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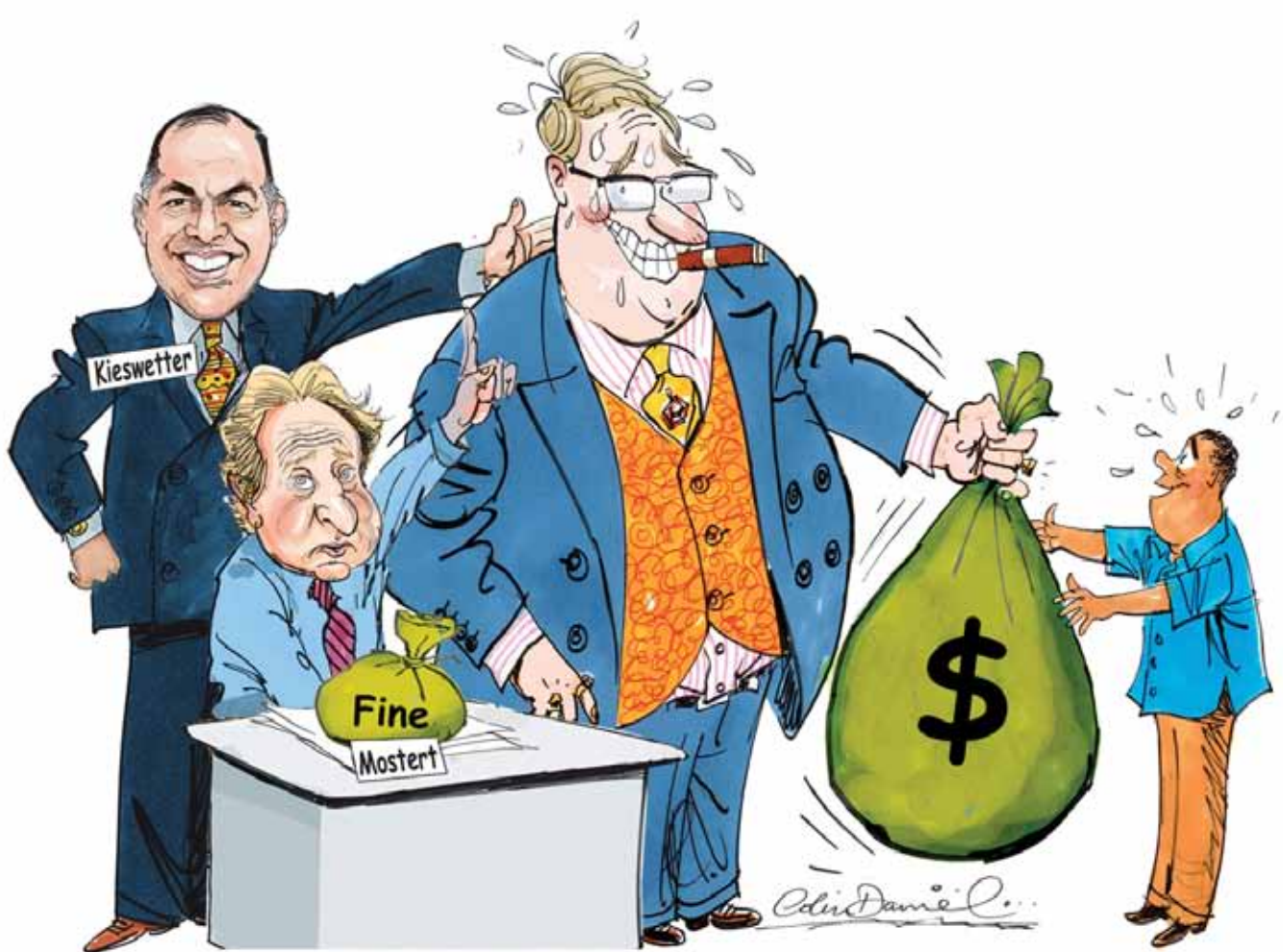
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Stripping of pension fund surplus assets:

At last pensioners and former members can smile

By the editor

The sanctioning on 17 March 2011 by the Johannesburg High Court of a plea settlement between the National Prosecuting Authority and certain companies within the Alexander Forbes Group, marked the successful end of extensive litigation by the curator of the seven funds, Tony Mostert and his team.

They vigorously endeavoured to retrieve stripped assets of the funds by their participating employers that took place more than 15 years ago, despite being deliberately delayed by spurious defences raised by protagonists of the schemes.

In terms of the plea agreement, the Alexander Forbes licensed entity at the time pleaded guilty to several charges of the contravention of provisions of the Financial Institutions Act (Protection of Funds Act), 2001. The company admitted to dealing with trust property, in this instance pension fund assets, without the utmost good faith and not exercising its fiduciary duties of proper care and diligence in respect of those assets.

Alexander Forbes agreed to pay a fine of R10 000 and to make an additional R5,4 million available for distribution to the funds and their stakeholders. This is over and above an earlier civil settlement facilitated by the executive officer of the FSB, Dube Tshidi. This resulted in Alexander Forbes paying the curator more than R342 million, the bulk of which will find its way to the seven pension funds for distribution to their stakeholders.

In a media release explaining why it

supported the plea arrangement, the FSB stated that it was heartened by the "openness and commitment on the part of the present senior management of the Alexander Forbes Group, which not only resulted in reasonable compensation to the subject pension funds being paid, but also augurs well for the future conduct of the Group".

Alexander Forbes Group chief executive, Edward Kieswetter, who took office in 2010, echoed these sentiments: "The most important motivation for Alexander Forbes in reaching a settlement on the civil claims and criminal charges was to ensure what is right for the pensioners of the funds affected by surplus stripping".

In coming to the table, Alexander Forbes took the lead in doing the right thing followed by Sanlam Life, which was also at the receiving end of pension surplus assets illegally removed from

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funds under its administration.

In December 2006, Sanlam paid R106 million to the curator, which represented the equivalent of R44,1 million received by Sanlam during the late nineties from the Datakor Funds in a similar surplus misappropriation scheme.

Sanlam however defended further attempts by the curator to recover damages caused by the surplus strippings. After complex settlement negotiations, facilitated by the FSB, a settlement was eventually reached.

This saw Sanlam supplementing its previous payment by a further payment of R175 million to the curator and agreeing to forfeit benefits amounting to R56 million under a policy ceded to it during the Datakor/Cortech pension fund transaction.

Other recoveries made by the curator in recent years enabled the curator to effect surplus apportionment exercises in respect of the seven pension funds under his control.

Some of these recoveries include: the architect of the evil surplus "accessing" methodology, former Nedcor executive Peter Ghavalas (R18,6 million), Rowland Bailey and his wife who enriched themselves from the surplus in the Mitchell Cotts Pension Fund (R20 million), Cape businessman Jan Pickard Jr (R31 million), the former Lifecare company (R60 million) and Lifecare Group Holdings Pension Fund (R26,2 million).

In doing so, 15 500 stakeholders of those funds will be paid out a total of R730 million within the next six months. Payments totaling R118 million to the surviving members and pensioners

of the Mitchell Cotts fund will be effected shortly. The rest will follow as soon as the apportionment schemes, already lodged with the FSB, have been approved.

