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		• adequacy and effectiveness of the overall control environment for financial services and activities, including systems, policies, controls and procedures; • the risks and deficiencies that have been identified; and • the remedies undertaken or to be undertaken. The CO must inform the provider to whom the compliance officer renders compliance services of the applicability of this exemption to such services.
		Classification of hedge funds - Association for Savings and Investment South Africa (ASISA)
		South African hedge fund managers have begun the process of categorising their hedge fund portfolios in line with the provisions of the new Hedge Fund Classification Standard, which was recently introduced by the Association for Savings and Investment South Africa (ASISA). The new **ASISA Hedge Fund Classification Standard comes into effect on 1 January 2020.** The aim of classifying all hedge fund portfolios, including hedge fund of fund portfolios, into different categories is to make it easier for investors to assess and compare funds and to select hedge funds appropriate for their risk profiles and investment portfolios. In April 2015 South Africa became the first country to put in place comprehensive regulation for hedge fund products. The regulations provide for two categories of hedge funds, namely Qualified Investor Hedge Fund portfolios and Retail Investor Hedge Fund portfolios. As a first step, this required the hedge fund industry to convert their hedge fund products to structures that conform to the provisions of the Collective Investment Schemes Control Act (CISCA). The next step is for hedge fund managers to classify all hedge funds in line with the provisions of the ASISA Hedge Fund Classification Standard. "The Standard is a key tool for investors and their advisers in that it provides a framework within which hedge fund portfolios with comparable investment objectives and investment universes are grouped together. The ability to compare like with like when making investment choices is critically important." **The four tiers** The Standard provides for four tiers of classification. The **first tier** splits hedge fund portfolios into either Retail Investor or Qualified Investor portfolios.

		The **second tier** classifies hedge fund portfolios according to their geographic exposure: • South African portfolios invest at least 60% of their assets in South African investment markets. • Worldwide portfolios invest in both South African and foreign markets. There are no limits set for either domestic or foreign assets. • Global portfolios invest at least 80% of their assets outside South Africa, with no restriction to assets of a specific geographical country, for example the USA, or a geographical region, like Africa. • Regional portfolios give investors at least 80% exposure to assets in a specific country, for example the USA, or a geographical region, like Africa, outside South Africa. The **third tier** of classification is based on the manager's investment strategy: • Long Short Equity Hedge Funds are portfolios that predominantly generate their returns from positions in the equity market regardless of the specific strategy employed. • Fixed Income Hedge Funds are portfolios that invest in instruments and derivatives that are sensitive to movements in the interest rate market. • Multi-Strategy Hedge Funds are portfolio that over time do not rely on a single asset class to generate investment opportunities but rather blend a variety of different strategies and asset classes with no single asset class dominating over time. • Other Hedge Funds are portfolios that apply strategies that does not fit into any of the other classification groupings. The **fourth tier** of classification applies only to Long Short Hedge Fund portfolios. These portfolios are further categorised as follows: • Long Bias Equity Hedge Funds. These portfolios will over time aim for a net equity exposure in excess of 25%. • Market Neutral Hedge Funds. These portfolios are expected to have very little direct exposure to the equity market. On average over time net equity exposure should be less than 25% but greater than -25%. • Other Equity Hedge Funds. This category is for portfolios that follow a very specific strategy within the equity market such as listed property or sector specific strategies. New categories of classification will be considered when there are five or more hedge fund portfolios in either the Qualified Investor Hedge Fund or Retail Investor Hedge Fund categories with an identical or substantially similar objective and investment policy. Once implemented, the new classification system will also make it possible for ASISA to collect its own reporting data on the hedge fund industry for the first time. ASISA currently collects and collates quarterly statistics for the Collective Investment Schemes (CIS) industry, excluding hedge funds

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3. RETAIL DISTRIBUTION REVIEW SOUTH AFRICA "RDR"		**The Financial Sector Conduct Authority (FSCA) on 15 December 2019 released several papers relating to Retail Distribution Review (RDR) -**
		The Financial Sector Conduct Authority (FSCA) on 15 December 2019 released several papers relating to **Retail Distribution Review (RDR).** The FSCA's predecessor, the Financial Services Board, published its RDR discussion document (initial RDR document) in November 2014, proposing a number of wide-ranging reforms to the regulatory framework for financial advice and the distribution of financial products, as part of a multi-year implementation project. A number of subsequent RDR communications, including general status updates, RDR related regulatory instruments, and further discussion documents and position papers have been published since the publication of the initial RDR discussion document. The most recent of these subsequent communications, all published in December 2019, are the following: **RDR Discussion Document on Adviser Categorisation and Related Matters and Annexure A -** Retail Distribution Review Advisor Categorisation Discussion Document December 2019 **Feedback** due **31 March 2020** **RDR Second Discussion Document on Investment Related Matters and Annexure A -** Retail Distribution Review Second Investment Related Matters Discussion Document **Feedback due 31 March 2020** (First Discussion document - June 2018) **RDR Discussion Document on a Remuneration Dispensation for Savings and Investment Products for the Low-income Market (Proposal TT) -** Retail Distribution Review: Status Update on Proposal TT - Special Remuneration Dispensation for the Low-income market **- December 2018 - feedback due 28 February 2020** **RDR Position Paper on Equivalence of Reward (Proposal RR) -** not for comment **RDR Paper on Intermediary Activity Segmentation and Related Matters -** not for comment **General RDR Status Update -** not for comment **Compli-Serve Summary on two of the most important RDR Consultation documents currently out for public comment (until the end of March 2020).** Adviser categorisation - 'The Two-Tier Adviser Model set to be the way ahead'

