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FSB celebrates 20 years of regulation

On 1 April 2011, the FSB celebrated two decades of supervision and regulation in the non-banking financial services industry of South Africa.

"The FSB assumed its functions following the recommendations of the Van der Horst Committee. The Financial Services Board Act, 1990, was promulgated on 11 July 1990 and it provided for the establishment of the FSB on 1 April 1991," reminisces Gerry Anderson, chief operations officer at the FSB.

"Before its existence, these functions were performed by the Office of the Registrar of Financial Institutions, which was a division of the Department of Finance, now National Treasury," he says.

The FSB is responsible for ensuring that regulated entities comply with legislation and capital adequacy requirements for financial soundness, thereby protecting the investing community. It regulates and supervises pension funds, friendly societies, long-term and short-term insurance, capital markets, collective investment schemes, and financial advisers and intermediary services. This is done in terms of 16 pieces of legislation.

Highlights

"We have developed and maintained a strong and effective presence in the regulatory space over the past 20 years in South Africa and internationally, while working closely with our counterparts in Africa," according to Anderson.

He says that the FSB has become an internationally recognised regulator and member of the executives of the International Organisation of Securities Commissions (IOSCO), International Association of Insurance Supervisors (IAIS) and International Organisation of Pension Supervisors (IOPS).

"It is recognised by all regulated entities as upholding international regulatory standards and is seen as an important contributor to furthering financial literacy in our country.

The FSB's work in this area is well documented in a variety of financial literacy, education and measurement materials of the Organisation for Economic Co-operation and Development (OECD). The FSB is also widely acknowledged for enforcing the Financial Advisory and Intermediary Services Act, 2002, (FAIS Act) and for the role that FAIS has played in enhancing consumer protection since 2004.

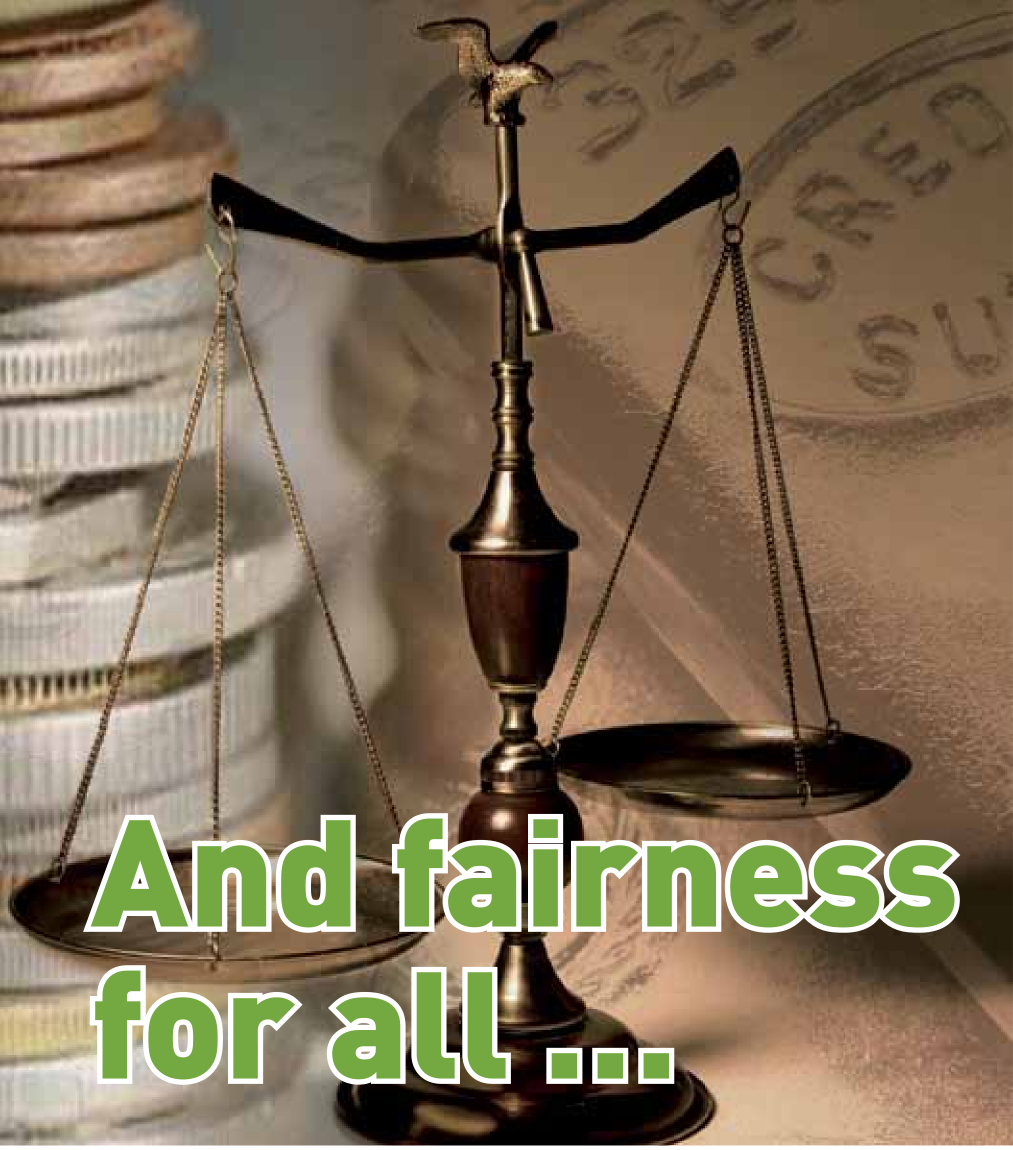
"The disclosure regime of the FAIS legislative framework is regarded by leading regulators, such as the World Bank as being of a high standard. The FSB has continuously improved legislative frameworks in the retirement, insurance, capital markets and collective investment industries.

"Successes include the formalisation of a bond exchange (Besa), the first in the world; the development of a highly sophisticated CSD (central securities depository) structure and clearing house (Strate); the demutualisation of the Johannesburg Stock Exchange; the stimulation of growth of the collective investment schemes industry as a savings mechanism; and the successful oversight of a number of successful curatorships such as Masterbond," says Anderson.

