

**FROM:** Director, Worldwide Markets  
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**REFERENCE:** Y3350  
**SUBJECT:** SOUTH AFRICA – FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT 2002  
**SUBJECT AREA(S):** Lloyd's underwriters to ensure they deal only with licensed intermediaries after 30 September 2004.

**ATTACHMENTS:** Appendix 1: Definition of key terms  
Appendix 2: Outline of the requirements for licensing and penalties for non-compliance.

**ACTION POINTS:** **Requirement for any organisation providing 'advice' or an 'intermediary service' to be licensed.**

**DEADLINE:** **30 September 2004. After this date underwriters may only deal with a licensed intermediary.**

The purpose of this Market Bulletin is to advise the market of new legislation, which requires any organisation providing 'advice'<sup>1</sup> or an 'intermediary service'<sup>2</sup> relating to a financial product, to be licensed.

South Africa's Financial Services Board (FSB) promulgated the *Financial Advisory and Intermediary Services Act* (the 'Act') in November 2002. The Act contains consumer protection legislation dealing with the regulation of intermediaries and other financial service providers (FSPs). Recently completed subordinate Regulations outline the licensing and registration requirements.

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<sup>1</sup> Please see Appendix 1 for a definition of this term (point 1).

<sup>2</sup> Please see Appendix 1 for a definition of this term (point 2).

Intermediaries have until the 30 September 2004 to obtain their licence under the terms of the Act. The FSB has advised that applications for licensing will take up to 2 months to process. FSPs should ensure their applications are submitted no later than **31 July 2004** to meet the 30 September 2004 deadline. Please refer to Appendix 2 for further information on the licensing procedures and deadlines.

### 1. Who must be licensed?

Any person<sup>3</sup>, other than a representative<sup>4</sup>, who as a regular feature of the business of such person and in relation to a financial product:

- Furnishes 'advice'; or
- Renders an 'intermediary service'; or
- Furnishes 'advice' and renders any 'intermediary service'.

The South African Insurance Association has advised that persons involved in dealing with the public and giving advice and/or providing an intermediary service, will have to obtain a licence. This will include: claims administrators, independent loss adjustors, underwriting managers, premium collection bureaux, etc., as they render an 'intermediary service' as defined under the Act.

**The Act does not distinguish between commercial and personal lines business.**

### 2. Implications for Lloyd's Underwriters and their intermediaries

- Lloyd's underwriters: For the purposes of the Act, Lloyd's underwriters are product suppliers and are not directly implicated in the authorisation regime established under the Act. They will therefore **not** be required to register.
- Open market correspondents and coverholders: Local intermediaries, whether they are open market correspondents or coverholders, writing direct and/or reinsurance business, will be required to register with the South African Registrar (since they provide 'advice' on financial products and/or may provide an 'intermediary service' as defined in the Act).

#### *Action to be taken by Lloyd's underwriters*

- To protect Lloyd's licence in South Africa, Lloyd's underwriters conducting business through South African intermediaries will need to ensure that the intermediary holds the requisite licence.
- Lloyd's approval process for both new coverholder and open market correspondent applications will not commence until evidence of authorisation by the Registrar has been provided.

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<sup>3</sup> See Appendix 1 for a definition of this term (point 3).

<sup>4</sup> See Appendix 1 for a definition of this term (point 4).

- It is the responsibility of the coverholder or open market correspondent to obtain the relevant authorisation. Evidence of registration for existing coverholders or open market correspondents should be provided to Lloyd's South Africa (Pty) Ltd (LSA), no later than 30 September 2004. LSA has written to all existing coverholders and open market correspondents advising them of this requirement. No further action on this matter is required by underwriters.
- **Underwriters should give consideration to notice of cancellation if the coverholder fails to be licensed by the 30 September 2004 deadline, since the underwriter will be unable to accept further risks.**
- Lloyd's brokers in London dealing directly with assureds: It is likely that Lloyd's brokers will be exempt from the requirements of the Act. However, this has still to be confirmed by the FSB. The Market will be informed, in due course, if Lloyd's brokers must be licensed.

### 3. Disclosure and deregulation of commission

Commissions have been regulated in South Africa for the past twenty years and the industry has to a large extent, resisted deregulation until proper disclosure rules are in place. The Code of Conduct contained in the Act introduces strict disclosure requirements. The FSP must disclose the gross premiums paid by the insured, together with commissions and fees received from intermediaries and insurers. Essentially this introduces the concept of disclosure of net premiums.

Currently, an insurer may not pay an intermediary more than 12.5% commission on motor business and 20% on non-motor business. These caps in terms of deregulation will now be removed. However, the requirement will remain that an insurer may not pay any other form of remuneration other than commissions. Non-cash incentives will still not be allowed.