Despite these achievements, more work is waiting for the curator. Actions against Simon Nash, charged with several counts of fraud and theft for his alleged illegal acquisition of assets of the Sable Industries Pension Fund, former pension fund administrator Aubrey Wynne-Jones and Wynne-Jones & Company, Jacques Malan and his retirement fund administration and consulting company and others, will be pursued relentlessly, as before. Inevitably claims by the curator will be contested and litigation is expected to continue for at least another year.

Strengthening the FSB team



Jonathan Dixon

The FSB announced that the Minister of Finance, re-appointed Jonathan Dixon as from 1 April 2011 for a further term of five years as deputy executive officer: insurance.

This will ensure the continuation of strategic projects that have been Dixon's responsibility. These include the Solvency Assessment and Management (SAM) project and the Treating Customers Fairly (TCF)



Leanne Jackson

project.

Dixon was also re-appointed to the executive committee of the International Association of Insurance Supervisors (IAIS) and has been appointed chairman of the Standards Observance Subcommittee of the IAIS. He is also chairman of the Governing Board of the Access to Insurance Initiative (A2ii), a joint initiative of the IAIS and the Microinsurance Network.

Leanne Jackson was appointed head: TCF Business Unit on 1 February 2011. Jackson will be responsible for rolling out the TCF project and managing the FSB's TCF Task Team.

She joined the FSB from Liberty Holdings Ltd, where she was executive: legal and regulatory affairs. During her time in the long-term insurance industry, Jackson was extensively involved in representing the industry in regulatory discussions. She was also a member of the FAIS Advisory Committee since its establishment.

She was appointed by the Minister of Finance.

The National Treasury has endorsed the FSB's TCF initiative as part of its recent paper entitled "A safer financial sector to serve South Africa better".

The FSB has outlined its TCF implementation plans in a TCF roadmap document published end of March 2011.

This is available on the FSB website (www.fsb.co.za).

Meet our new board members

A number of new members recently joined the FSB's board



Di Turpin



Ismail Momoniat



Dudu Msomi



Olano Makhubela



Hamilton Ratshefola



Dr Xolile Guma



Dr Monde Mnyande

Di Turpin serves on two FSB advisory committees. One focuses on pension funds and the other on collective investments. She is a member of the Minister of Finance's Policy Board, a trustee of retirement funds, a director of Shine (an educational NGO) and consults in the investment industry. Turpin has a BBusSc(Hons) in marketing from the University of Cape Town and previously worked in the banking and life industries. Beforehand she was chief executive of the Association of Collective Investments.

Ismail Momoniat is the deputy director-general of tax and financial sector policy at the National Treasury, which he joined in 1995. There he has been part of the team reforming and modernising the budget process. Until 2005 he headed the division responsible for provincial and local government funding. He has driven key public finance governance legislation, such as the Public Finance Management Act, 1999, and the Municipal Finance Management Act, 2003. Momoniat started his career as a lecturer in mathematics at Wits University. He has an MSc from the London School of Economics and an MSc (maths) from Wits University.

Dudu Msomi is founder and CEO of Busara Leadership Partners, a boutique strategic advisory service and consulting firm. The talent is distinctive in its trans-disciplinary and multi-sectoral experience, thinking and approaches for competitive

and comparative advantage. Msomi was previously the deputy director of the Life Offices Association (LOA). Msomi chairs the FSB Licensing Committee. She is a board member of the Agricultural Research Council (ARC). Dudu Msomi has B.A.(Hons), postgraduate diplomas in advertising, marketing and corporate governance, as well as a PMD and an MBA. She has read Corporate Law.

Olano Makhubela obtained a BCom (Law) at the University of Durban Westville (now University of KwaZulu-Natal) and an LLB degree from Wits University. He also holds a BCom(Hons) in economics from Unisa and completed a masters degree in economics at the University of London (SOAS). Makhubela has been with the National Treasury since 2000 where he has been the chief director for financial investments and savings, responsible for pensions, insurance, investment products and governance.

Hamilton Ratshefola is co-founder of Cornastone Technology Holdings (Pty) (Ltd), an IT company specialising in software development and mobile payments. He holds a BCom in information systems and business economics from North West University, completed IBM's executive leadership programme, and recently the executive leadership programme at Cornell University. At IBM Ratshefola fulfilled various roles: systems engineer, sales executive, sales manager,

general manager and divisional executive. In 1999 and 2000 he was named most admired black ICT leader, while in 2007 he was in the top 20 for the Computer Society of South Africa's award for IT personality of the year.

Dr Xolile Pallo Guma holds degrees in economics and accounting from the universities of Botswana and Swaziland and has a master's degree in economics from the Victoria University of Manchester. From 1978 to 1990 Dr Guma served the University of Swaziland's economics department in various capacities before he became the director of the Social Science Research Unit until 1994. In 1995 he joined the Reserve Bank as an economist where he was appointed deputy governor in 2001 and senior deputy governor in June 2010.

Dr Monde Mnyande is chief economist and advisor to the governor at the Reserve Bank, a position he has held since 2009. He is a member of the monetary policy committee, financial stability committee, the governors' executive committee, and vice-president of the Economic Society of South Africa. He joined the Reserve Bank in 1995 where in 2005 he was appointed executive general manager and chief economist. Dr Mnyande holds BA and MA degrees in finance from Webster University in St Louis, an MBA degree from St Louis University, as well as an MA and PhD (economics) from the New School University in New York.



Want to change asset managers? Keep this in mind

By Brandon Furstenburg, chief operating officer, Mergence Investment Managers

Many retirement funds in South Africa are led by the nose by their investment consultants. Some argue that the knowledge gap between professional and employer trustees, and employee-elected trustees, provide fund consultants with additional power.

So what should a trustee board do if they contemplate changing their asset manager/s? First decide whether the manager truly needs replacing, given the fund's investment strategy. Remember, investing pension funds is for the long-term, so they shouldn't be managed on a short-term basis. If a manager has underperformed for six months, that's on its own not a good enough reason to fire them.

At retail level this scenario is well known: An individual who chops-and-changes investment managers and portfolios by picking the flavour of the

month is more likely to under perform, than one who makes a decent initial choice of portfolios and stays put.

Secondly, if the intention is to fire a manager and replace him with another (or a decision has been taken to diversify the selection of asset managers by introducing one or two new ones), the question of how is important.

Fund consultants sometimes attach the phrase *transition management* to this process, which means: Are you going to liquidate assets the current manager is holding and then hand over cash to a new one, or go through the process of transferring assets from one manager to another? Neither exercise is costless, but trustees need to be aware that the first option (cash) can sometimes be very costly.

This is because there are trading (for e.g. brokerage) costs involved if force-liquidating a portfolio into cash. Then, if another asset manager buys many of the same shares the first one held, trading costs are again payable.

Members have to pick up all these additional costs for little reason. Furthermore (the writer has been exposed to this very practice) – if some of the investments being sold in order

to move money between managers, are less liquid or possibly even very illiquid, the cost of unwind is often large.