		The FSCA has launched their next Retail Discussion Review (RDR) discussion paper that will differentiate (label) between a Product Provider Agent (PSA) and a Registered Financial Advisor (RFA) - Independent FA. Under RDR there will only be **two adviser models permitted: product supplier agents (PSA), currently known in some circles as tied agents, and registered financial advisers (RFA), currently known as independent brokers.** A concern for the FSCA is whether these terms will be appropriate to use as customer facing designations. Consumer research conducted by the FSCA indicated that the terms 'broker', 'agent' and 'tied adviser' presented challenges and were not understood by many consumers. The term 'financial adviser' was the best understood by the focus groups. It appears a naming convention, which includes the word 'financial', is seen as more descriptive and is relatively better understood. **The summary is broken down into seven highlights, namely:** • Adviser categories terminology. • Practical implications of the two-tier approach. • Limiting a PSA's advice to home group products and services. • The use of the designation 'Independent'. • The use of the designation 'Financial Planner'. • Product supplier responsibility. • Any room for a multi-tied advice model?
		Retail Distribution Review 'RDR': 2nd Discussion Document on Investment Related Matters. G Grispos Summary January 2020
		The Financial Sector Conduct Authority (FSCA) released its Second RDR Discussion Document on Investment Related Matters on 20 December 2019. Industry has until the end of March 2020 to comment. In line with the overall structure of the 2018 Investments Document, this document hones in on four key focus areas: **Section 1: The general investments landscape**

		The FSCA fully agrees that any regulatory intervention it considers should be risk-based and proportional. It does not agree with the position that no structural regulatory intervention at all is required. **Section 2: Defining and understanding different activities performed under a discretionary investment mandate** **2.1 Defining Investment Management** Its current thinking is that the definition should cover the following: • Obtaining a mandate from a financial customer to apply an agreed level of decision making, on behalf of the financial customer; • after establishing and agreeing the financial customer's investment objectives and investment risk appetite; • identifying, selecting, acquiring or disposing of financial products, financial instruments or other assets (or identifying and selecting other investment managers to perform this activity); • in accordance with an investment strategy and investment objectives set out in the mandate; • in accordance with any parameters, limits, thresholds or other instructions set out in the mandate; • handing any assets acquired over to a custodian or nominee for safekeeping. **2.2 Categorising investment management activities** This dealt mainly with identifying and defining different types of discretionary management activity, and the extent to which these should be differentiated in future licensing, fit & proper and/or other aspects of the regulatory framework. The FSCA remains of the view that the current 'one-size-fits-all' scope of the FAIS Category II licence is too broad to adequately and proportionally deal with the range of investment management services in the market, and that a degree of sub-categorisation of these activities is needed. The FSCA now proposes that the licensed activity of discretionary investment management be broken down into three sub-activities for licensing purposes: **Asset management:** discretionary investment management comprising asset selection (including asset class selection); **multi-management:** discretionary investment management comprising manager selection (including management style and asset class selection); and

		alternative investment management: to include hedge fund management, private equity management, and potentially other alternative investment strategies. This category would in effect be an appropriately expanded version of the current FAIS Category IIA licence category. **The proposed licensing framework** would **require any entity intending to perform investment management** to apply for a licence for **discretionary investment management and, as part of that licensing process, to apply for authorisation to perform one or more of the above-mentioned three sub-activities.** The FSCA confirms that a licensed discretionary investment manager may perform any combination of the three sub-activities, subject to meeting the applicable fit and proper and other licensing requirements for that sub-activity. **2.3 Fit and proper standards for investment management** It follows from the **updated proposal** that the **licensing framework for investment managers should distinguish between asset management, multi-management and alternative investment management, that the fit and proper requirements will need to align to these sub-categories.** The FSCA's current thinking is that **the experience** and **"class of business**" training requirements, in particular, will need to be tailored to the three proposed sub-activities. **2.4 Mandates of Convenience** The FSCA remains of the view that this dispensation should be subject to the following criteria as set out in the 2018 Investments Document: **Intermediaries** holding these mandates **are not regarded as exercising investment discretion** but rather as **holding a more limited authority to perform specified services under a written 'standing authorisation' from a customer, without having to obtain the customer's separate written instruction on each such occasion.** The intermediary is not regarded and may not describe itself as an investment manager (unless they also in fact hold an investment management licence). In addition, in order to limit the scope and potential risks of this service, the dispensation will be limited to mandates granted by retail investors. Portfolio rebalancing and similar activities for non-retail customers, which are a potentially complex exercise, will therefore continue to require a full discretionary investment management licence. Holding and acting on a 'mandate for convenience' **will not require a separate licence category or authorisation by the FSCA. Any FSP licensed under the FAIS Act as a Category I FSP (for advice in relation to the applicable product categories) will be permitted to perform this activity**

		Section 3: Categorising investment advisers within an RDR framework **3.1 Is there a need for a 'tied' advice or product supplier agent (PSA) model in the investments sector and how would it work?** It will be permissible for the same group of companies to operate both tied and non-tied (PSA and RFA) advice channels, provided these are operated through separate legal entities. Group level governance controls will need to be in place to mitigate the risk of conflicts of interest arising in such business models. It will not be permissible for the same entity to offer tied advice for some products / solution types and non-tied advice for others; nor for different individual advisers in the same entity to provide tied advice and others to provide non-tied advice. This does not preclude an RFA firm from allowing some advisers to offer advice on a broader range of products and services than others, depending for example on their competence and experience levels or the customer groups they serve, provided that such restrictions do not limit the adviser to in-group offerings only. **3.2 Defining 'group' products and services for determining the scope of advice for a tied (PSA) investment adviser** The FSCA believes that the regulatory framework should allow a discretionary investment manager – in any of the three sub-categories of investment management proposed in this document – to appoint 'tied' or PSA advisers if it so wishes. We agree with the view of the majority of stakeholders that the most appropriate way to provide for this will be to extend the scope of the PSA model to allow tied advisers to be appointed by either product suppliers or service providers (specifically, discretionary investment managers). It follows that a tied or PSA adviser will therefore, in addition to being permitted to recommend financial products offered by a product supplier in its home group (such as a bank, insurer or CIS management company), also be permitted to recommend the entering into of a discretionary investment mandate with a discretionary investment manager that is also a member of that group. **3.3 Third party co-branded CIS models** The FSCA remains strongly of the view that a CIS management company that enters into third party co-branding arrangements retains full accountability for the third party's outsourced investment management activities. In addition to the views set out in the 2018 Investments Document, the FSCA's rationale for this approach is illustrated by and expanded on in the reasons provided in our recent administrative penalty decision against MET Collective Investments (Pty) Ltd.