He points out that the FSB has also enhanced its enforcement capabilities and established the market abuse directive, which evolved from the Directorate of Insider Trading and the recent Enforcement Committee. "In this vein, the 1999 legislation to combat insider trading was regarded as state of the art among international regulators."

Anderson says that the FSB will be shaped by the outcome of proposals contained in the so-called "red book" called *A safer financial sector to serve South Africa better*, which was released by National Treasury during March 2011, as well as the adoption of a "twin-peaks" regulatory model in the financial services sector.

"These will see the FSB change to a market conduct regulator and shed its prudential regulatory functions. To all staff members, thank you for your commitment and dedication to the vision of this organisation. To those who have just joined, welcome and to those who have been with us for a while, keep up the good work. Here's to the next 20 years!"



And fairness for all ...

By Anton Swanepoel, counsellor on FAIS

Many years ago I watched a movie, *And justice for all*, starring Al Pacino as a lawyer defending an innocent man who was charged with murder. Pacino had to fight right to the end to prove his client's innocence. What impressed me most is that he risked being debarred in search for the truth and ultimately, fairness.

Replaying Pacino's closing argument, I thought: The fight for truth and fairness was worth it. But why does it have to be so hard?

After 22 years in the financial services industry it seems that the battle for truth and fairness continues and the question remains: Why does it have to be so hard?

There are a number of parties involved in the industry and every stakeholder has its own priorities. To add to the complexity there are powerful forces such as *self-interest, greed* and the quest for *power* that compete against *fairness*.

Over the years the FSB had to intervene between clients, financial advisors (providers) and product suppliers because too many consumers were not treated fairly. Consumer protection lies at the heart of the Financial Advisory and Intermediary Services Act (FAIS Act), 2002, and the Treating Clients Fairly (TCF) initiative currently in process.

The FAIS General Code of Conduct and TCF require that financial advisors and product suppliers treat clients fairly. The drive towards fairness is a clear and common theme in legislation globally.

This trend should be embraced because of the long-term rewards it will bring stakeholders. To fully understand the rewards, one has to consider the meaning of fairness.

Fairness has a number of definitions. It is referred to as the quality or state of being just and unbiased: equitableness, fair-mindedness, justice, justness.[1] Fairness is characterised by honesty and justice and is free from self-interest, deception, injustice, or favouritism.[2]

When buying products, consumers want to be treated fairly. One party should not benefit at another's expense. The long-term reward of treating all fairly is a long-term, mutually beneficial relationship. It is a pity that so many people miss out on this because they focus on short-term gain.

At its core, the FAIS Act and TCF have exactly this goal – to establish fair and sustainable professional relationships. It will serve advisors and product suppliers well to remember that: *Fairness is not an attitude. It's a professional skill that must be developed and exercised. Brit Hume.*

Under FAIS, advisors must always render services honestly and *fairly*. At first this appears to be a one-way obligation — advisor to client. In terms of TCF the title speaks for itself. This also appears as a one-sided obligation — product supplier to client.

The reality is that there are usually three main stakeholders involved when financial products are sold. Fairness can never be one-sided and sometimes there are even more parties involved.

It must always be remembered that *fairness* implies a win-win situation for all. The main stakeholders are interdependent and as a result one has to consider fairness from all sides. A win-loose relationship can only be temporary.

The main stakeholders involved when financial products are sold are clients, financial advisors (financial services providers) and product suppliers.

The concept of fairness should apply to *all*.

Let's take a look at the different relationships between the main stakeholders. It gets even more interesting if linked investment services providers (LISPs) and underwriting managers are involved. However, we will only focus on the main stakeholders' relationships for the purposes of this article.

Clients

From a client's perspective there are two important relationships:

- The client - provider/advisor relationship, where the General Code of Conduct demands fair treatment of the client by the provider/advisor.[3]
  A provider must at all times render financial services honestly, fairly, with due skill, care and diligence, and in the interests of clients and the integrity of the financial services industry.[4]
- The client - product supplier relationship, where TCF demands fair treatment of the client by the product supplier.[5]

Financial services providers/advisors

The FAIS Act recognises the principle of fairness as it demands fairness from advisors in the way they treat clients.[6] The Act also makes provision for the granting of costs, including costs against a complainant (client)[7] in favour of the respondent (advisor)[8] if in the opinion of the Ombud -

- the conduct of the client[9] was improper or unfair;[10] or
- the client[11] was responsible for an unreasonable delay in the finalisation of the investigation;

provided that an amount payable under a cost award bears interest at a rate from a date determined by the Ombud.[13]

Not many advisors are aware that the FAIS Act and the General Code of Conduct make provision for the *fair* treatment of the client *and* provider. This privilege is only available to providers on a "use-it or lose-it" basis. If the advisor complied with the provisions of the FAIS Act, the legislation works in his or her favour. Most advisors see the legislation as a list of requirements, not realising that the many sections in the Act and Code of Conduct that protect the interests of advisors.[14]

For example: Providers are not expected to render free services. They may receive a fee and/or commission, but are required to disclose their remuneration.[15] However, clients are not always blameless when relationships fail. Many clients expect everything for nothing and simply do not want to pay for advice. Some journalists add fuel to the fire by focusing on fees at the expense of quality advice. As there are many providers of financial products in the value chain, it may appear that the advisor is the culprit when it comes to total cost to client, which is not entirely fair. Perhaps the TCF could adhere to fair princiles when it comes to total cost to clients.

Many investments and policies are replaced without considering the implications for the previous advisor. Some clients complain simply because they can.

Fortunately the Ombud's objective is to consider and dispose of complaints in a fair, informal, economical and expeditious way and by reference to what is *equitable in all circumstances* regarding -

- the contractual arrangement or other legal relationship between the complainant and any other party to the complaint; and
- the provisions of the Act.

Equitable means to be *fair* and reasonable; treating everyone in an equal way.[16] There is a legal obligation on the FAIS Ombud to treat every advisor and client fairly and reasonably (in an equal way) in all circumstances, which should give advisors confidence in the system.

When advisors propose financial products, they depend on the quality and sustainability of the product as promised by the supplier. Many advisors have been disappointed when financial products fail and hopefully the TCF principles when implemented will reduce this in future. When products fail, not only are clients treated unfairly but also advisors.