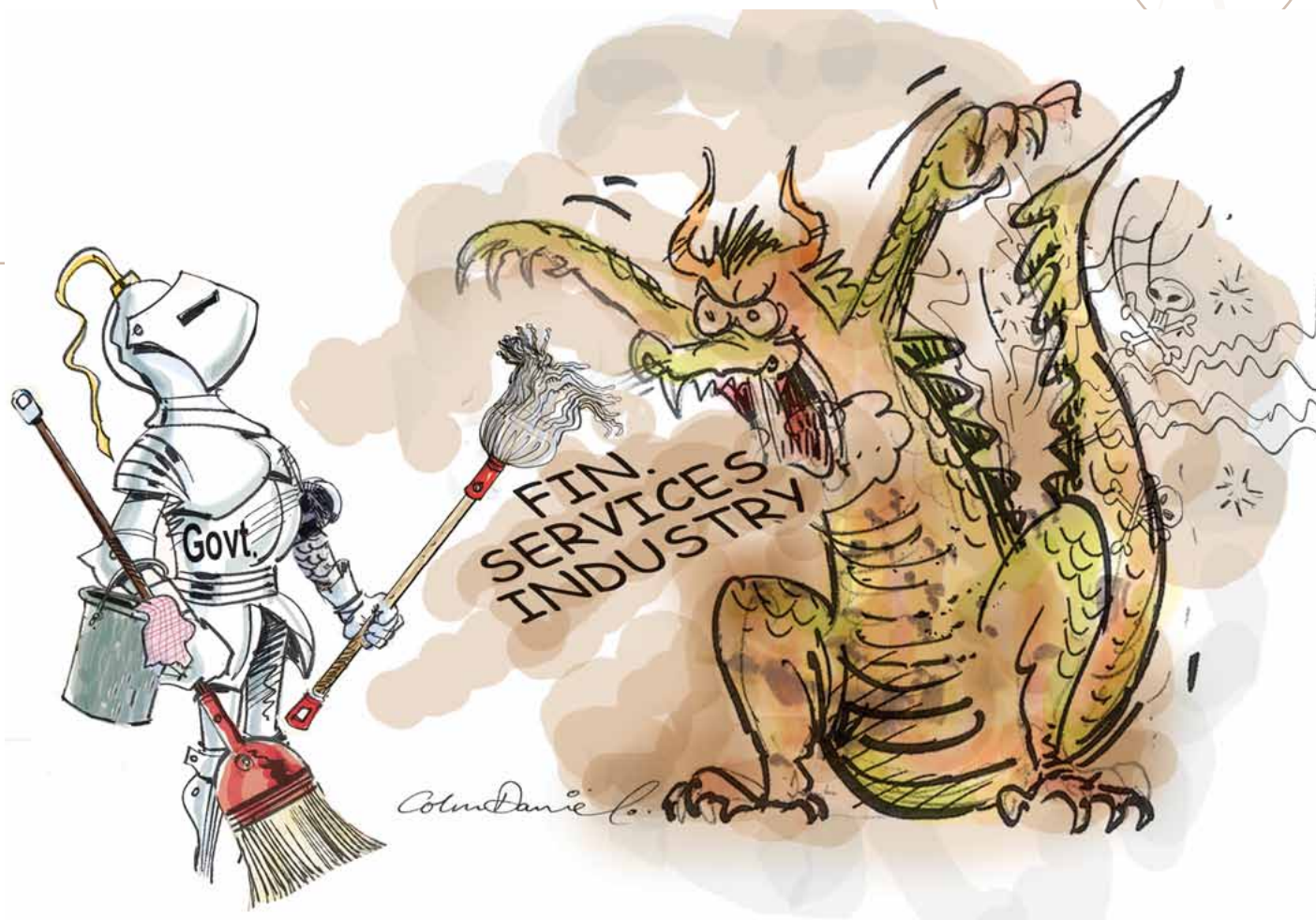
Fund consultants should make boards aware of these possible costs and their magnitude. If not, they are not doing their job properly. The writer has seen consultants issue blanket orders to asset managers to liquidate positions into cash apparently with no concern with cost and how much enforced loss is being placed on members.

These consultants are acting irresponsibly. Trustees must be aware of these issues so they can call their consultants to order.

Another question trustees must ask in the *transition management* process is what/if the consultant will be charging the fund to "manage the process". Any charges must commensurate with the value they provide.

Giving asset managers a blanket order to liquidate everything into cash is not rocket science. Therefore it should not be rewarded equivalently to the case where a transfer of assets between managers is occurring.

Do not allow members to suffer when changing investment managers.



Government to ramp up financial regulation

The government is set to embark on the next stage of its campaign to clean up the financial services industry. This will include putting pressure on the banks, the life insurance industry and the retirement industry to reduce their costs and be honest about the information they provide consumers.

The plans include bringing the banks for the first time firmly under the market conduct regulations, as well as extending regulations to private pools of capital, which include hedge funds, private equity funds, the money market and derivative trading that occurs outside of security exchanges (over-the-counter trading). The regulations will also target

credit agencies, which are supposed to check the risk of investments but failed to blow the whistle before the recent credit crisis.

Key to the reforms is the proposed "treating customers fairly" regulatory environment, which will involve a switch from the current rules-based approach, where all the required behaviour is stipulated, to getting companies to behave ethically within predefined broad parameters, which will grant the regulator fairly wide discretion as to what is and is not acceptable.

The principles are based on the fair treatment of customers at every stage of the product cycle, from design and marketing to advice and service.

National Treasury says it is also reviewing the commission structures for intermediaries (financial advisers) in the life assurance and short-term insurance industries to bring commissions and fees

into line with those of other products. This may include a ban on product providers paying commissions. Instead, you will pay for advice to ensure that advisers act in your best interests and not necessarily only in the best interests of the product providers.

A comprehensive review of the complaints (ombudsmen) structures is also under way to ensure that you have speedy and affordable redress when things go wrong.

Consumer education, starting at school level, is also high on the National Treasury's to do list.

The government's plan of action is detailed in a 85-page document "A safer financial sector to serve South Africa better", which was released simultaneously with the budget earlier this year.

The document spells out twelve principles that will underpin the reforms

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Avoid misunderstanding and disappointment

Funeral policies:

Complaints about funeral policies comprise an increasing percentage of complaints received by the Office of the Ombudsman for Long-term Insurance.

They comprised 38% of complaints finalised by the office in 2010, up from 27% in 2009. Common complaints about these policies are discussed below. Policyholders and prospective buyers need to check the policy wording to avoid the misunderstandings and disappointments reflected in these types of complaints.

Non-payment of benefits within 48 hours

Some insurers promise that they will pay the funeral benefit within 48 hours. The important prerequisite, which is often overlooked, is that payment can only be made within 48 hours of the submission of all the required documentation. Typical wording in the policy reads: *"Claims will be processed within 48 hours (two working days) once we have received all the required documentation."*

Some complainants are under the impression that payment will be made within 48 hours of notification of death, a misunderstanding that can lead to disappointment and may necessitate alternative financial arrangements for the funeral.

Death during waiting period

In funeral policies, which are not medically underwritten, the insurer may control its risk by imposing a waiting period, during which death from natural causes will not be covered. This aspect causes more complaints about funeral policies every year than any other cause. Even where the deceased dies one or two days before the expiry of the waiting period, the Ombud is unable to assist complainants. It is only if the death was accidental that it would be covered during the waiting period.

