



The impact of upcoming regulatory changes on UMAs

KAYLIN DE CONING JACOBS:
Compliance Officer at RENASA

The following regulatory changes, to be introduced in the foreseeable future, will have an effect on Underwriting Management Agents (“UMAs”).

The Financial Services Regulation Bill, also known as the “Twin Peaks Bill” separates the Prudential and Market Conduct departments of the regulator. The Prudential Authority, under the guidance of the South African Reserve Bank, will deal with all prudential matters. The Financial Sector Conduct Authority will deal with market conduct and will replace the Financial Services Board. This new structure will affect all insurers and UMAs who, as registered financial services providers, will be regulated by these “new” entities.

The Insurance Bill will repeal and amend various sections of the Short-Term Insurance Act, but the Act itself will remain. One of the significant changes to be introduced is a new licencing regime. All existing licence holders under the existing Act will be

required to apply for licences in terms of the new framework and licences will be awarded according to class of business.

The existing categories applicable to a short-term (or “non-life licence” as it will be called) will still exist, but these categories will be expanded as per the Non-Life Schedule 2 Table 2 contained in the Bill, into 41 sub-classes of business for which insurers and product providers will be required to qualify. Licences will not be granted at random, and the regulator must be satisfied that an applicant has the necessary resources and expertise to conduct a particular line of business prior issuing a licence. The business model of entities performing binder and outsource activities may also be impacted by the final format of the Retail Distribution Review process. Phase One of the RDR, which is based on the Financial Services Regulation Bill and contains 14 proposals, may significantly impact the business model of brokers and UMAs. The majority of the proposals have finer details that need to be determined – for example, that binder fees will be capped at a certain percentage. Although it is highly likely that a cap will be

implemented, it is uncertain what that will be. The regulator wishes to see remuneration aligned with activity costs and UMAs must prepare themselves for an era where percentage based income may no longer be acceptable. All FSP’s should focus on the need to conduct an activity-based costing exercise to determine what the actual costs are of performing specific binder and outsource functions for an insurer. A “one size fits all” approach will no longer be acceptable.

Further phases of the RDR project, and the RDR in general, are unlikely to impact UMAs as they may intermediaries or brokers rendering financial services to consumers. Advisory services providers will be expected to be remunerated for the provision of advice and should not look to product providers for compensation. This may result in some brokers being tempted to transition to a UMA, as a restriction on fees will reduce earning potential. This may increase the competitiveness of UMAs and their relationships with brokers. Such developments may see further regulatory requirements arising and could impact negatively upon the interest of consumers who may find



that they are left without any form of financial advice if they cannot afford to pay for it.

The Draft Information Letter issued by the FSB on the Clarification of the Legislative Requirements is another measure which will impact heavily on the way insurers and UMAs handle the transfer of a policy/book of policies from one insurer to another, as well as for any cancellation or replacement of policies. The main challenge is likely to be the logistical measures required to deal with the planned removal of negative consent from policyholders for such changes to be made. In the future, policyholders will have to give actual positive consent before changes can be implemented. Although this is only a draft, it is likely that these provisions will become law, and brokers and their UMA partners should start examining practical ways to accommodate these measures in their business models as soon as practically possible.

These proposals are in line with TCF outcomes and what the regulator envisages in future concerning market conduct issues concerning the moving,

transfer and cancellation of policies. Binder agreements, pending the RDR implementation and possible new binder regulations, will need to be reviewed by all departments in the organisation, including the legal and compliance department. This is to ensure compliance with the potential new binder regulations and RDR, and the Insurance Bill and the changes this will bring about in the Short-Term Insurance Act.

When conducting business in terms of a UMA Binder agreement with an insurer, the UMA must ensure that it has the required specialist resources to perform its assumed functions, and that it operates in terms of the requirements of the binder agreement. The Policyholder Protection Rules are currently being reviewed, but for now, only apply to personal lines policies. PPR creates a good outline for TCF and a UMA must ensure constant compliance with PPR.

Revised Fit and Proper requirements are likely to impact upon solvency requirements and operational costs. These requirements, also applicable to representatives and key individuals,

may increase the demand for skills and greater care will be required when selecting applicants for these positions.

DATA. DATA. DATA. This was the theme of the FSB's regulatory conference held in November 2015 with regards to market conduct. The FSB expressed that the only way to show that you are implementing TCF, and are applying the market conduct framework throughout your business, is through the collection and analysis of data. Complaints data is vital in showing your business' approach to market conduct. Here, statistics on matters such as the turnaround time for complaints resolution and the number and type of complaints reaching your office, will be examined by the regulator.

The TCF Complaints Discussion Document issued by the FSB in 2014 can assist a UMA in determining the type of data to include in their complaints register. The main issue regarding the planned regulatory changes lies in the uncertainty around the effective dates for implementation. Although clarification of implementation dates have been promised, there is as yet no indication of when these new regulations will come into effect.

Nevertheless, it is strongly recommended that all who may find themselves affected by the proposals take action to incorporate them into their operations as soon as possible. Businesses that do so will not only have more time to iron out any concerns ahead of time, but are also likely to gain a competitive advantage in doing so. Although regulatory change is seen as a challenge, the new framework is likely to bring with it many opportunities and benefits. A UMA can not only survive, but thrive through the current and forthcoming regulatory changes.

The key lies in understanding the business requirements for this sector, and to ensure a designated/outsourced compliance officer/company is monitoring and assisting with the proper implementation of all regulatory requirements. Treating Customers Fairly is an imperative and is the basis for this changing regulatory system. Remember that without a customer we do not have an industry.