The TCF initiative could be instrumental in the establishment of aligned, mutually beneficial (fair) relationships between clients, advisors and product suppliers in the financial services industry. As most products are sold through financial advisors, the role of the advisor should also be considered.

Product suppliers

TCF aims to place certain obligations on product suppliers to design, market, advise and communicate with clients in a way that treat them fairly. The policyholder protection rules will experience a significant positive impact as a result of this initiative. TCF can almost be seen as the FAIS Act for product suppliers as FAIS and TCF aim to achieve fairness between contracting parties. Therefore the architects of TCF have a unique opportunity to include some of the sound principles already included in FAIS in TCF.

If we truly want to make a positive difference, we should be more focused on achieving fairness to all parties in the financial services industry, because it promotes mutually beneficial, sustainable, long-term relationships.

*Though force can protect in emergency, only justice, **fairness**, consideration and cooperation can finally lead men to the dawn of eternal peace.*
Dwight D. Eisenhower

References

[1]See http://www.answers.com/topic/fairness
[2]See http://wiki.answers.com
[3]See section 2 of the General Code of Conduct
[4]See section 2 of the General Code of Conduct
[5]See the principles contained in TCF
[6]See section 2 of the General Code of Conduct
[7]My insert
[8]My insert
[9]My insert
[10]My insert
[11]My insert
[13]See section 28(2)(b)(iii) of the FAIS Act
[14]See sections 2, 3(1)(d), (e) and 8(2) of the General Code of Conduct
[15]See section 7(1)(c)(vi) of the General code of conduct
[16]See Oxford Advanced Learners Dictionary, Oxford University Press 2005, p 493

Brian van Flymen

FIA co-hosted conference for insurance industry

"Co-hosting *The Insurance Conference* with the Insurance Institute of South Africa (IISA) and the South African Insurance Association (SAIA) has provided a broad platform for insurers, intermediaries and regulators to engage in constructive debate, in an open forum, on the most pressing issues facing the industry today," says Brian van Flymen, president of the Financial Intermediaries' Associaiton (FIA).

Local and global issues

"The event has enabled us to more clearly articulate current local and global issues from an intermediary's perspective. FIA welcomes all initiatives aimed at protecting the consumer and restoring confidence in the financial services sector.

"This is amply demonstrated by FIA and our members embracing the FAIS regulatory exam process. We also welcome the impending Treating Customers Fairly legislation, which will ensure that financial services products are serviced throughout their lifespan.

"The acquisition of intermediated financial services should be an inalienable right for citizens and one hopes that the increased legislation will find a balance, that does not preclude the 'person in the street' from availing themselves of such services.

Asymmetry

Most thesis on insurance, at least in the short-term environment, begin with the issue of asymmetry of information.

The insurer knows more about underwriting and the insured knows more about the specific risk to be insured.

FSB launches free online education programme for retirement fund trustees

The FSB launched a free online education programme, known as the Trustee Toolkit (TTk) in response to the identified need for the education and development of retirement fund trustees.

The toolkit provides trustees with information, practical guidelines, case studies and access to online support and allows them to navigate at their own pace through the learning material. On successful completion of the programme, trustees will be in a position to perform their duties more efficiently and effectively.

The Trustee Toolkit programme consists of three modules, which are based on the principles of good governance and sound decision-making. Each module comprises tutorials, case studies, reference materials, assignments and a formative assessment. On successful completion of each of the modules and the summative assessment, the trustee will receive a certificate of completion. The FSB's Consumer Education Department is the custodian of the toolkit and there is no cost to participants.

Anyone interested in participating can register and use the toolkit programme. For more information on the trustee toolkit programme email: trusteetoolkit@fsb.co.za or visit www.trusteetoolkit.co.za.

Source: FSB Media Release, 17 August 2011

Good external communication starts with good internal communication

Before an organisation can successfully address external stakeholders, internal communication should be streamlined, says Tembisa Marele, the new head of the FSB's Communication Department.

And yes, she is that familiar face you see on television on Sundays but, she says, "I've never considered myself a celebrity. I'm a communicator. Being at the helm of the FSB's communication efforts fuses most of my passions".

Tembisa wants to showcase the positive role the FSB plays as regulator in the financial fraternity. "We will have to streamline all the great ideas from the various departments. I believe that we must talk effectively with each other before we can talk to the world."

Born and raised in Alice and Mthatha, Tembisa's family later moved to Port Elizabeth where she obtained a BA in psychology and public administration at the Nelson Mandela Metropolitan University. A new course introduced at the university, however, changed her destiny. "A new course in media studies was introduced and I was invited to join. This was quite an honour as the department only took 12 students. My parents were always discussing the news and topical matters of the day. I think this is where my love for news and interest in the media originated."

This was not an easy decision, though. "I was determined to become a psychologist, I love working with people. But, on my way to register for an honours' degree in psychology, with all the documentation and reference letters tucked under my arm, I stopped in the hallway. And then my future changed. I realised I wanted to pursue a career in the media. So I threw the psychology documents into the nearest dustbin and decided to register for media studies." And she has not looked back.

Media career

Tembisa's media career has included jobs at the *Evening Post* and the *Herald* in Port Elizabeth and later a position at a community radio station in the city.

Her move to Johannesburg was not the typical "Jane-comes-to-town story", she says, but a deliberate move to learn more about the industry she had chosen. She studied at the National Electronic Media Institute of South Africa (Nemsa) in Parktown and two degrees and a diploma later she joined SAFM, producing various radio shows. When the producer of the financial news slot was leaving the station, Tembisa was offered the position, and this led to her entry into financial journalism. "I was literally thrown in at the deep end."

Tembisa Marele

But after a handful of courses she found her feet. Television was the next step. She spent two years at the SABCAfrica News Desk and later joined SABC3 to present and produce an early business slot. "I had to get up at three o'clock in the morning and had to go to bed when other people prepared for a night out on the town. No social life, of course."

Lunchtime business news followed and Tembisa was by now a fully-fledged senior financial journalist. In the meantime she also completed an MBA. This she achieved while being pregnant. (On her way to write the second of her final two exams, she quickly stopped at her gynaecologist who said she would have to write the exam later. She was already in labour.)

Let's talk

Tembisa has not left the news world all together and is still presenting a television show Sunday nights on SABC3, *Asikhulume, Let's talk*.