A waiting period is usually defined as a period (such as six or nine months) starting on the date of commencement of the policy. Occasionally, there is also an additional requirement. A number of premiums must first be paid (e.g. six months and six premiums). Policyholders often incorrectly assume that the payment of for instance six premiums means that the waiting period is over.

CASE STUDY

The policy commenced on 1 September 2009. The policy had a six month waiting period during which death from natural causes was not covered. The waiting period expired on 28 February 2010. The life assured died on 25 February 2010 due to natural causes. The insurer declined the claim in terms of the policy and the claimant complained to the Ombud because she had paid six premiums to the insurer. The Office of the Ombud upheld the insurer, as there were no grounds for instructing it to pay a claim during a waiting period. The policy read: *"No benefit is payable in*

respect of the death of an insured person due to natural causes during the waiting period. "Waiting period" - a period of six months from the date of commencement of the policy." It was unfortunate for the complainant that the life assured died during the waiting period.

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Incorrect details

It often happens that the details of the insured are incorrectly provided at inception. This is particularly common when the insured is an extended family member. The name or date of birth, which is recorded, may differ from

what appears on the insured's identity document. This becomes a problem when the insured dies and the death certificate does not correspond with the insurer's records. The insurer may then refuse to settle the claim. It is in the interest of the policyholder to submit a copy of the actual identity document to the insurer at the time of taking out the policy, or as soon as possible thereafter. With regard to name differences, the onus rests on the claimant to provide proof that the insured and the deceased are the same person. With the amount of fraudulent activities involved in insurance, insurers take an understandably cautious approach to claims where details in the death certificate and the application form differ.

CASE STUDY

The Ombud received a complaint where the father of a minor child submitted a claim on her death providing a death certificate with a name and date of birth as 15 December 1984. The mother, on affidavit, gave a different surname and

a date of birth as 16 December 1983 and the school gave confirmation of attendance with a third surname and date of birth as 15 December 1983. With three different surnames and three different dates of birth, the insurer requested clarification. This seemed justified and the Ombud asked the complainant to explain the discrepancies. The complainant did not respond and the matter was not investigated further.

Dates of birth

Where a date of birth on the death certificate differs from the insurer's details, section 59(2) of the Long-term Insurance Act, 1998, applies: *If the age of a life insured under a long-term policy has been incorrectly stated to the long-term insurer, the policy benefits shall, notwithstanding subsection (1), be those which would have been provided under that policy in return for the premium payable had the age been correctly stated: Provided that if the nature of that long-term policy, or kind of long-term policy,*

is such as to render such arrangement inequitable, the Registrar may direct the long-term insurer to apply such different method of adjustment to the policy benefits of that long-term policy, or type of long-term policy, as the Registrar considers equitable in relation to the misstatement of age."

CASE STUDY

The policyholder had indicated that the life insured was in the age band of 46 and 54 years when she insured her mother for R10 000. The life insured, however, had been in the age band between 55 and 65 years. When the policyholder instituted a claim on the death of the insured, the insurer refused to pay the claim and refunded the premiums of R630, on the basis that the age had been incorrectly stated and that the premium had been too low for the actual age. The Ombud pointed out that section 59(2) of the Long-term Insurance Act applied. In the absence of

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to the financial sector regulatory system. The reforms include the registration of any person or institution that provides a financial service and a new framework for regulators that will result in greater co-ordination to prevent cheats from slipping through the cracks.

The aims of the reforms:

- To protect consumers against the avaricious and the crooked; and
- To ensure that the financial system is stable.

National Treasury points out that the global economic meltdown was sparked by poor market conduct, with banks providing unaffordable home loans to consumers in the United States, based on the false assumption that property prices would continue to rise.

Treasury says the idea that the financial sector "can successfully regulate itself

has lost credibility in the aftermath of the crisis". The crisis has also shown that poor market conduct (how customers are treated) can lead to systemic risk (a threat to the financial system).

South Africa to a large extent escaped the meltdown, because fairly strong regulations had been implemented before it occurred.

The review proposes that a new division be created at the FSB to regulate the gamut of retail banking, including "the regulation of banking charges and other practices".

National Treasury says that market conduct regulation is essential because financial services providers often have far more expertise and knowledge than consumers in assessing the quality and array of financial products.

"Unfortunately, this can create the incentive for financial services providers to exploit their superior information. Abuses range from milder complaints

of providing deficient financial advice, to egregious and blatant cases of fraud and misrepresentation.

"Moreover, the big services providers with substantial market power may charge higher fees, sell products that are not appropriate... and exploit their market power in other ways that may be deemed unfair to consumers."

The financial services industry requires stricter supervision than other industries, because the industry has a greater impact on the wealth of consumers and because the long-term nature of savings and insurance means that problems often become apparent only much later, the Treasury says.

This article, written by Bruce Cameron, was first published in Personal Finance of 2 March 2011, a publication of Independent Newspapers, published in The Saturday Star, The Saturday Argus, The Independent on Saturday and the Pretoria News Weekend.

Donors to Education Foundation eligible for tax benefits



**By Ginger Bester, manager:
Consumer Education, Department, FSB**

The Financial Services Consumer Education Foundation is an independent trust established by the FSB in 2004 as a vehicle for donations to fund deserving consumer education projects. It successfully applied for tax benefit status under Section 18A of the Income Tax Act, 1962.

Section 18A allows a taxpayer, whether an individual, company, close corporation or trust, a deduction from their annual taxable income if they make a bona fide donation in cash or kind to an approved public benefit organisation.

A tax receipt is then given to donors in return for their contribution, which they then submit to the Receiver of Revenue for tax relief.

Contributions to the Foundation can be identified as conditional, that is, to be used only for a specific purpose or target market, or they may be categorised as general and used as a contribution towards the implementation of any project approved by the Foundation.

Although the Consumer Education

Department of the FSB proposes and manages projects funded by the Foundation, applications for funding consumer education projects from other organisations can also be considered. The Foundation receives donations from a number of sources and these funds are used to cover the costs of implementing a variety of projects. Donors to the Foundation are now eligible to receive a tax benefit.

The purpose of these projects is to impart financial management knowledge to consumers to enable them to understand and exercise more control over their personal financial circumstances.

Foundation-funded programmes

The Consumer Education Department and the FSB has successfully implemented the projects below and to date approximately R7 million of foundation funds has been spent on implementing these projects.

Different approaches have been

used to spread financial messages to consumers. These include face-to-face workshops, print and electronic media, providing resource material to state schools and presenting road-shows at shopping malls and taxi ranks. A synopsis of the programmes follows.

Face-to-face workshops

Face-to-face financial education workshops have taken place with follow-up call-centre support.

The workshops offer practice in developing personal budgets, guidance on how to manage debt as well as information on the importance of saving, having insurance and the avenues of recourse to follow if consumers feel they have been misled by financial services providers. Initially, workshops were successfully piloted in KwaZulu-Natal and the North West Province in 2007.

This was followed by a further 204 financial education workshops in 2009 that reached 5 034 consumers in urban



Call-centre support for 90 days after attending a workshop became a feature of the programme in 2009 and has proved to be very helpful. Workshops with call-centre support continue to be offered to both urban and rural communities and form an important part of the overall consumer financial education programme.