		Lastly, the FSCA will do further fact finding regarding the concern raised around so-called 'co-named broker funds' that are not operated through formal 3rd party co-branding arrangements, to understand the nature, prevalence and potential conduct risks posed by any such practices. **3.4 Due diligence responsibilities** Although we agree that an entity required to perform a due diligence exercise should be able to place reasonable reliance on the fact that an entity has been licensed by the FSCA, we emphasise that due diligence cannot be reduced to a mere licence check. **Section 4: Implications for remuneration and charging structures** **4.1 Cost disclosure** Based on feedback received, the FSCA will engage with ASISA and other stakeholders to understand the extent to which the EAC model could be adapted as a broader investment cost disclosure mechanism, and the associated technical challenges. We fully agree that the disclosure model needs to enable investors to understand and compare the costs associated with every entity in the value chain, what services are being provided for that cost, who the recipient of any remuneration is, and what the impact of each item of cost will be on their investment return. The FSCA also agrees that investment managers offering model portfolios and other non-CIS solutions should be required to provide disclosure documents similar to - and comparable with - CIS Minimum Disclosure Documents, and will consult further on how best to achieve this. Also note the new requirement in the amended s 3A of the FAIS General Code of Conduct requiring written customer consent to the amount, frequency, payment method and recipient of any fees (other than regulated commission and certain other regulated fees) including consent to the details of the services that are to be provided in exchange for the fees. **4.2 Mitigating the risk of duplication of charge** Although the FSCA is in full agreement that enhanced disclosure is a significant mitigating factor in reducing the risk of inappropriate cost duplication, it cannot be relied on as the sole solution to conflicted and unjustified charging practices. Strengthened disclosure standards therefore need to be complemented by broader interventions aimed at reducing these risks, as discussed elsewhere in our RDR proposals. **4.3 Mitigating the risk of conflicted advice in vertically integrated models**

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		The FSCA remains of the view that branding is a useful tool to highlight intra-group relationships between advisers, investment managers and product suppliers, over and above more substantive disclosure around these relationships and the status of the advice provided. We are however open to the use of co-branding rather than a single common brand, provided the display of the respective brands is sufficiently prominent to highlight the relationships concerned. We also recognise the potential complexity of common or co-branding requirements in groups with multiple brands and are open to how best to accommodate these models without compromising customer understanding of intra-group relationships in these models. As advised in earlier sections, a group of companies may operate both PSA and RFA advice models, but these must be operated through separate legal entities. The same legal entity cannot act as both an RFA and a PSA. An investment manager may appoint a tied adviser (PSA) to provide advice on its behalf. This would require the investment manager to be licensed for advice in addition to its investment management licence, and the PSA would then provide advice through that licence. However, in light of the discussion in section 3.2.2 above, note that it will be possible for a PSA appointed by another group entity (for example, a product supplier in the group) to also recommend the investment management services (i.e. the entering into of a discretionary mandate) with an investment manager in the group. In such a model, the investment manager will not itself require an advice licence, but governance arrangements must be in place in the group to ensure that the investment manager bears an appropriate level of responsibility for such recommendations. The FSCA also confirms that an investment manager will not be disallowed from holding an advice licence as an RFA, where it wishes to provide both advice and investment management services. However, investment managers adopting such a model will need to take care to ensure that appropriate controls are in place to ensure that the advice so provided is objective and not biased in favour of the investment managers or its group's own products or services (in other words to ensure that it is indeed acting as an RFA and would not be better positioned as a PSA). **4.4 Facilitating and monitoring advice and other fees** The FSCA is still considering the divergent views expressed regarding fee facilitation and monitoring and will share our updated thinking in due course. **4.5 Remuneration for automated advice** The FSCA agrees that no separate remuneration dispensation is required for automated advice and that equivalent standards and principles should apply to all advice models.

		4.6 Remuneration for non-advice distribution The FSCA will further consider whether any explicit remuneration standards are required for non-advice distribution models, taking the above inputs into account, as part of our development of broader RDR proposals regarding these models. **4.7 Mitigating the risk of conflicted exercise of discretionary mandates** The FSCA will take the inputs regarding conflicted exercise of discretion into account as we develop more concrete regulatory frameworks for the proposals set out in Sections 2 and 3 of this document.
		A review of the FSCA's 'Equivalence of Reward' Position Paper- N Verappen, February 2020
		The Equivalence of Reward (EoR) Position Paper published by the FSCA in December 2019, provides an update on the research that took place during 2019. It expresses a view on the way forward with regards to EoR. Where the concept of equivalence of reward is considered, the discrepancies between remuneration for tied agents and independent advisers have been a topic in dispute for some time now. The FSCA, guided by the intention of promoting a more level playing field, has through the paper attempted to clarify and strengthen the principle of 'equivalence of reward' as the basis on which long-term insurers may remunerate their tied advisers. The FSCA has advised that the proposed approach to the calculation of EoR will be drafted into legislation in 2020 and opportunity will be provided for comment. The issues involved in EoR are complex. For the FSCA to better understand the practices of insurers as well as the impact of limitations, a study was conducted through written responses to questionnaires and detailed face-to-face interactions. The study focused on the following three main objectives: **To analyse practices in the industry;** If any remuneration practices are considered inconsistent with the principle of EoR, assess the impacts of these practices; Recommend changes to the regulatory and supervisory framework governing the system of EoR.