Family life has changed her priorities, she says, and she tries to spend as much time with them as possible. Reading, music, cooking, and playing with her

Continued on p 19

Group-wide supervisory regime for insurers

By Johan Heyneke, project manager: Insurance Prudential

The FSB performs prudential and market conduct supervision of registered insurance companies and other financial institutions on a solo basis only (i.e. supervising each licensed entity separately). While the major insurance groups voluntarily provide information at a group level, there is no formal requirement to do so, nor are there any regulatory requirements for group reporting.

The FSB is developing a new risk-based solvency regime for South African short- and long-term insurers, known as the Solvency Assessment and Management regime (SAM), to align the operation of the South African insurance industry with international standards.

SAM will be based on the Solvency II capital adequacy, risk governance, and risk disclosure regime being implemented for European insurers and reinsurers. SAM will share the same broad features as Solvency II, being a principle-based regulation based on an economic balance sheet. It will utilise the same three-pillar structure of capital adequacy (Pillar 1), systems of governance (Pillar 2), and reporting requirements (Pillar 3).

Effective supervision of insurance groups is an essential element of a third country equivalence assessment under Solvency II, hence a regulatory framework for insurance group supervision will form a critical part of SAM. Given the urgency around the issue of effective group supervision that was highlighted by the recent global financial crisis, interim measures for the supervision of insurance groups in South Africa will be introduced as early as 2012.

Why a group-wide supervisory regime?

The FSB must have a comprehensive view of the overall risk exposure of South African insurance groups and financial conglomerates, especially the potential effect on the regulated entities operating within South Africa. It is also important for the FSB to understand the potential impact from the wider group on South African regulated entities where these entities are part of an internationally-based insurance group or financial conglomerate.

The International Monetary Fund (IMF) and the World Bank regularly assess South Africa's regulatory and supervisory regime in terms of a financial stability assessment programme (FSAP). The FSAP benchmarks the South African regulatory and supervisory regime against international standards. In the case of insurance regulation and supervision, these international standards are contained in the International Association of Insurance Supervisors (IAIS) Insurance Core Principals (ICPs). One of the major shortcomings of the current regulatory and supervisory regime for insurers, as noted in the 2010 FSAP, is the lack of a group-wide regulatory and supervisory regime.

The FSB is therefore committed to adopting a group-wide regulatory and supervisory regime so as to align South African insurance supervision with the requirements of the IAIS and recommendations for international good practice.

The Long-term and Short-term Insurance Acts will be amended to provide for the necessary regulatory powers and legal authority to carry out group-wide supervision. This includes the ability to cooperate and coordinate with other relevant supervisors on a cross-border and/or cross-sector basis, as well as the ability to share information.

Defining an insurance group

A group is considered to be an insurance group for the purpose of group-wide supervision if there are two or more entities of which at least one is an insurer and one has significant influence on the insurer.

Some insurance groups may also be financial conglomerates.

An insurance group is considered a financial conglomerate if it consists of a group of companies conducting insurance activities and financial activities either:

- In at least one of the other regulated financial sectors; or
- In at least one non-regulated financial sector to the extent that the financial activities in that sector are not subject to group-wide/consolidated supervision by sectoral frameworks.

Group-wide regulatory framework

The regulatory and supervisory framework applied to insurance groups will, in accordance with the proportionality principle, differ depending on the type of insurance group. The supervisory approach will not replace solo supervision but will be an extension thereof.

The group-wide regulatory framework addresses:

- Transparent group structures - For effective group-wide supervision, it is important for the supervisor to understand the insurer's group structure appropriately. An insurance group should make and keep its group structure transparent in order not to impede effective group-wide supervision. Supervision will take into account the individual structure and character of each group;
- Non-operating holding companies (NOHCs) - Authorising a NOHC will achieve an easier application of fit and proper, internal control and risk management requirements if governance, strategic direction and senior management are concentrated at NOHC level. It will also enhance information access, supervisory review and supervisory enforcement. The intention of group supervision is not to apply solo supervision to the NOHC but rather to hold the NOHC accountable for the financial position, governance and risk management of the group;
- Group-wide solvency - A group-wide solvency assessment determines whether the management of risk and capital for the group is adequate, especially to the extent that the group conducts activities that may adversely impact on the financial/solvency position of insurance entities within the group. It covers other important issues such as investments in affiliated entities, intra-group transactions, risk exposures and double gearing of capital.

  The insurance group solvency requirement is not intended to replace the solvency requirements of the solo entities; however, it does assist in evaluating whether the amount and quality of capital is appropriate given the level of risks present within the insurance group;
- Group-wide governance - Ensuring that insurance groups have appropriate governance, risk management and internal controls suitable for their nature, size and complexity; and determining appropriate fit and proper requirements for the group's board of directors, shareholders and senior management will be addressed within the mandate of Pillar II of the SAM project and included in the interim and the final SAM measures for governance;
- Group-wide market conduct - Group-wide market conduct is concerned with how insurers within a group and/or the group as a whole conduct their business activities, especially regarding the fair treatment of customers and appropriate disclosures to the public. Market conduct issues may relate to reputational and contagion risk. These issues will be addressed in the final SAM measures, incorporating recommendations arising from the Treating Customers Fairly (TCF) process; and
- Reporting requirements - Relevant, comprehensive and adequate information needs to be disclosed on a timely basis to give market participants a clear view of the business activities, performance and financial position of insurance groups. This will enhance market discipline and understanding of the risks to which an insurance group is exposed and the manner in which those risks are managed.

Information exchange, cooperation and coordination with other supervisors

An important component of a well-structured group-wide supervision regime is the ability and authority to exchange key information between supervisors. With the implementation of the interim insurance group supervisory regime it will be necessary to cooperate and coordinate with other supervisors on a cross-border and/or a cross-sector basis. This will allow for the exchange of information, views and assessments among supervisors to allow for a more efficient and effective group and solo supervision and timely supervisory intervention.

Conclusion

It is important that insurers assess the full effect of the interim group supervisory requirements and determine the most appropriate response to them, in light of their specific objectives and preferences. The variety of group supervisory approaches means that there are regulatory considerations for groups to consider, making it vital that groups understand the consequences and plan now for group supervision.

Recognition of Prior Learning

A promise that did not deliver?