The FSB has Gazetted the deregulation of corporate and commercial commissions for one month after the licensing deadline. **From 30 October 2004, corporate and commercial commissions will no longer be capped.**

The regulation of commissions in respect to personal lines business will remain.

### 4. General

Further information on the Act may be obtained by using the following link:

<http://www.fsb.co.za>

If you have any queries about the above please contact any of the following:

**Lloyd's Worldwide Markets:**

Market Services      Tel:    020 7327 6677  
                                 Email: [market.services@lloyds.com](mailto:market.services@lloyds.com)

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This bulletin has been sent to underwriters, Lloyd's brokers and the Compliance Officers of managing agents.

Julian James  
Director  
Worldwide Markets

## DEFINITION OF KEY TERMS

The following terms have been extracted from Section 1 of the Financial Advisory and Intermediary Services Act (the Act).

### 1. Advice

“advice” means, subject to subsection 3(a) (see below) any recommendation, guidance or proposal of a financial nature furnished, by any means or medium, to any client or group of clients –

- (a) in respect of the purchase of any financial product; or
- (b) in respect of the investment in any financial product; or
- (c) on the conclusion of any other transaction, including a loan or cession, aimed at the incurring of any liability or the acquisition of any right or benefit in respect of any financial product; or
- (d) on the variation of any term or condition applying to a financial product on the replacement of any such product, or on the termination of any purchase of or investment in any such product

and irrespective of whether or not such advice –

- (i) is furnished in the course of or incidental to financial planning in connection with the affairs of the client; or
- (ii) results in any such purchase, investment, transaction, variation, replacement or termination, as the case may be, being effected.

*Subsection 3(a):*

- (3) For the purposes of this Act –
  - (a) advice does not include –
    - (i) factual advice given merely –
      - (aa) on the procedure for entering into a transaction in respect of any financial product;
      - (bb) in relation to the description of a financial product;
      - (cc) in answer to routine administrative queries;

- (dd) in the form of objective information about a particular financial product; or
  - (ee) by the display or distribution of promotional material
- (ii) an analysis or report on a financial product without any express or implied recommendation, guidance or proposal that any particular transaction in respect of the product is appropriate to the particular investment objectives, financial situation or particular needs of a client;
  - (iii) advice given by –
    - (aa) the board of management, or any board member, of any pension fund organisation or friendly society referred to in paragraph (d) of the definition of “financial product” in subsection (1) to the members of the organisation or society on benefits enjoyed or to be enjoyed by such members; or
    - (bb) the board of trustees of any medical scheme referred to in paragraph (g) of the said definition of “financial product”, or any board member, to the members of the medical scheme, on health care benefits enjoyed or to be enjoyed by such members; or
  - (iv) any other advisory activity exempted from the provisions of this Act by the registrar, after consultation with the Advisory Committee, by notice in the Gazette.

## 2. Intermediary service

“intermediary service” means, subject to subsection (3)(b) (see below), any act other than the furnishing of advice, performed by a person for or on behalf of a client or product supplier:

- (a) the result of which is that a client may enter into, offers to enter into or enters into any transaction in respect of a financial product with a product supplier; or
- (b) with a view to
  - (i) buying, selling or otherwise dealing in (whether on a discretionary or non-discretionary basis), managing, administering, keeping in safe custody, maintaining or servicing a financial product purchased by a client from a product supplier or in which the client has invested;

- (ii) collecting or accounting for premiums or other moneys payable by the client to a product supplier in respect of a financial product; or
- (iii) receiving, submitting or processing the claims of a client against a product supplier;

*Subsection 3(b)*

3(b) intermediary service does not include –

- (i) the rendering by a bank or mutual bank of a service contemplated in paragraph (b)(ii) of the definition of “intermediary service” where the bank or mutual bank acts merely as a conduit between a client and another product supplier;
- (ii) an intermediary service rendered by a product supplier –
  - (aa) who is authorised under a particular law to conduct business as a financial institution; and
  - (bb) where the rendering of such service is regulated by or under such law;
- (iii) any other service exempted from the provisions of this Act by the registrar, after consultation with the Advisory Committee, by notice in the Gazette.

### **3. Person**

“person” means any natural person, partnership or trust, and includes –

- (a) any organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996 (Act No. 61 of 1973);
- (b) any company incorporated or registered as such under any law;
- (c) any body of persons corporate or unincorporated.

