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Regulation, resilience and risk

One of the key challenges facing the insurance industry must be the sheer volume of regulation and the rapid pace of change.

Mark Carney, Bank of England Governor, was recently quoted as saying that the banking supervision teams at the Bank of England, "now receive the equivalent of twice the entire works of Shakespeare of reading each week." Bearing in mind that Shakespeare wrote 37 plays, 154 sonnets and any number of poems in his lifetime, your regulatory burden could be somewhere between a comedy and a tragedy.

The British Insurance Brokers' Association (BIBA) warned in 2017 already that the regulatory burden imposed by the Financial Services Authority (FSA) on the insurance broking sector is a greater competitive disadvantage than the amount of corporation tax it pays. Others would argue that the increased regulation has changed the face of the industry in a positive way, gaining increased trust from customers and ensuring financial stability in unprecedented economic times. Whichever way you look at it, this volume is only going to grow exponentially over time and insurers are going to be challenged to keep abreast.

Closer to home, the tabling of the Financial Sector Regulation (FSR) Bill in Parliament is imminent. To clearly illustrate the sheer volume of regulation involved in this legislative process; when the first draft of the FSR Bill was published in December 2013, close to 300 pages of comments were received on the draft Bill that would change the regulatory landscape so dramatically.

The Financial Sector Conduct Authority (FSCA) has been active in the first half of this year with a steady stream of draft Conduct standards being published. This raises an important question – is Conduct currently effective in the industry or does Conduct only become effective on the promulgation of the Conduct of Financial Institutions Bill (COFI Bill)? KPMG's view is that the Market Conduct requirements is already alive through the various financial sector laws and regulations like the FAIS Act, the Policyholder Protection Rules and various banking regulations and it is almost irrelevant that the COFI Bill has not yet been enacted. We encourage insurers not to wait for the COFI Bill to be fully and finally effected before establishing a Conduct programme and critically not to let implementing Conduct in business be solely regulatory driven.

The FSCA has published firm guidance for industry on coping with the Covid-19 pandemic. The pandemic itself poses numerous challenges for insurers across the business cycle from offering premium relief for policyholders to managing underwriting risk with limited and deferred medical underwriting to the challenge of interpreting business interruption insurance claims. The regulator's message has been clear, encouraging insurers to act in the best interests of their customers and engage with the regulator in a proactive manner where support or clarification of the principles is required.

For many firms, one of the key regulatory challenges in 2020 is no doubt the requirement to convert their license in terms of the requirements of the Insurance Act. This process was initially planned to be completed by July 2020, however it seems that the process will take a bit longer than anticipated. To further complicate the matter, the Prudential Authority recently announced that it will temporarily suspend the issuance of new licences (not the conversion of existing licences) for a period of six months. This is to take into account the impact that Covid-19 has had on the economic environment in South Africa and the additional challenges this may place on new entrants to prove financial soundness, in line with the Prudential Authority's mandate to ensure financial stability.

The Prudential Authority is also proposing changes to the audit requirements for insurers and controlling companies. Draft prudential standards on audit requirements for solo insurers, groups (controlling companies), Lloyds, microinsurers and branches, registered in terms of the Insurance Act, have been published to this effect. These standards introduce additional reporting requirements for the auditor with regard to cell captives and reinsurance providers and some changes in the level of assurance provided over certain parts of the quantitative regulatory returns for solo insurers and Lloyds.

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The audit requirements are new for branches, controlling companies and microinsurers since these types of entities did not exist until the enactment of the Insurance Act. As a result, insurance groups will now, for the first time, require their auditor(s) to provide assurance over their group returns. At this stage the envisaged effective date is 1 September 2020, meaning insurers and controlling companies whose financial year-end is after the effective date of the proposed standards will be required to comply with the standards.

Financial crime continues to be a threat to our industry, and is anticipated to rise over the coming months, particularly as unemployment increases and economic growth stalls. Remote working and increased control risks on the one hand together with increased online activity and fraudsters posing as charitable organisations and other fraudulent scams provide the perfect storm for money laundering operations. In an effort to curb this risk in the insurance industry, the Financial Intelligence Centre (FIC) issued a compliance communication earlier this year which provides FIC Act compliance obligations to accountable institutions which offer life insurance products, urging that they must consider the money laundering and terrorist financing risks relating to the nominated beneficiaries of their clients and conduct the necessary due diligence prior to receipt or pay out of funds.

The long awaited effective date for the majority of the provisions of the Protection of Personal Information Act (POPIA) has finally been released and most of the provisions of the Act came into effect on 1 July 2020. Although POPIA provides for a transitional period of one year, the insurance industry will need to comply with provisions relating to direct marketing by means of unsolicited electronic communications, the treatment of sensitive personal data and the security of personal information without delay. The one year transitional period afforded by the Act will pass quickly. If firms have not yet aligned their data management strategies, together with privacy regulations and an assessment of the associated cyber risk, they have significant work to do to ensure that they are compliant and more importantly, not at risk of a breach. Implementation of the regulations does not simply entail a gap analysis and updating of organisational policies. There are many new concepts introduced by the Act, such as a central process for data subject access rights which require detailed planning. Refer to our article: The Protection of Personal Information Act is effective?!

Part of the success story for the insurance industry is its ability to expect disruption, be flexible, anticipate change, and recover quickly from setbacks. As insurers continue working to comply with new regulation and shape the industry, there is no doubt that there will be an increased need to develop solutions that not only assist with regulatory compliance but also build customer trust and reduce business risk.