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		The original RDR proposal advocated to prescribe EoR at an induvial level, however, it was found that the technical complexity could render the rules-based approach at an individual level not only unfeasible but would also add unduly to operational costs. In order to avoid these inequities, EoR will rather be applied at the level of an insurer's full tied agency channel. The FSCA advises that the EOR should consist of principle level requirements creating the EoR framework and then specific technical measures that support the principle-based measures. In terms of the recommended framework measures, the FSCA endorses a principles-based approach. Insurers must prepare a board approved policy covering the remuneration of their tied agents that includes measures with regards to compliance with the requirements of EoR. In addition, annual reporting will be included in the conduct report to the FSCA. An Position Paper Equivalence of Reward Page submission must cover the overall EoR ratio and include any factors impacting on that ratio. If the specified limits are exceeded, all planned endeavors to reduce limits must be included. An exception report is to be included, where any tied agency sub channel has an EoR of more than 10 percentage points or any individual agent more than 20 points above the specified EoR limit. Detailed justifications for exceptions must be included in the report. **To aid in this, the following technical measures have been recommended:** The FSCA has propositioned that the **EoR ratio be set at 115%.** With regards to VAT, this should be excluded from the hypothetical commission as well as any VAT payable to tied agents. Management expenses should also be excluded but all other appropriate expenses to the tied agency should be included. These items will be clarified at a later stage after further consultation has taken place. EoR ratios must be determined based on the accounting statements in each reporting period but may be calculated on a present-value approach. In addition, the calculation must exclude any agents in the first two years of their careers to accommodate and allow for cost of training and financial support received. Where there are Instances of high EoR ratios at an individual level or a tied sub-channel level they should be managed on an exception basis and reported to the FSCA where relevant. The levels must thus be monitored. Differing approaches from insurers will be required to provide an explanation to the FSCA to justify the differing approach.

		And lastly, the income of tied agents that carry out duties for the insurer in the role of contractors should be treated in the same way as the corresponding income of other agents for EoR purposes. The FSCA has expressed that additional rules will be introduced at a later stage if any shortcomings in the system are identified.
4. Financial Sector Regulation Act 9 of 2017 (FSR Act).	M	**Chapter 14 of FSR Act takes effect 1 September 2019**
		The commencement of Chapter 14 of the 2017 Financial Sector Regulation Act (ombuds) and the repeal of the 2004 Financial Services Ombud Schemes Act have been postponed once again – to 1 April 2020 and 1 October 2020 respectively. This was announced on 30 August 2019 *Government Gazette*. The dates concerned have been changed so many times it is difficult to understand Friday's notice without referring to the original timetable gazetted on 29 March 2018, as well as postponements announced last September, on 18 March this year and in May. It would be helpful if National Treasury would publish a revised timetable reflecting sections of the Act already in force and the latest commencement dates for those not yet in effect – including their implications for related legislation. The commencement date for Chapter 14 (Ombuds) of the Financial Sector Regulation Act 9 of 2017 (FSR Act), is now 1 September 2019. The amendments provide a considerable advance on harmonising the various ombuds and protecting financial customers, with the goal of consolidating the ombud system to make it easier for consumers. An important point is the setting up an Ombud Council which will be setting standards and requirements to harmonise and develop best practice for the ombuds, in addition to which its function is to build awareness. The commencement date of Chapter 14 of the FSR Act (ss 175-217, establishing an Ombud council and recognising industry Ombud schemes) was postponed on 1 April 2019 and extended to 1 September 2019. The FSR Act will repeal the Financial Services Ombud Schemes Act on 1 September 2019
		Draft Conduct Standard for Banks
		The Financial Sector Conduct Authority (FSCA) has published **a Draft Conduct Standard for Bank**s, 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. 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**
		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 was expected to be presented to Cabinet 'during the latter half' of 2019.** This was 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 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.**

	Inherent Risk Rating	Status in the industry / market
		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. Protection of Personal Information Act		**Information Regulator (IR) - Update February 2020**
		Chairperson of the Information Regulator, Advocate Pansy Tlakula, recently sent a request to President Cyril Ramaphosa to declare that the remaining provisions of the **Protection of Personal Information Act, 2013 (“POPIA”) commence on 1 April 2020 ("commencement date").** The President is expected to act as requested, following which responsible parties will then have a year grace period to comply by 31 March 2021. Compliance with POPIA will include certain mandatory measures, such as: • the appointment of an information officer – in the absence of such appointment, this will automatically be the head of the organisation; • the making of certain mandatory disclosures to data subjects, including with whom their personal information is shared; • the development, implementation, monitoring and maintenance of a POPIA compliance framework;

- the conducting of personal information impact assessments to ensure that adequate measures and standards exist in order to comply with the conditions for the lawful processing of personal information;
- the development, monitoring and maintenance of a manual as prescribed in the Promotion of Access to Information Act, 2000;
- the development of internal measures, together with adequate systems, to process requests for information or access thereto; and
- the conducting of internal awareness and training sessions.

Once in force, "The Information Regulator … may make an assessment … of whether a public or private body generally complies with the provisions of this Act insofar as its policies and implementation procedures are concerned." Appropriate fines may be considered having regard to failure to operate good policies, procedures and practices to protect personal information".

Information Regulator (IR) - Update 19 January 2020

The Information Regulator (IR) says the Protection of Personal Information Act will come into effect this year and says it is engaging with the Presidency on this issue. Rapport notes there is at least some movement with implementation as the IR has published draft guidelines for sector-specific codes of conduct for comment.