By Charene Nortier and Stefanie Mackenzie, FSB

The FSB conducted research to establish the extent to which Recognition of Prior Learning (RPL) was used in the financial services industry as a result of the FAIS requirements. The research also investigated the success thereof and whether it would be used again.

The Financial Advisory and Intermediary Services Act (FAIS Act), 2002, brought a mind shift in the financial services industry regarding qualifications. The FAIS Act prescribes that financial services providers (FSPs) must be competent to provide financial services to clients. FSPs fulfill specific roles in terms of the legislation. They need to meet competence requirements, which are further expanded on in subordinate legislation, such as the Determination of Fit and Proper requirements.

Some role players in the industry could not meet the "entry level qualification" requirements of FAIS, although they had been functioning in the industry for many years. Others were unable or reluctant to enroll for formal qualifications that would meet the "appropriate qualification" requirements.

From 2002 to 2004 and even later, Recognition of Prior Learning (RPL) was used in the training and development fields to attract role players in the industry, promising that RPL would be an "easy" alternative to formal studies. The FSB is of the view that RPL is quite probably a promise that did not deliver. The regulator would not want to support a process that is not realistic and achievable for role players. The FSB therefore conducted research to establish the extent to which RPL was used in the financial services industry as a result of the FAIS requirements, the success thereof and whether it would be used again.

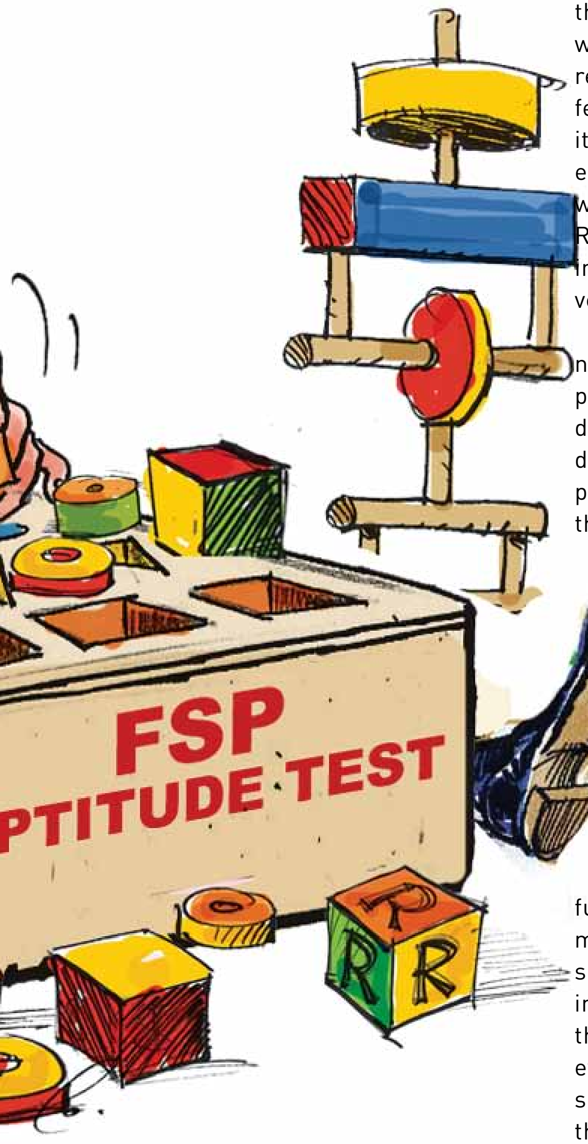
Research methodology

Research was conducted to investigate how RPL was used within the banking, insurance, wealth management, health services and investment management sectors of the industry. The primary sample consisted of two SETAS in the industry that have been actively involved in the qualification process; seven medium to large banks; six large insurance companies; five large industry associations; and five large independent compliance practices. The secondary sample targeted 130 000 people who are either key individuals or representatives, of the two regulated roles. The survey was made available to institutions and individual role players.

Conclusions

There are definite correlations between the responses from the two samples. Older participants were often those that found the most benefit from RPL processes, as RPL recognises their experience and knowledge.

Fifty-seven percent of the



participants were unable to choose the language of their choice, 37% chose English and 6% Afrikaans. There are thus restrictions in terms of RPL. However, although people could not exercise a wide range of choices regarding their language preference, the fact that RPL was mostly conducted in less "academic" language made it more accessible to learners. This is an important factor when one takes into consideration that most RPL candidates were older and did not have an academic track record.

Support during the RPL process seems to be a problem as 34.2% of the respondents indicated that they did not receive support and guidance from the training provider. Another 22.1% were unsure about the support they received. When this is seen against the feedback from the primary sample, it is a concern. The primary sample emphasised that support for learners was crucial to the success of the RPL process, yet the feedback from individuals indicated that they received very limited support.

Responses show that people did not necessarily enroll for RPL because of pricing. The majority of participants did not know whether there is a price difference between standard learning programmes and RPL. The reason why they did not know the difference is unclear. This may highlight the need for more transparent pricing options to ensure that learners are better informed about pricing and what they are paying for.

An overwhelming 62% of participants paid for RPL themselves, which could indicate the importance of reasonable pricing. Only one percent received funding from the SETA, showing that more can be done to provide financial support to learners who are interested in using RPL as a method of furthering their studies. Access to funding or even knowledge about funding also seems limited. This may be an area for the SETAs to consider in future.

The response to whether participants will use RPL again was positive with the majority (55%) indicating that they will use it again.

According to the primary sample, RPL worked well for learners who dislike writing exams. This is interesting because the methods of assessment used for RPL were predominantly exams – i.e. the responses indicate that various methods of assessment are used during the RPL process. A combination of assignments, portfolios of evidence (POE) and examinations is the most predominant method of assessment (33%), with writing examinations and submitting assignments only (excluding POE) being the second most popular method of assessment (30%).

Most participants made use of independent training providers to assist them with the RPL process (47.8%). This shows that independent training providers require significant support from SETAs due to the important role they play in implementing RPL. From the primary sample's feedback it is clear that training providers (both internal and external) feel frustrated with the SETA processes, and actually experience that the SETAs make it hard for them to provide services such as RPL. Similar sentiments of frustration were expressed about SAQA and Higher Education in particular. This could be a definite area for the SETAs, SAQA and other role players such as the Departments of Education to address.