Print media

Print media have proved to be a popular and effective means for conveying consumer financial information. Publications produced by the FSB include graphically-illustrated financial education booklets, guidelines on the financial issues faced by youth, pamphlets as well as articles published in national daily newspapers and specialist magazines such as *Teacher*. The content of these publications forms the basis of workshops and other consumer financial education programmes.

Electronic media

The electronic media play a major role in communicating content in the so-called information age and effectively reach practically all sectors of society. The FSB has capitalised on this phenomenon and has conveyed financial education through the following media:

- *DVD*

Financial information and messages based on the FSB's financial education booklets have been packaged onto DVD and distributed to church congregations through their established distribution channels. Once viewed, the programmes are then passed on to Stokvel societies and other community groups. In line with the FSB's multi-faceted approach, the same messages then also appear in daily newspapers in both print and graphic format.

- *Radio and television*

The FSB has successfully used radio programmes to convey financial education information. The format adopted is to invite knowledgeable people in the financial sector to be interviewed on radio and, in many instances, to have phone-in discussions with consumers. This approach is very effective in reaching widespread communities in all LSM categories and in all eleven official languages in South Africa. In this regard, a current initiative funded by the Foundation involves flighting thirteen financial education episodes on ten SABC radio stations in all official languages.

A similar format has been adopted with TV programmes, but without phone-in engagement with viewers.

- *On-line learning*

An example of using electronic media to address major financial education issues is the use of on-line learning approaches to provide trustees of retirement funds with skills to manage funds more effectively. The retirement fund industry in South Africa is worth more than a trillion rand and plays an important role in the future well-being

of a large segment of the population. It is imperative that trustees of these funds have the knowledge to effectively manage these funds. The FSB is thus embarking on a programme to offer learning programmes online and through facilitated workshops to trustees to increase the ability to effectively govern retirement funds.

- *Integrating financial education into the public school curriculum*

A key approach to promoting sound financial behaviour is to ensure that financial management information is offered to learners through the schooling system.

To this end, the FSB's consumer education booklets have been adapted to be curriculum compliant. They are offered in both print and digital format to learners.

Content has been integrated into the Economic and Management Science (EMS), Mathematical Literacy and Life Orientation curriculum, and provided to schools through workshops for teachers. The project is fully supported by the Department of Basic Education.

At least 7 700 teachers have been trained to date to use the Mathematical Literacy resources with workshops set to continue in 2011.

The programme has been exceptionally well received by teachers who have attended the workshops.

The successful introduction of the *Financial Guide for Youth* has also prompted education authorities to request that the information contained in the booklets be offered to learners in the 50 public Further Education and Training colleges. A service provider has been appointed to facilitate workshops for these students before entering the working world.

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FPI extends terms of office for board leadership

News from the Financial Planning Institute of Southern Africa (FPI) by Tsholofelo Dihutso, marketing and communications manager of the FPI.

The Financial Planning Institute of Southern Africa (FPI) extended the terms of office of its board chairperson, Gerhardt Meyer and chairperson-elect (previously vice-chairperson), Solly Keetse to serve for an additional two years. This amendment of the FPI's by-laws was approved at a special general meeting of members in Randburg on 30 March 2011.

The changing of the position of vice-chairperson to chairperson-elect was also approved, as well as limit to the number of consecutive terms non-executive directors may serve on the board. This was changed to four terms of two years each.

"In the last few years, the FPI has made good strides on its vision and long-term strategy to establish financial planning as a distinct profession, with the Certified Financial Planner® (CFP) mark¹ as its symbol of excellence," said Godfrey Nti, FPI chief executive officer. "Extending Meyer and Keetse's terms, as well as the changes made to the by-laws, provide continuity of leadership at board level at

this critical time when the FPI is putting in place a new strategy to strengthen its position of being the standards setter of professionalism in the financial services industry," he added.

FPI becomes a member of EthicsSA

The FPI became a member of the Ethics Institute of South Africa (EthicsSA) in November 2010. This is a public declaration of the FPI's dedication to build an ethical South Africa. As a member, the FPI qualify for discount on specialised services, such as in-house training, code development and review, and organisational climate assessment.

International news

Thriving, CFP® certification programmes in Brazil, China, India, Indonesia and the Republic of Korea, helped to push the global number of CFP professionals to a new high in 2010. The Financial Planning Standards Board Ltd (FPSB), owner of the CFP, Certified Financial Planner and CFP logo marks outside the United States, reported the number of CFP professionals

reached 133 756 at 31 December 2010, up 6.1% from 126 016 at the end 2009.

Despite unsettled financial markets around the world, growth of the global number of CFP professionals has averaged 6.7 percent over the past five years, and CFP certification continues to emerge as a global financial planning credential. By the end of 2010, the majority (71 805 or 53.7 percent) of the world's CFP professionals conducted business outside the United States. The number of CFP professionals outside the United States more than tripled since 2000, and the global number of CFP professionals more than doubled during the same time period.

2011 Annual FPI Convention: The Leading Edge

Registrations are now open for the 2011 Annual FPI Convention at the Sandton Convention Centre on 1 and 2 June 2011. From the inspiring Billy Seleke, programme director, to Richard Mulholland, closing speaker on day two, delegates can expect a number of exciting new additions.

Highlights include:

- An employee benefits breakaway session.
- New top student awards, including a new media award and the FPI Chairman's Award at the gala dinner.
- The first FPI induction ceremony for new RFP™, AFP™ and CFP® professionals.

FPI members can claim 14 CPD points for attending the convention. There are also limited sponsorship, exhibition and advertising opportunities available. Visit the FPI website at www.fpi.co.za to secure your seat.

LexisNexis online news and legislation service

Free subscription to LexisNexis online financial and legislation news has again been negotiated for 2011 for all FPI members. To access this service, log onto www.legs.fpi.co.za or go to the resource centre on the FPI website for more information. This service includes FAIS and FICA legislation and notices regarding the upcoming regulatory exams.

Regulatory exams

The FPI has been closely involved in discussions with the FSB since the early stages of the development of the exams. The FPI supports the principle that professional financial planners should have an appropriate level of knowledge of legislation governing the profession. The FPI further supports appropriate exams as a way of assessing the competence of financial planners serving consumers in the financial services sector.

Over the last few months, the FPI has discussed a number of issues with the FSB, raised by members and other stakeholders regarding the level one regulatory exams. The FSB has addressed some of these issues in the recently released FAIS Circular 2/2011.

The FPI invites members and other stakeholders to continue submitting their comments in order to facilitate open discussion between all stakeholders. The FPI will continue to engage the FSB on all relevant comments.

An FSB preparation guide was issued

to assist candidates to prepare for the exams. The FPI is running regular webinars to guide candidates through this document.

In addition to the *webinars*, the FPI will also schedule weekly live question and answer sessions through its website. This will give members the opportunity to discuss any concerns directly with the office and receiving a response in real time. FPI CFP® professionals qualify for certain exemptions from level two exams.

To submit suggestions regarding the exams, email the FPI at fpi@fpimail.co.za. For further information, visit the FPI Examination Body's website at www.re.fpi.co.za or contact the FPI on 086 1000 374.