The Bill was first tabled in 2009 and signed into law in 2013, but very few provisions in the Act are in operation. The IR says there was an 18-month dispute about funding mechanisms which were only recently be resolved. Although it only has a budget of R40m for the 2020-21 financial year, the IR says it is now on track to go ahead with implementation. The IR has appointed a chief executive and five executive managers with only the positions as chief of training and communications remaining vacant.

Webber Wentzel partner Karl Blom says the movement is positive and SA is in a better position than a year or three ago, but it doesn't mean that implementation is imminent. He says the process of drafting codes of conduct could take a long time. It would be easier for sectors such as law and medicine which are used to dealing with personal information, but it could be much harder in sectors such as education. The codes of conduct will have to be filed with the IR for approval.

		PAIA and PAJA rules: procedure for application to court
		New rules under the Promotion of Access to Information Act 2 of 2000 (PAIA), for the 'procedure for application to court' were published on 4 October 2019, effectively coming into operation on 4 November 2019, for all applications regarding decisions of information officers or relevant authorities of public bodies or heads of private bodies. Upon receipt of the application the information officer of public body or head of a private body must provide a copy of the application, under cover of a written notice, to all other parties affected by the application who have not been cited therein. Revised administrative judicial review rules under the Promotion of Administrative Justice Act 3 of 2000 (PAJA), have also been published. Cases can now be brought to the lower courts.
		Objective of the Information Regulator is to govern
	M	**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. **Media Reports suggest that promulgation will only happen in 2019, now 2020.** **Regulations** relating to the protection of personal information were **gazetted in December 2018** but **have yet to come into effect**. 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**. 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 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!)

	Inherent Risk Rating	Status in the industry / market
		•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. **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. 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. •
7. FICA		**SA banks fined over money-laundering control weaknesses**
		The Reserve Bank has imposed administrative sanctions on five banks and directed them to take remedial actions. The five are Standard Bank SA, GroBank (formerly SA Bank of Athens), Ubank, Bank of China (Johannesburg branch) and HBZ Bank. The SARB said it found weaknesses in each of the banks' money laundering control measures following routine inspections conducted in terms of the Financial Intelligence Centre Act. In terms of the Act, the prudential authority must inspect banks' AI systems during the year to assess whether they have appropriate and adequate measures and money laundering or terrorist financing controls in place to comply with the Act.

		According to SARB, the five banks are co-operating and have agreed to the necessary measures to address the identified compliance deficiencies and control weaknesses. Standard Bank of SA was fined R30m, with a directive to take remedial action for failure to comply with suspicious and unusual transaction reporting requirements in terms of the Act. However, R7.5m of the R30m is suspended for a period of three years subject to the bank adhering to certain conditions imposed by the SARB. The other banks were fined lesser amounts or received cautions.
		Legislation: Shared customer due diligence guidelines mooted. CALL FOR COMMENTS: DRAFT PUBLIC COMPLIANCE COMMUNICATION 105 ON THE USE OF RELIANCE AGREEMENTS BY ACCOUNTABLE INSTITUTIONS FOR CUSTOMER DUE DILIGENCE ON SHARED CLIENTS
		(Monday, 28 October 2019): The Financial Intelligence Centre (FIC) called for comments from accountable institutions, reporting institutions, supervisory bodies and other persons on the draft Public Compliance Communication 105 (draft PCC 105). The draft PCC 105 provides guidance to accountable institutions, on how to apply the principles of the withdrawn exemptions 4, 8 and 9, using reliance agreements, as aligned with the provisions as set out in the Financial Action Task Force Recommendation 17. Comments on the draft PCC 105 invited, to 19 November 2019. Aimed at providing guidance on applying the principles of withdrawn exemptions by using reliance agreements, the document's proposals are aligned with the provisions of international Financial Action Task Force recommendation 17. This deals with preconditions an accountable institution is advised to impose when relying on a third party to assist with customer identification and verification. Proposals in the document are underpinned by the requirements of Chapter 3 part 4 of the 2001 Financial Intelligence Centre Act, which prescribes the mechanisms to be used in promoting compliance by accountable institutions with measures in the Act aimed at mitigating money laundering, terrorist financing and related activities. While the notice calling for comment was issued on 28 October 2019, its link to the draft document on which input is sought was only activated on 30 October 2019. This may justify an extension to the deadline.
		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;** • **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.** **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).**

Regulatory Risk Log January 2020		
	Inherent Risk Rating	Status in the industry / market

		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' • 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
		Updated FIC guidance relating to terrorist property reporting (TPR) in terms of s 28A of the FIC Act / and OTHER NEWS FROM FIC
		March 2019 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).

	Inherent Risk Rating	Status in the industry / market
		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)**:
		Draft money laundering and terrorist financing control regulations were 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 (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

	Inherent Risk Rating	Status in the industry / market
		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.

	Inherent Risk Rating	Status in the industry / market
		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**
8. Insurance Acts.		**New replacement record of advice format comes into effect 1 September 2019**
		The Financial Sector Conduct Authority (FSCA) earlier in 2019 determined the format for a replacement advice record (individual risk policies) required in terms of rule 19.2.6 of the Policyholder Protection Rules (LT PPRs) made under s 62 of the Long-term Insurance Act 52 of 1998. **The new format came into effect from 1 September 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 rule 19 an insurer must, prior to entering into an individual risk policy that constitutes a replacement, obtain a copy of the record of advice that the intermediary is required to provide to the policyholder in accordance with s 9(1)(d) of the FAIS General Code of Conduct (FAIS Code), and satisfy itself that the record complies with the disclosure requirements set out in s 8(1)(d) of the FAIS Code. Rule 19.2.6 provides that the FSCA may

		determine the format for the RPAR referred to in rule 19. Please see the attached form which needs to be completed in terms of Insurance Notice 2 of 2018. The effective date is 1 September 2019 as per Insurance Notice 3 of 2019.
		<u>FSCA published draft exemption notice proposing an exemption of microinsurers that offer credit life microinsurance policies</u>
		The Financial Sector Conduct Authority (FSCA) released Communication 6 of 2019 advising stakeholders of the draft exemption and asked for comments 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