RPL was used and is still being used within the financial services industry for the purpose of meeting the FAIS requirements. The use of RPL provided mixed results – in some instances it worked well, and in others it did not. Fifty-five percent of respondents will use RPL again, which is more positive than negative; however, there are a number of areas that need further work for this to be sustainable.

Imperfect FAIS compliance

In the article "Imperfect FAIS compliance — cause and effect" in our previous issue, the sentence under the sub-heading *Needs analysis, disclosures, feedback* (p. 7) must read as follows:

The needs analysis should include issues such as suitability and affordability and should **not** only include a financial needs analysis.

Consumer education

Learners flex their financial muscles

Cebiswayimfundo Mnguni of Estcourt High School won the 2011 Grade 11 Provincial Speech Contest on Finance in KwaZulu-Natal. A total of 12 grade 11 learners competed at school, circuit, ward and district level to make the finals that took place in Port Shepstone on 13 September. As from next year the competition will be extended to the other provinces.

It is designed to create awareness of consumer rights and available support systems. Other aims are to promote careers in the financial services industry, introduce insurance as investment, integrate theory and practice in the National Curriculum Statement and create awareness of the activities of the KZN Financial Literacy Association.

Provincial winner, Mnguni, was overjoyed as he scooped a bursary, trophy, certificate and a Post Bank savings account with R300 cash. In addition, he won a music system, television and DVD player for his school. "It was a roller-coaster indeed. My sleepless nights paid off and eventually I managed to pull through. I would like to thank my parents, teachers and all who assisted me to win," he said.

Mnguni chose the topic of how regulators protect consumers. Participants also had a choice between the following topics: *How do I protect my money; The Financial Services Ombudsmen; and The responsibilities of consumers*.

Lungile Mkhwanaze of Nohlevu High School in Ilembe came second, followed by Saiesha Bachu of Lincoln Heights in Newcastle. All the finalists received certificates, laptops from PC Training and Business College, a Post Bank savings account with R300 cash, as well as financial training for learners at their schools.

Speaking at the function, KZN MEC for Finance, Ina Cronjé, also champion of the KZN Financial Literacy Association, said that the competition is an opportunity to strengthen the Association's aims to

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Waiting for photograph from KZN

Consumer education

JSE partners to improve financial literacy

The Johannesburg Stock Exchange (JSE) has partnered with the South African Reserve Bank (SARB), the Financial Planning Institute (FPI), the South African Savings Institute (SASI) and the National Credit Regulator (NCR) to improve financial literacy among South Africa's youth.

National Youth Financial Literacy Day, to be held annually, follows July's national savings month and forms part of the JSE's project aimed at growing the economy by taking financial knowledge and literacy to young people.

"As part of the focus on financial literacy, the JSE has an agreement with several provincial Education Departments through which it provides courses to learners and teachers about banks, savings, investment and related topics," says JSE executive, Noah Greenhill. "We have succeeded in making this part of the syllabus in some provinces. This forms part of a drive to develop an investment and savings culture in South Africa. The bulk of domestic investment is still financed by its own citizens. In recognition of this, we have implemented initiatives to educate the wider public about the world of investing," adds Greenhill.

The JSE and various partners held the full day event on 11 August 2011 at the Sandton Convention Centre for the benefit of young people wanting to know more about money matters. Given recent world events, the importance of investing and sticking to a long-term plan is vitally important for the youth.

Knowing, for example, how to use credit wisely is critical, especially for the increasing number of youth headed households. Credit Bureaus' records show there are 18.6 million credit active consumers across the various age groups with 46.4% having impaired records.

"If one is financially smart, one can use credit successfully. Saving instead of spending without a budget and life plan, not being seduced by instant gratification, avoiding taking on unnecessary credit, and paying well in terms of any credit that is taken on – all these habits make for highly desirable consumer behaviour and will also benefit credit providers and the economy," says Darrell Beghin of the NCR.

South Africa still has a dismal savings rate, especially at household level (0.2%/GDP). Elizabeth Lwanga-Nanziri of SASI points out that a high savings rate is desirable for sustainable growth of a nation and to fight poverty and household vulnerability.

The Global Competitiveness Report for 2010/11 notes that South Africa's gross savings rate was 16% of GDP in 2009, compared to China's 52%, India's 37% and Russia's 22%.

"This low savings rate, especially at household level has got negative spill-over effects, leading to an increased burden on the state to provide safety-nets. Despite the introduction of the National Credit Act in 2007, many South African consumers face the challenges of high indebtedness and only education and a change of attitude will change that," says Solly Keetse, chairperson-Elect of the Financial Planning Institute. "I am confident that this Financial Literacy Day will make an important contribution to the improvement of the general understanding of financial and economic matters," adds Jannie Rossouw of the South African Reserve Bank.

Life policies

All you need to know

By Dr Franso van Zyl, former chief counsel: Legislation. FSB

This is the last article in our series on long-term investment. This article discusses matured policies, how to claim on a life policy and the role of the Life Insurance Ombudsman and FAIS Ombud.

Matured policies

The following options are avaialble to you when your life policy matures:

- Discontinue paying the premiums, but keep the money invested in the same portfolio. Find out whether you will incur any charges and how long your money will be invested.
- Extend the policy in the same investment and continue to pay premiums. There are costs involved and you may have to sign up for a specified period. If you have a smooth/stable bonus portfolio, find out whether all the bonuses in the past will "vest" if you extend the policy.
- Extend the policy on a paid-up or premium-paying basis, but switch the underlying portfolio. If you took out your policy some time ago you will now have a wider choice of underlying investment portfolios. The insurer may also offer you a guaranteed portfolio to protect your maturity value. Again, make sure what the costs are.
- Extend the policy without paying new premiums and use it for tax-free income. You do not pay tax on the maturity value as the insurer pays tax on taxable income from your investment at a flat rate of 30%. You will benefit if your marginal rate is more than 30%. Insurers also pay CGT on your behalf at a preferential rate of 7.5%, against a rate of 10% which you could be paying. If you leave your money, it will continue to attract investment growth while you can make partial surrenders, giving you a tax-free income. The initial capital can be reserved by making partial surrenders equal to the annual growth. Some insurers may allow you to make a non-interest loan on your policy to provide you with income. This gives you the option to repay the loan later without having to take out a new policy with a minimum five-year period, during which you cannot make tax-free withdrawals.
- Take the maturity value in some other form.
- Sell the policy in the second-hand market.
- Take the maturity value.