### **4. Representative**

“representative” means any person who renders a financial service to a client for or on behalf of a financial services provider, in terms of conditions of employment or any other mandatory agreement, but excludes a person rendering clerical, technical, administrative, legal, accounting or other service in a subsidiary or subordinate capacity, which service –

- (a) does not require judgement on the part of the latter person; or
- (b) does not lead a client to any specific transaction in respect of a financial product in response to general enquiries;

## **5. Key individual**

“key individual”, in relation to an authorised financial services provider, or a representative, carrying on business as:

- (a) a corporate or unincorporated body, a trust or a partnership, means any natural person responsible for managing or overseeing, either alone or together with other so responsible persons, the activities of the body, trust or partnership relating to the rendering of any financial service; or
- (b) a corporate body or trust consisting of only one natural person as member, director, shareholder or trustee, means any such natural person.

## **6. Compliance officer**

This definition has been extracted from Board Notice 83 of 2003:

“compliance officer” includes, in a case where such officer operates in a corporate, partnership or trust format, any natural person, whether an employee of such entity, a particular partner or trustee, or a member of the management of the entity, as the case may be, appointed by such body to take personal responsibility for the performance of compliance monitoring functions contemplated in section 17(1)(a) of the Act in respect of a particular authorised financial services provider, and to be approved by the registrar for that purpose.



## **OUTLINE OF THE REQUIREMENTS FOR LICENCING AND PENALTIES FOR NON-COMPLIANCE**

### **Licensing procedures and maintenance**

The licence application form may be obtained directly from the Financial Services Board (FSB) through their call centre on + 27 800 20 20 87 or + 27 800 11 04 43 or from one of the following Recognised Bodies approved by the FSB to process licences:

Arcay Group  
 Celestis  
 Chartered Institute of South Africa (CISA)  
 Financial Planning Institute (FPI)  
 Group Administrators Fund – Funeral (GAF)  
 Insurance Brokers’ Council of South Africa  
 Moonstone  
 PricewaterhouseCoopers  
 South African Financial Services Intermediaries Association (SAFSIA)

Once a Financial Service Provider (FSP) has determined that it requires a licence it must identify a number of individuals, referred to as ‘key individuals’<sup>5</sup> within their organisation. Any authorised FSP with more than one key individual or one or more representatives (see below) must appoint one or more compliance officers<sup>6</sup> to monitor compliance with this Act by the provider and its representatives. The compliance officer, or in the absence of such officer the authorised FSP concerned, must submit reports to the FSB in the manner and regarding the matters as they so determine.

The key individuals and compliance officer will be required to meet particular fit and proper standards as set out in the Act. The FSB will therefore be responsible for approving the key individuals and the ongoing licence will be dependant on this approval.

An authorised FSP must at all times be satisfied that the provider’s representatives, and key individuals of such representatives, are, when rendering a financial service on behalf of the provider competent to act (see section 13(2)(a) of the Act).

The Act also contains regulations including: those that govern disclosures, record-keeping, complaints handling, provision of advice and the handling of clients funds.

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<sup>5</sup> See Appendix 1 for a definition of this term (point 5)

<sup>6</sup> See Appendix 1 for a definition of this term (point 6). Such a person must meet the qualification and experience requirements set out in Board Notice 83 of 2003 – the Notice on Qualifications and Experience of Compliance Officers in respect of Financial Services Business 2002.

### **Identification of ‘representatives’**

The authorised FSP must maintain a register of representatives, and key individuals of such representatives, which must be regularly updated and be available to the FSB for reference or inspection purposes.

### **Recognition of prior learning**

The insurance industry in South Africa has never previously insisted on a minimum professional qualification. However, it is now intended to recognise relevant practical experience and, as far as possible, convert that experience into a qualification by means of a process called ‘recognition of prior learning’. This process is further supported by the requirements in the Act, based upon the National Qualifications Framework (NQF) set up by the Department of Education.

For commercial lines business the minimum qualification is a Matric, but an alternative to the Matric is also offered, in that the Act will also accept, as fit and proper, a person with a minimum of 30 credits at an NQF level 4. The NQF is an ‘outcome based’ learning approach which facilitates recognition of experience. The Insurance Sector Education and Training Authority (INSETA) has set up a National Assessment process to give persons without the minimum academic qualification of a Matric, the opportunity to earn credits based on their experience.

### **The need for ongoing training**

The qualification process described above sets out the minimum qualification standards. All Key individuals and representatives who only meet the minimum standards will have to undergo ongoing training to raise their qualifications from an NQF level 4 of 30 credits to an NQF level 4 of 60 credits, within 3 years, for commercial lines business. The personal lines requirements are slightly lower.

### **Penalties**

Intermediaries have until the 30 September 2004 to obtain their licences under the terms of the Act. Only licensed intermediaries will be permitted to operate on or after this deadline.

**Carrying on unlicensed business on or after 30 September may lead to fines up to R1, 000,000, for every day during which the failure continues, and/or criminal prosecution. Any insurer authorising a South African broker that is not licensed may also be found to be in contravention of the Act.**