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	Inherent Risk Rating	Status in the industry / market
		<u>**FSCA publishes exemption for certain insurers from Rule 19 of PPR**</u>
		The **Financial Sector Conduct Authority** (FSCA), under s 281(1) of the Financial Sector Regulation Act 9 of 2017, **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
		Regulations update – Premium Collection
		The Financial Sector Conduct Authority, under section 279(1) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), **extends the period for compliance with Regulation 4.2(3)** of the Regulations made under section 70 of the **Short-term Insurance Act**, 1998 (Act No. 53 of 1998) promulgated by Government Notice R.1493 in Government Gazette 19495 of 27 November 1998 and amended from time to time, **to 1 April 2020.** **The Financial Sector Conduct Authority**, under section 279(1) of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) **extends the period for compliance with Regulation 8.2(2)** of the Regulations made under section 72 **of the Long-term Insurance Act,** 1998 (Act No. 52 of 1998) promulgated by Government Notice R.1492 in Government Gazette 19495 of 27 November 1998 and amended from time to time**, to 1 April 2020.** The extension of the submission date means that **it will not be possible to publish the final Exemption Notices by 31 January 2020 as initially planned.** It also means that the **General Extension will have to be extended further** to allow time to finalise the consultation process relating to the Exemption Notices **COMPLIANCE DEADLINE PUSHED OUT IN RESPECT OF PREMIUM COLLECTION BY INTERMEDIARIES** **The Financial Sector Conduct Authority (FSCA) has extended the period of compliance for collection of premiums by intermediaries, specifically the requirement for a separate bank account to only contain premiums, from 28 September 2019 until 1 February 2020**. It primarily affects the retail market where insurance is ancillary or incidental to the commercial contract and insurers. Despite the transitional period allowed, the FSCA has recently received several applications for exemption from independent intermediaries operating in the retail space, where rendering of services as intermediary is not the primary business of the entity and the insurance product is ancillary to a

	Inherent Risk Rating	Status in the industry / market
		commercial contract. In all these instances, the premium for the insurance product is collected together with payment for a non-insurance service or product. Reasons cited for the applications vary greatly but, in many instances, include practicalities, customer convenience and suitable service to policyholders as well as evidence of substantial risk mitigation through strict governance and oversight over the accounting for premium by the independent intermediary. These applications will require interrogation by the FSCA with particular focus on complexities in business models especially where the independent intermediary operates in the retail market and the primary business of the independent intermediary is not insurance. The Authority therefore requires more time to consider these applications and to make an informed decision on how to approach the variety of issues emanating from these submissions. In light of the above, the Authority has taken a decision to, in terms of S 279(1) of the Financial Sector Regulation Act 9 of 2017 (FSR Act), extend the period of time to comply with the requirements in Reg 4.2(3) of the regulations under the Short-term Insurance Act 53 of 1998 (STIA), and Reg 8.2(2) of the regulations under the Long-term Insurance Act 52 of 1998 (LTIA), until 1 February 2020. Insurers and independent intermediaries are reminded that an exemption from any requirements contained in Reg 4 of the regulations under the STIA and Reg 8 of the regulations under the LTIA was deliberately positioned in a way that it is the insurer's responsibility to bring an application for exemption on behalf of the independent intermediary. The wording of Reg 4.4(1) of the regulations under the STIA and Reg 8.4(1) of the Regulations under the LTIA, specifies that the Authority may, on reasonable grounds, on application from an insurer or on the Authority's own initiative, subject to such conditions as the Authority may determine, exempt an insurer or independent intermediary from any requirement of the relevant Part of the regulations. In their communications the FSCA makes it clear that any request for an exemption from the requirements of Reg 8.2(2) and Reg 4.2(3) must be made by the Insurer and not the independent intermediary. **SHORT-TERM INSURANCE ACT REGULATIONS** 4.2 Requirements relating to receiving premiums (1) The payment of a premium to an independent intermediary authorised under section 45 to receive a premium is deemed to be a payment to the insurer under the policy concerned. (2) An independent intermediary who receives premiums must account for such premiums properly and promptly and open and maintain one or more separate bank account into which premiums are to be received.

		(3) A separate bank account referred to in sub-regulation (2) may only contain monies collected from policyholders and may not contain any monies or funds of the independent intermediary. (4) All premiums received by an independent intermediary- (a) through electronic means must be received into a bank account referred to in sub-regulation (2); or (b) in cash must be deposited into a bank account referred to in sub-regulation (2) within 1 business day after a premium is received. (5) When an independent intermediary receives a premium in cash, that independent intermediary must as soon as reasonably practicable after receiving the premium, give to the payer a written receipt for the premium received containing the name, address and telephone number of the recipient, the policy number and the name of the insurer on whose behalf the premium is received. (6) An independent intermediary must, within a period of 15 days after the end of every month, pay to the insurer concerned the total amount of the premiums received during that month. (7) Despite sub-regulation (6), an independent intermediary may, subject to the insurer's authorisation, prior to paying the total amount of the premiums received to the insurer reduce that amount by the value of- (a) any refund of premiums due and payable by the insurer to any policyholder or prospective policyholder represented by such independent intermediary in respect of the policies that are subject to the authorisation granted by the insurer; (b) any consideration payable to that independent intermediary by the insurer for rendering services as intermediary in respect of the policies concerned. (8) If more than one independent intermediary is authorised by an insurer to receive premiums in relation to the same policy, the period between the receipt thereof from the insured or any person on his or her behalf and payment to the insurer shall not exceed the period contemplated in sub-regulation (6). **LONG-TERM INSURANCE ACT REGULATIONS** 8.2 Requirements relating to receiving premiums (1) An independent intermediary who receives premiums must account for such premiums properly and promptly and open and maintain one or more separate bank account into which premiums are to be received. (2) A separate bank account referred to in sub-regulation (1) may only contain monies collected from policyholders and may not contain any monies or funds of the independent intermediary. (3) All premiums received by an independent intermediary- (a) through electronic means must be received into a bank account referred to in sub-regulation (1); or (b) in cash must be deposited into a bank account referred to in sub-regulation (1) within 1 business day after a premium is received. (4) An independent intermediary must, within a period of 15 days after the end of every month, pay to the insurer concerned the total amount of the premiums received during that month.