How to claim on a life policy

Some legitimate claims are not paid out for many months. A lack of understanding of the process is often the problem. The onus does not fall on the insurer alone. For a claim to be paid out timeously, certain requirements have to be met. If all involved cooperate to attend to these requirements, frustration and delays will be minimised.

The successful claims management process should begin the moment the broker delivers the policy document. Take time to read every word in the document and ask questions. Your broker is there to assist you. It is essential to ensure that the policy you thought you were getting is the one delivered. Satisfy yourself immediately that your policy provides the protection you want.

Secondly, ensure that your will, life policies and all personal documents are stored in a safe place and that your spouse knows where to find them. If you have (wisely) nominated a beneficiary, all payments will be made to this person. Also, if you have nominated beneficiaries, proceeds of your policies do not form part of your estate, except that the proceeds have to be considered for estate duty purposes. The main benefit is that the funds will be available immediately.

Remember that your broker is well versed as far as the correct claims procedures are concerned. Your broker will in all likelihood be available to attend to claim requirements. These normally

include:

- A copy of the death certificate.
- The original policy document (this is a legal document that has to be cancelled).
- Medical report by the family doctor. (If death was due to unnatural causes, e.g. an accident, the police and post-mortem reports will also be required.)

Insurers often refer to the death of the policyholder within the first five years as an "early claim". In the event of an early claim, the claim may be investigated carefully. Thus, prompt provision of the required documents will assist the claims department in its efforts to settle. Insurance companies normally take one week after all requirements have been met to process claims.

Life Insurance Ombudsman

If an assured or beneficiary is not satisfied with an insurance contract, there is another way to seek redress short of going to court - the Life Insurance Ombudsman. Though sponsored by insurers, the ombudsman acts independently and is available to investigate, free of charge, all complaints between the public and insurers. Insurers adhere to his rulings.

When the Ombudsman believes that he is unable to dispose of a complaint, he will refer this to the insurer concerned and will notify the complainant. The insurer and the Ombudsman then consult each other regarding the disposal of the complaint. The Ombudsman may at any time seek expert advice regarding the complaint. The identity of the parties concerned is not disclosed unless the Ombudsman is satisfied that proper consideration of the complaint necessitates disclosure to the expert. The Ombudsman maintains secrecy unless the parties concerned expressly exempt him from this.

The Ombudsman may be contacted at telephone number +27 21 657 5000 or facsimile +27 21 674 0951. The e-mail address is info@ombud.co.za. The physical address is:

Third Floor,
Sunclare Building,
21 Dreyer Street,
Claremont,
Cape Town
7700

Written complaints must be send to Private Bag X45, Claremont 7735.

Financial Advisory and Intermediary Services Ombud

The Financial Advisory and Intermediary Services Act (FAIS Act), 2002, established an Office of the Ombud for Financial Services Providers (FAIS Ombud). The FAIS Ombud is mandated to investigate and adjudicate complaints by clients against financial services providers (FSPs) and their representatives. These complaints could relate to a number of areas of non-compliance with the various codes of conduct promulgated under the FAIS Act, where a financial service has been rendered negligently and where there was misconduct while rendering a service.

The FAIS Act requires that when adjudicating a complaint, the FAIS Ombud have regard to the contractual or other legal relationship between the parties and ultimately do what is equitable in the circumstances. Compensation could vary from ordering the complainant to be placed in the position in which he or she would have been had it not been for the misconduct of the FSP or representative, or it could be to simply correct a misunderstanding. It depends on the circumstances of the case.

The FAIS Ombud can accept a complaint for investigation if the complaint relates to a financial service that was rendered on or after 30 September 2004. The maximum amount of the alleged loss or damage must be R800 000. Since 1 April 2005, the FAIS Ombud can also act as the Statutory Ombud in terms of the Financial Ombud Schemes Act, (FSOS Act), 2004. In terms of the FSOS Act, the voluntary ombudsmen established by the financial services and banking industry enjoy recognition. However, what is important is that the Statutory Ombud can adjudicate a complaint where the existing voluntary ombudsmen do not enjoy jurisdiction or where there is uncertainty over jurisdiction. If a case cannot be settled through mediation or conciliation, the FAIS Ombud may issue a determination. A determination is deemed to be a judgment of a court.

The FAIS Ombud can be contacted at telephone number +27 12 470 9080 or facsimile + 27 12 348 3447. The e-mail address is info@faisombud.co.za. The physical address is:

FAIS Ombud
Eastwood Office Park
Baobab House
Ground Floor
Lynnwood Ridge
0081

Written complaints must be send to P.O. Box 74571, Lynnwood Ridge 0040.

There is also a central telephone number that will connect you with any of the Ombuds' Offices: 0860 662 837.

FIC urges financial services providers to register

The Financial Intelligence Centre (FIC) reminds all financial services providers (FSPs) to urgently register with the centre in terms of section 43B of the Financial Intelligence Centre Act (FIC Act), 2001, as amended.

The registration period already ended on 1 March 2011 and those who have not registered yet, should do so urgently. Late registrations closer to the deadline of 1 March will be seen more favourably, as sanctions will soon be issued for late registrations.

FSPs must note that the description of the accountable institutions in Schedule 1 of the FIC Act has changed. Item 8 of Schedule 1 now only refers to a person doing long-term insurance business, (and not, as previously, insurance brokers or agents of insurers). Item 12 of Schedule 1 refers to financial services providers requiring authorisation in terms of the Financial Advisory and Intermediary Services (FAIS Act), 2002. FSPs must therefore ensure to only register under Item 12. However, FSPs that are also licensed to do long-term insurance business must register under Item 12 (as FSP) and Item 8 (as long-term insurer). FSPs that only conduct short-term advisory and intermediary business and/or medical scheme business are excluded from the description of Item 12. They are not required to register.

All necessary documentation for registration is available on the centre's website at www.fic.gov.za.

Enforcement capacity

The centre has recently established its enforcement capability and can now do inspections to determine compliance with the FIC Act, including the registration requirement.