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Funeral policies from p 9

a different directive from the Registrar of Long-term Insurance, the insurer had to make the necessary adjustments to the benefit and pay the beneficiary. The insurer paid the adjusted benefit of R6 051 to the beneficiary.

Divorced spouses

Husbands and wives may insure each others lives while they are married. The question is what happens when they get divorced. Does the divorced spouse remain covered? Insurers often decline claims under a funeral policy for a divorced spouse. The answer lies in the wording of the policy as the following case demonstrates:

CASE STUDY

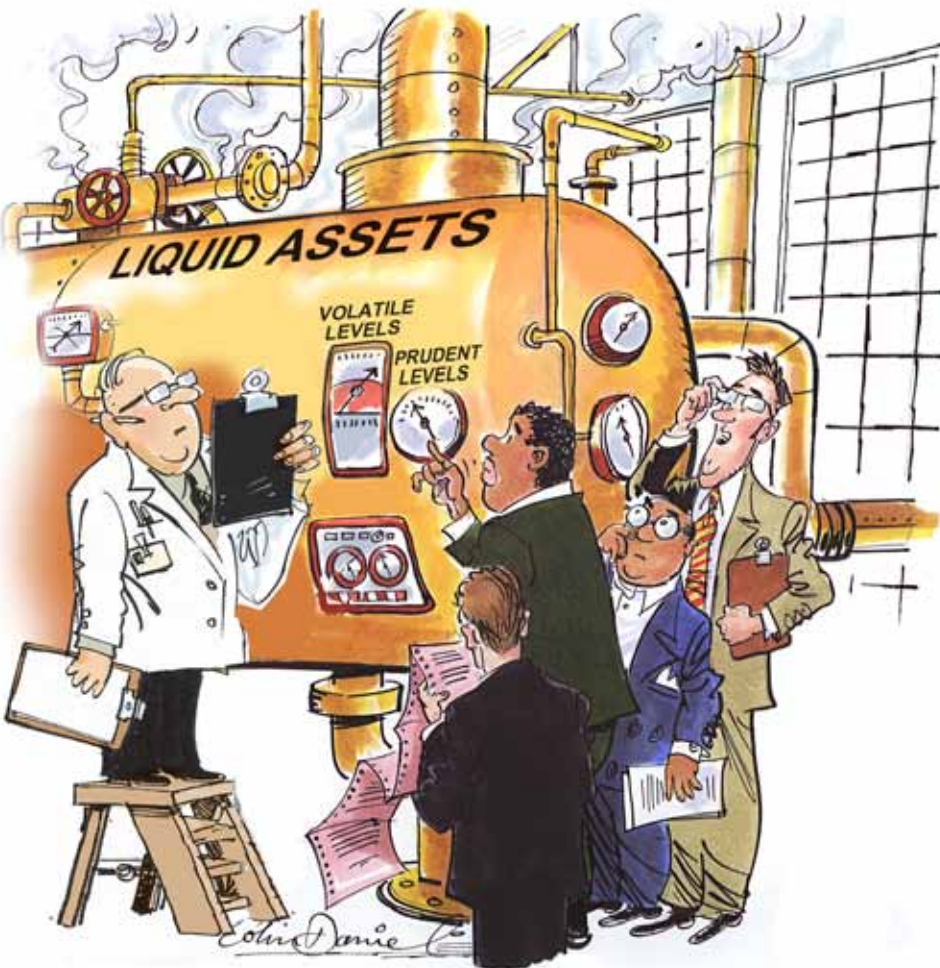
The complainant had taken out a policy in 2001 and named her husband as a life assured. They subsequently got

divorced but the wife had not removed him as a life assured and continued to pay the premium. When he died and she claimed under her policy, the insurer refused to pay the benefit on the grounds that the deceased was no longer her spouse and did not fall into the category of "dependants". The policy had no provision stating that cover ceased on divorce and the definition of "dependant" reads: "*a person residing in Southern Africa at the entry date if such person is the spouse of the principal life assured...*" In the circumstances the Ombud advised the insurer that it would be obliged to pay the benefit. The insurer agreed to pay and the complainant was able to settle the funeral debt that she had incurred for her ex-spouse, with whom she had in any event been living before his death.

Premiums exceed cover

Funeral policies are almost invariably pure risk policies with no investment value or savings element and have relatively small benefit amounts. This aspect is not always fully appreciated by policyholders and the Ombud receives a number of complaints, particularly from elderly people, where the policyholder over a long term has paid more in premiums than the benefit amount. This can lead to bitter disappointment. The problem is that if the policyholder cancels the policy at that stage, there will be no further benefit under the policy. The policyholder therefore has a difficult choice. Unfortunately the Ombud is not in a position to assist policyholders who are in such a situation.

Source: Ombuzz, electronic newsletter of the Ombudsman for Long-term Insurance



Solvency Assessment and Management (SAM): Are your assets still appropriate?

By Anton Reinke, Assets Task Group chairperson and principal consultant at Alexander Forbes Financial Services*

SAM is by now an all too familiar acronym and one that we will hear a lot about over the next couple of years.

One of the key components of Pillar 1 (quantitative requirements) of the SAM governance structure is "assets" and in particular, the way in which assets will be valued, recognised and "controlled" under the future SAM regime.

How will assets be valued under SAM?

SAM is largely following the EU's Solvency II initiative, which proposes an economic valuation of assets so that assets are valued at an amount for which they can be exchanged between parties. Furthermore, the Consultation Papers prepared by CEIOPS (Committee of European Insurance and Occupational Pensions Supervisors) states that the valuation of assets should mostly follow the International Financial Reporting Standards IFRS. CEIOPS also suggests a hierarchy in the valuing of assets in that mark-to-market must be used where possible before mark-to-model.

How will SAM change the current landscape?

Solvency II differs from the current South African insurance regulations when it comes to controlling the quality of assets. Currently, the FSB specifies the maximum permitted holdings for each asset class. In contrast, Solvency II does not specify which assets can be invested in or the maximum permitted holdings but rather follows a principles-based approach when it comes to investing in assets. The principle follows the "prudent person" test, which requires insurers and reinsurers to only invest in assets which they can properly identify, measure, monitor, manage, control and report.

Furthermore, assets not traded on regulated financial markets must be kept to prudent levels and excessive reliance on any one asset should be avoided. It remains to be seen if the FSB will do away with the list of assets currently employed but it is likely that investing in assets will be "controlled" by adding a capital charge to assets depending on the class of assets. Therefore, insurers and reinsurers will be penalised through additional capital requirements when investing in risky assets.

CEIOPS also recommends specific valuation rules when it comes to certain

assets. These include:

- The economic value of goodwill for solvency purposes is nil.
- Deferred tax assets should only be recognised to the extent that it is probable that future taxable profit will exist against which to offset it.

The principles-based approach may provide more flexibility to insurers and reinsurers but also shoulders them with more responsibility (and more work). Where there is no observable price for an asset, the regulator is going to examine closely the model used for valuing the asset. In particular, there should be documented policies and procedures and a proper "four-eye" review of the asset valuations with a clear sign-off process. Lastly, as a final supervisory tool, the annual Solvency and Financial Condition Report prepared by each insurer and reinsurer will require disclosure on the methods used to value assets.