		(5) Despite sub-regulation (4), an independent intermediary may, subject to the insurer's authorisation, prior to paying the total amount of the premiums received to the insurer reduce that amount by the value of– (a) any refund of premiums due and payable by the insurer to any policyholder or prospective policyholder represented by such independent intermediary in respect of the policies that are subject to the authorisation granted by the insurer; (b) any consideration payable to that independent intermediary by the insurer for rendering services as intermediary in respect of the policies concerned. (6) If more than one independent intermediary is authorised by an insurer to receive or hold premiums in relation to the same policy, the period between the receipt thereof from the insured or any person on his or her behalf and payment to the insurer shall not exceed the period contemplated in sub-regulation (4). **27 September 2019** **FSCA COMMUNICATION 7 OF 2019 (INSURANCE) - GENERAL EXTENSION OF THE PERIOD FOR COMPLIANCE WITH REGULATION 4.2(3) OF THE REGULATIONS UNDER THE SHORT-TERM INSURANCE ACT, 1998 (ACT NO. 53 OF 1998) AND REGULATION 8.2(2) OF THE REGULATIONS UNDER THE LONG-TERM INSURANCE ACT, 1998 (ACT NO. 52 OF 1998) GRANTED** **1. PURPOSE** The purpose of this Communication is to – (a) inform stakeholders that a general extension of the period for compliance with Regulation 4.2(3) of the Regulations under the Short-term Insurance Act, 1998 (Act No. 53 of 1998) (Regulations under the STIA) and Regulation 8.2(2) of the Regulations under the Long-term Insurance Act, 1998 (Act No. 52 of 1998) (Regulations under LTIA) has been granted by the Financial Sector Conduct Authority (the Authority), and (b) (b) confirm the requirements in applying for an exemption from Regulation 4 of the Regulations under the STIA or Regulation 8 of the Regulations under the LTIA. **2. REASON FOR EXTENDING THE PERIOD FOR COMPLIANCE** 2.1 The amendments to Regulation 4 of the Regulations under the STIA and the insertion of Regulation 8 of the Regulations under the LTIA was published by notice in the Government Gazette on 28 September 2018, with an effective date of 28 September 2019, allowing for a 12 month transitional period for insurers to comply. 2.2 Despite the transitional period allowed, the Authority has recently received a number of applications for exemption from independent intermediaries operating in the retail space, where rendering of services as intermediary is not the primary business of the entity and the insurance product is ancillary to a commercial contract. In all of these instances the premium for the insurance product is collected together with payment for a non-insurance service or product.

		2.3 Reasons cited for the applications vary greatly but in many instances include practicalities, customer convenience and suitable service to policyholders as well as evidence of substantial risk mitigation through strict governance and oversight over the accounting for premium by the independent intermediary. 2.4. These applications will require interrogation by the Authority with particular focus on complexities in business models especially where the independent intermediary operates in the retail market and the primary business of the independent intermediary is not insurance. The Authority therefore requires more time to consider these applications and to make an informed decision on how to approach the variety of issues emanating from these submissions. 2.5 In light of the above the Authority has taken a decision to, in terms of section 279(1) of the FSR Act, extend the period of time to comply with the requirements in Regulation 4.2(3) of the Regulations under the STIA and Regulation 8.2(2) of the Regulations under the LTIA until 1 February 2020. 2.6 Insurers and independent intermediaries are reminded that an exemption from any requirements contained in Regulation 4 of the Regulations under the STIA and Regulation 8 of the Regulations under the LTIA was deliberately positioned in a way that it is the insurer's responsibility to bring an application for exemption on behalf of the independent intermediary. The wording of Regulation 4.4(1) of the Regulations under the STIA and Regulation 8.4(1) of Regulation 8 of the Regulations under the LTIA specifies that the Authority may, on reasonable grounds, on application from an insurer or on the Authority's own initiative, subject to such conditions as the Authority may determine, exempt an insurer or independent intermediary from any requirement of the relevant Part of the Regulations. 2.7 Accordingly any application for exemption from these requirements must be brought by an insurer and not by the independent intermediary. The insurer remains accountable for any actions performed on its behalf, including the collection of premium, regardless of choosing to authorise a third party to render such service on its behalf. 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
		Policyholder Protection Rules 13 (Data Management under 'Project Performance and Acceptable Service' section) and 20 (Termination of Policies under 'No Unreasonable Post-Sale Barriers') will commence on 1 January 2020.
		Amendments will be made to the governance and oversight requirements relating to binder agreements (reg 6.2A), and to the requirements, limitations and prohibitions relating to binder agreements (reg 6.3), from 1 January 2020. **Data** **The binder agreement will have to require the binder holder to provide the insurer with access to up-to-date, accurate and complete data (in accordance with reg 6.2A(2)) on a daily basis, to ensure that the insurer is able to comply with any regulatory requirements relating to data management, including any requirements provided for in the Policyholder Protection Rules (PPRs):** • **The requirement that the insurer must, before entering into a binder agreement, be satisfied that the binder holder has the operational ability and IT systems to provide access to data as and when requested comes into force on 1 January 2020.** • **The requirement that the binder holder must provide accurate and complete data on a monthly basis for funeral and assistance policies and on a daily basis for all other policies comes into force on 1 January 2020.**
		Short-term Insurance Act 53 of 1998 (STIA) - Short-term Act Regulations
		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
	M	**Rule 17 and 18, Claims**
		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 actioning 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.
		IGF Cover terminated (See also above, Premium Collection)
		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
		Cell Captive proposed Conduct Standards – December 2019
		The **Financial Sector Conduct Authority (FSCA)** has **formulated further policy proposals aimed at addressing the conduct risks identified in insurance business conducted through cell structures**. **The purpose** of the position paper is therefore to **set out the risks identified particular to this segment of the insurance industry and policy proposals on how these risks can be addressed through changes to the regulatory framework**. The following risks emanating in particular from third party cell captive insurance business models have been identified through, amongst others, the work done by the joint working group and supervisory experience:

	Inherent Risk Rating	Status in the industry / market
		Potential conflicts of interest, including the risk of biased advice to policyholders, the risk of mis-selling, the risk of unfair decision-making related to the payment or repudiation of claims and the risk of inappropriate and conflicted motivation to an intermediary to move a book of business into a cell structure where it may derive additional benefits as a cell owner; • possible regulatory arbitrage; • lack of appropriate governance and oversight by cell captive insurers over the business operated in the cell structures in general, and over new product development in particular; • shortage of skills and resources in some cell captive insurers to administer products and a lack of knowledge and understanding of the intimate workings of the various businesses operating within their cell structures ('rent-a-licence' type models); and • unnecessarily complex complaints processes and escalation procedures within the cell structures, especially identified where the cell owner is a bank or another large institution, causing unfair barriers to policyholders. **Expediting the Conduct Standard** This position paper serves as confirmation to interested parties and regulated entities on the policy direction taken by the Authority regarding the regulation of conduct in third party cell captive insurance business. It is intended to give certainty to the industry around the policy views on conduct related requirements specific to cell captive insurance to be introduced in order to mitigate any further regulatory arbitrage. In light of the pending conversion of licenses under the Insurance Act it is vital that the final conduct related regulatory proposals be communicated to the industry to inform the strategies of insurers. The document is **issued for communication purposes and does not invite public comment**, as the **intention is for the Authority to update the previous draft Standard to incorporate the proposals set out in this document**. The **updated draft conduct standard, along with the relevant supporting documents will be published for public comment** in terms of the consultation requirements in the Financial Sector Regulation Act 9 of 2017, and interested parties will have an opportunity to raise comments and views on the proposals through that process. 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

	Inherent Risk Rating	Status in the industry / market
		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'

	Inherent Risk Rating	Status in the industry / market
9. 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
10. Pension Funds Act	M	**<u>Retirement Fund Reform</u>**.
		Retirement Fund Reform (RFR) aimed at the implementation of a comprehensive and integrated framework for the provision of income security for all South Africans 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
		<u>Conduct Standard on section 14 transfers released by FSCA and is in effect</u>
		The **Financial Sector Conduct Authority** (FSCA) has published **FSRA conduct Standard 10F of 2019 (PFA**) relating to s 14 transfers in terms of the Pension Funds Act 24 of 1956 (the Act).

		This Conduct Standard sets out in detail the **process to facilitate transfers between a registered retirement fund and any other person**. It provides timelines and requirements for the lodging of an application and the finalisation of the transfer following approval. It additionally requires that a comparison of the costs and benefits under the transferor and transferee funds be disclosed to the transferring members, except where the transfer is requested voluntarily by members (eg in Retirement Annuities) or where the transfer is in respect of unclaimed benefits. Board Notice 208 of 2011 sets out the conditions imposed by the registrar of pension funds in respect of the different types of transfers in terms of s 14 of the Act, as well as providing the forms required for such an application. The **appropriate conditions and certifications have been updated and the forms realigned**, to clarify the requirements and make these more complete. **The Conduct Standard replaces the previous Directive 6 issued as a Board Notice.**
		DRAFT NOTICE: Regulation 28 of the Pension Funds Act
	L	**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.
11. 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. 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 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.
12. 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. **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.

13. 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 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

	Inherent Risk Rating	Status in the industry / market
		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. 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
14. Collective Investment Schemes Act		**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.

Regulatory Risk Log January 2020		
	Inherent Risk Rating	Status in the industry / market

	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
	CIS-FSCA Draft Exemption Notice 1 of 2019 with FSCA Communication 1 of 2019
	The Financial Sector Conduct Authority (FSCA) published FSCA Draft Exemption Notice 1 of 2019 with FSCA Communication 1 of 2019 that proposes to exempt managers and auditors of collective investment schemes (CIS) and its portfolios from those parts of section 74(1) (a) and (2) (c) of CISCA, which determines the accounting standard to be applied by managers and auditors of CIS portfolio's as per the specific accounting standards that are set out in the draft exemption. The Act currently determines that accounting records are maintained and annual financial statements are prepared in conformity with 'generally accepted accounting practice'. However, these accounting standards are no longer applied in South Africa. No further regulated requirement exists with regards to an accounting and auditing standard for a collective investment scheme and its portfolios. The exemption is aimed at facilitating the implementation of alternative accounting standards for managers of collective investment schemes in South Africa in order to ensure alignment with South African accounting practices international standards for accounting. The draft general exemption proposal proposes a fit for purpose set of accounting standards for CIS portfolios appropriate for SA CISs. The draft general exemption makes a distinction between the accounting standards applicable to managers and auditors in respect of the CIS itself and the accounting standards applicable to managers and auditors in respect of the individual portfolios within the CIS. Comments on the draft Exemption Notice closed 29 November 2019 to Marius.DeJongh@fsca.co.za