** Anton Reinke can be e-mailed at reinke@aforges.co.za*

Acknowledgments:

- Solvency II Directive 2009/138/EC of 25 November 2009
- CEIOPS Consultation Paper 35: Valuation of Assets and "Other Liabilities"

Regulatory examinations vital in professionalising SA's financial services industry

By Clive Franks, media and communications manager, Financial Intermediaries Association of Southern Africa (FIA)

Criticism concerning the regulatory exams that are being introduced by the FSB to test intermediaries' knowledge of the regulations governing the financial services industry is understandable. These exams are however a positive step in order to professionalise the role of the financial adviser.

According to Justus van Pletzen, acting CEO of FIA, the exams are also necessary to safeguard the interests of consumers. "The Financial Advisory and Intermediary Services Act, 2002 (FAIS Act), and other relevant legislation, have been in existence for six years. As this legislation governs our industry, it is essential that those offering financial advice should know and understand the legislation and how it affects their clients.

"The majority of financial advisers are highly competent individuals with a thorough knowledge of the industry. They have the interests of their clients at heart. These exams are not introduced to catch advisers out but to ensure that everybody is operating with the same level of knowledge and competence," according to Van Pletzen.

He says the FIA has been regularly engaging the FSB on various matters pertaining to the exams.

"The regulator has made it clear that it will not consider scrapping or postponing the exams. In a meeting with the FIA, the FSB said it was closely monitoring

the roll out of the exams and that it may make appropriate recommendations if this process cannot accommodate all affected persons. The FSB also confirmed that it was aware of efforts by new and unrecognised bodies in the industry trying to undermine the spirit of the FAIS Act. The Board is ready to react to any challenge that comes its way by means of legal processes."

Van Pletzen points out that the FSB is willing to assist with translation of the regulatory material into any or all of the official languages, but has warned that costs to the industry would be astronomical. The FIA is still canvassing legal opinion on this matter as well as the consequence for those advisers who do not pass the exams before expiry of the deadline. The FIA is taking these issues seriously and will continue to engage with the regulator once we have a legal opinion," says Van Pletzen.

The deadline for the compulsory level 1 regulatory examination, which tests an adviser's knowledge of the regulations governing the industry, is December 2011, while level 2 exams,

which test specific product knowledge and application is December 2013. Some advisers can be exempted from the level 2 exams based on their qualifications.

Seamus Casserly, president of the FIA, says that intermediaries must realise that the regulator has no intention of deviating from the current regime, which they believe is in the interest of the consumer. Referring to the spirit of the law he adds: "We cannot defend intermediaries who consider their commission income to be more important than the interests of clients. Neither can we excuse those intermediaries who deliberately fail to exercise the necessary degree of care by not researching the appropriateness

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FAIS expert, Anton Swanepoel, addressing one of FIA's workshops.



How to choose an insurer and intermediary

This is part five of the series on long-term investment by Dr Franso van Zyl, chief counsel legislation, FSB

A life policy is an asset against which one can borrow money, excluding retirement annuities (RAs). Money is lent in two ways:

- No-interest loans: If you take out a loan against a portion of your endowment (investment) policy, you are effectively removing your investment from the market. The result is the same as if you had not invested the money borrowed.
- Interest-bearing loans: This type of loan is usually taken against smoothed-bonus policies. In effect you borrow money from the insurer which uses your policy as security and charges you interest similar to banks. Some insurers' interest rates can be quite high, the rates of others are competitive with banks. It may be better to use your policy as security against a loan from a bank, giving you a lower rate. Never take out an interest-bearing loan if you do not plan to pay it back. The loan plus accumulated interest may exceed the surrender value of the policy, and the policy will lapse.

Choosing the insurer and intermediary

Insurance is usually bought at an insurer through an insurance agent or broker. However, one can directly approach an insurer to buy a product.

Insurance agent

As a rule, insurance agents work only for one insurer and make their money

by way of commission.

Insurance brokers

Insurance brokers are not bound to a particular insurer and also make their money mostly through commission. These persons may be licensed to sell any kind of insurance product and are supposed to know where to find the best buy.

Establishing the relationship

Insurance brokers have long been regarded as the agents of their clients on whose behalf they take out insurance cover with an insurer. This relationship is created by agreement or by later ratification. The legal relationship requires the broker to perform his mandate in the interest of the client. This relationship needs no formalities and can come into being by writing, verbally or tacitly by conduct. The broker then exercises skill and care in performing the activities of affording the insured effective cover, in selecting a reputable insurer.

Application of FAIS Act

Insurance intermediaries (agents and brokers) whether acting as mere salespersons or financial advisers are in terms of the Financial Advisory and Intermediary Services Act, 2002 (FAIS Act), subject to fit and proper testing and a code of conduct.

The local life insurance industry has earned the reputation of being ahead of many countries in various respects. Despite this, the industry is still

unfortunately being perceived by some as an industry employing individuals with questionable ethical and moral values. Several have been renowned for their hit-and-run tactics. A favourite "hit" is luring the public into insurance savings plans requiring high premiums regardless of suitability or investment potential. The intermediary can explain that it is easy to reduce the premium if there is a decrease in monthly income, but neglects to mention the penalties involved. Several assured people have been persuaded to take out cover without properly understanding what the policy means, while the intermediary earns a high commission.

A common evil has been misrepresentation to clients, especially when expectations do not materialise. This is due to a lack of integrity and knowledge about insurance products, the insurer concerned and ethics. Of concern in the past was the lack of proper screening and control of so-called "independent" brokers entering the market and obtaining contracts from insurers. It is expected that the FAIS Act will reduce this.

Insurance intermediaries are obliged in terms of the FAIS Act to disclose commissions. The investor is also entitled to disclosure of how much of the premium is taken up by charges and expenses. The investor should get a rough indication how much total overheads - including commission and administrative costs - will reduce the rate of return on his investment. Further items for disclosure include:

- A description of the benefits and risks of the product;
- The effect of any costs on cash pay-



(Part 5)

outs, both at maturity and if you cash in the policy early; and

- Whether the intermediary is tied to a single provider or is an “independent” broker.

Be on your guard if you are immediately steered towards one insurance product with no other options. Even if the broker has done a detailed fact find, ask for specific comparisons with other insurers when the broker recommends only one or two insurers.

The broker's duties

A broker has at least seven main duties which may be affected by the term of a mandate received from a client and which are subject to the FAIS Act:

Performance

A broker should perform his mandate fully and expeditiously. A broker must follow instructions. Being expeditious is essential as a broker may be liable if he allows unreasonable time to pass between the acceptance of the mandate and a circumstance causing

the loss sought to be insured against. To avoid liability, a broker would have to prove that the insurer would not have accepted the insurance, or if it had done so, would have repudiated it. A broker will not be liable for damages for failure to obtain a policy which would have been void because of illegality or immorality. The mandate between a broker and client can be terminated at any time by either party.

Care and skill

A broker must exercise care and skill in performing instructions. The degree of care will depend on the circumstances of each case, but it is clear that professional skills are necessary. A broker filling in an application form for a client, owes a client a duty of care to ensure that the answers to the questions are recorded. The broker normally does not owe the client a duty to ensure the answers are correct.

Notification

A broker must notify an insured within a

reasonable time whether the insurance has been granted. If the client is uninsurable, the broker should notify the client as soon as possible.

Disclosure

A broker must disclose to the client any information relevant to his interests including information as to the costs of the policy. This duty applies during, before and after the acceptance of the client's mandate.

Good faith

A broker must show good faith in all dealings with and on behalf of an insured. He may not make a secret profit out of any information belonging to the insured. This includes an obligation to maintain secrecy and not disclose clients' information to third parties.

A broker must keep clients' money and property separate from his own and deliver to the client any property in his

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How to choose... from p 17



possession whether entrusted to him originally or acquired while performing his mandate. The broker must also take steps to protect the insured's interests, i.e. the broker will not usually be entitled to cancel a policy.

Giving advice

Anyone giving advice must exercise reasonable care and skill, always acting in the client's interest. Giving financial advice is one of the most important functions of insurance brokers. The broker is therefore expected to have a basic knowledge of the FAIS Act and insurance law, understand insurance policies and be reasonably familiar with the market.

Client queries should also be accurately transmitted to the insurer. Failure in this regard would amount to negligence if the client suffers loss.

Financial advice not connected with insurance

Salespersons in the insurance industry often call themselves financial advisers as insurance is rarely detached from investment questions, but also because it makes them sound more

authoritative.

As long as the public is aware of the intermediaries' limitations and that they are often qualified to advise on insurance only, no problems should arise. But the use of the name "financial adviser" often deceives. Fortunately with the FAIS Act, financial advisers are not only licensed in respect of products applied for but are obliged to inform the client accordingly.

Investors should choose their financial advisers carefully, making sure they are licensed as financial services providers (FSPs) or as representatives of FSPs under the FAIS Act, having met the prescribed fit and proper requirements. Claims can be made free of charge to the FAIS Ombud in case of FSPs and their representatives, and to the Ombudsman for Long-term Insurance in case of insurers not subject to the jurisdiction of the FAIS Ombud also known in another capacity as the statutory ("catch-all") ombud.

Damages

The principle governing the measure of damages is that the person claiming damages should be put in the position he would have been in if the broker had discharged his duty. In claims against brokers, damages claimed are usually the amount that would have been payable by the insurers for the broker's breach of duty.

Factors when choosing an insurer

Compare the premium rates and the rate of bonuses paid out on life policies in previous years by insurers offering similar policies. Look at the figures for the future, but remember they are estimates. Pay particular attention to the assumptions on which the estimates are based.

Compare the terms of the policies and the possible surrender values before they mature. Look out for special

conditions and restrictions. Try to ensure that there are as few conditions as possible attached to the policy. Some policies exclude, e.g. people who are a health risk, have a dangerous occupation or commit suicide.

Although insurers expect clients to observe the utmost good faith, insurers often fail to design comprehensible policy contracts and neglect to disclose material issues early.

Buying life insurance by mail

Buying life insurance by mail has become a growing business. It is also likely to be accompanied by an equal growth in the number of inappropriate



products sold. Furthermore, applicants can become victims of small-print limitations, provisos or exclusions, as policies are not properly explained.

The aim is an immediate sale by way of marketing material designed to evoke emotional reaction based on fear or making great money. One should be especially careful of increasing retirement annuity contributions without first checking whether one is entitled to the full tax relief on such contributions.

Be careful of being tempted to purchase long-term investments without due consideration for your short- or medium-term needs. Look out for becoming a victim of small-print limitations.

Completing the application form

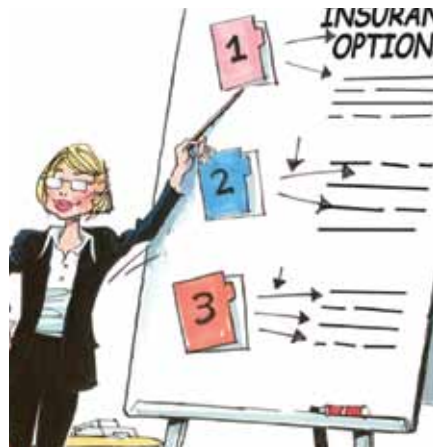
There may be a temptation when taking out life insurance not to declare an existing medical condition as this might load premiums. Any false statement or omission of important information may give the insurer the right to refuse payment. A life insurance contract requires good faith in all dealings. The contract is priced with reference to the insured's life expectation and likelihood of becoming disabled while the policy is in force.

Do not attempt to mislead the insurer about personal circumstances to pay a lower premium. If you have entered the contract fraudulently, it will invalidate the policy and the consequences could be severe for you and your family.

Great care should be taken in answering questions about past health or proposals which other companies might have accepted. If there is any doubt, answer "not to my knowledge" rather than "no".

The insurer usually wants to know about the applicant's health habits (smoking and drinking) and history of health. The applicant may also be asked to undergo a medical examination, usually at the insurer's expense. Such information is regarded as material to the contract. If the insured's profile differs materially, an extra premium will be charged for the extra risk to prevent other policyholders from subsidising these with abnormal risk profiles, or the applicant will be declined.

Once a person is rejected or accepted with a loaded premium - that is, a higher than the published rate for his age - his name is placed on a list shared



by all insurers.

This does not necessarily mean the applicant will also be rejected or charged a higher rate by other insurers. They may decide to investigate the matter thoroughly or impose special conditions.

The issue of non-disclosure or false statement can be complicated where an intermediary is involved as answers are often written on the form by the intermediary - and the applicant may sign the form without checking the information.

But who is to blame for incorrect information? This is a grey area. In

principle, a broker is usually regarded as being the agent of the applicant while an agent is considered to be acting on behalf of the insurer. But when completing an application form, the intermediary is considered as the applicant's agent.

Some insurers have a statement on the form that the intermediary is acting on the applicant's behalf and that any answer is deemed to be that of the applicant.

Fortunately, this problem arises rarely. Insurers tend to adopt a lenient attitude towards such disputes, usually looking for reasons to pay. But it is a risk one should try to avoid.

As a contract of good faith, the information on an application form is confidential between the insurer and those who provide the information. Not even the insured's family has a right to it. If the insurer requests the insured's doctor to provide information this is not revealed to the insured, although the insured may ask the doctor to do so.

(To be continued)

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of their advice. The FAIS Act, and subsequent examinations, are an attempt to prevent such practices and it cannot be disputed that an informed, experienced intermediary adds immeasurable value to the process.

"Continuing education is a requirement of many vocations and given the importance of a financial adviser's role to consumers, it is a reality that intermediaries will always need to learn and adapt. Advisers have one position only, which is to represent clients in a fair and honourable manner and should this require further effort, we must act accordingly."

Cassery says that the FIA does not take the effect of the regulatory

examinations lightly and is co-operating with a number of organisations to offer workshops and assistance to all advisers to enable them to navigate their way through the examination process as smoothly as possible. "Feedback received from members who attended workshops, presented by financial expert and trainer, Anton Swanepoel, has been extremely positive. A noteworthy comment is now that they have a better understanding of how to prepare for the exams in a structured manner, the fear for the exams has disappeared. Many advisers who have already passed the exams, irrespective of their age or home language, confirm that the exams are not the obstacle some people believe," he says.

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