The centre can issue sanctions or penalties for late registrations. Failure to register constitutes a contravention of the FIC Act, which carries a maximum criminal fine of R10 million, five years in prison, or an administrative sanction. The administration sanction may include, but is not limited to, a reprimand, a restriction of business activities or a financial penalty not exceeding R10 million for natural persons and R50 million for legal persons.

Appeal Board

The Minister of Finance has appointed the members of the Appeal Board for those who wish to challenge decisions of the centre or a supervisory body.

FSPs are therefore encouraged to ensure that they are fully compliant with the provisions of the FIC Act to avoid the criminal and/or administrative sanctions.

Cash threshold reporting

FSPs are obliged to file cash threshold reports with the centre in terms of the Act. They must within two business days, report the prescribed particulars concerning a cash transaction concluded with a client in excess of R25 000 which:

- Is paid by the accountable institution or reporting institution to the client, or a person acting on behalf of the client, or someone on whose behalf the client is acting; or
- Is received by the accountable institution or reporting institution from the client, or a person acting on behalf of the client, or someone on whose behalf the client is acting.

Suspicious and unusual transaction reporting

All South African businesses, including FSPs are obliged to report suspicious transactions to the centre in terms of the Act. Even though some businesses are doing this actively, our experience is that some FSPs are not filing suspicious transaction reports with the centre.

The FIC Act requires the following persons to report such transactions:

- An FSP;
- Those managing FSPs; or
- Those employed by an FSP.

The requirement to report suspicious or unusual transactions applies to all FSPs practicing as sole proprietors or as part of a financial services group. By doing so, FSPs will help the fight against crime. This can lead to a safer and stable business operating environment which encourages and improves investor confidence.

Enquiries may be sent to the FIC by e-mail to fic_feedback@fic.gov.za. You may also telephone the centre on +27 860 FIC FIC (342 342). Kindly consult the website at www.fic.gov.za to keep abreast of further developments.

Source: Financial Intelligence Centre Notice, 9 September 2011

Financial muscles from p 12

make learners financially literate in the province. "It also promotes respect and appreciation for diverse ideas and opinions. People of all ages need to know how their finances operate," she said.

Dr Simon Mbokazi representing the MEC for Education, Senzo Mchunu, thanked the professionals and finance specialists who assisted learners in preparing for the competition.

"The MEC for Education fully endorses this project as the competition provides an excellent opportunity for learners in our secondary schools to learn how the finance fraternity operates," he said.

The executive officer of the FSB, Dube Tshidi, gave a thumbs up for the project and said that "we commend KwaZulu-Natal for being the first in the country to introduce such a project. We plan to introduce the competition nationally as from next year," he said.

Sponsors include Chartis Insurance, the Financial Planning Institute, Financial Practitioners' Development Trust, the FSB, Hibiscus Coast Municipality, INSETA, Kapenta Bay Hotel, KZN Education, KZN Provincial Treasury, PC Training and Business College, Post Bank and Ukhozi Radio.

The judging panel comprised of representatives from INSETA, the Financial Planning Institute, the Department of Education and the FSB. Chief adjudicator, Olivia Davids, head of Consumer Education at the FSB, commented on the high confidence level of the participants and the progress since the previous competition. She also gave tips for improvement.

FPI celebrates 30 years of excellence in financial planning

July 2011 marked the 30th year that the Financial Planning Institute (FPI) has been in existence as the professional body for financial planners in South Africa. To celebrate this achievement, a chronicle of the industry's journey will be published and made available in early 2012.

Key milestones

1981 Institute of Life and Pension Advisors (ILPA) was formed and ILPA professional exams developed for professional membership with the highest level being FILPA (Fellow of the Institute of Life and Pension Advisors).

1986 ILPA signed an agreement with the then University of the Orange Free State to moderate and verify the standards of the professional exams.

1996 Strategy conference of the ILPA Council at which a generalist level (that eventually led to the Diploma in Financial Planning), specialist level (leading to the Advanced Postgraduate Diploma in Financial Planning) as well as the tiered certification structure (RFP™, AFP™, and CFP® professional) were conceptualised.

1998 CFP® mark brought into SA on licence from the Certified Financial Planner Board of Standards Inc. in the United States. First Associate examinations through ILPA introduced.

2000 Adopted the new company name: Financial Planning Institute of Southern Africa, introduced the Financial Planner of Year Award and first Postgraduate Diploma in Financial Planning offered through the University of the Free State.

2002 Introduced the AFP™ and RFP™ professional designations.

2004 Registered as a non profit Section 21 company and founding member of the Financial Planning Standards Board (FPSB), based in the United States.

2005 Board strategy reviewed and institute's mission, vision and activities aligned to being a true professional body. Introduced the National Certificate: Wealth Management through FPI Learning.

2007 Professional designations recorded on the National Qualifications Framework (NQF).

2009 Appointed by the FSB as an examination body for the development and delivery of the regulatory exams.

2010 Reached over 3 700 CFP® professionals.

Refresher workshops

These national workshops are the second biggest event on the financial services industry calendar and the only event of its kind in South Africa. Professionals are updated on all developments in the financial planning industry and the effect on their businesses in one session, including compliance, legislation, court cases and determinations.

Who should attend?

All financial planners who need to refresh their knowledge as well as those studying towards a career in financial planning should attend. Wessel Oosthuizen and Marius Botha, with their combined extensive knowledge, will again present these workshops.

For further information on the workshops or other FPI CPD events, please visit www.fpi.co.za. Access the Events Calendar on the homepage, use the Resource Centre tab, or email marketing@fpimail.co.za.

New appointments made to the FPI's Board of Directors

The FPI announced the appointment of Ben Raseroka and Bongani Sithole and the re-appointment of Prem Govender, CFP® to the Board of Directors of the institute for a two-year term.

Ben Raseroka

Bongani Sithole

Prem Govender

Tembisa Marele

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three year old daughter in particular, are passions. She believes that relationships with family and friends are important and must be valued.

When asked how she balances the various roles in her life, she says that women are not always aware of how strong and capable they are. "But you need a good support system and strength from above. Otherwise this becomes a very difficult balance."

She draws strength from many other women such as her mother and grandmother and people such as Lakela Kaunda, a former editor of the *Evening Post* and Mapule Mbhalati, former station manager at SAFM. "They took a chance on me as a young woman entering the industry, and they trusted my abilities. This was incredible motivation."

The media world's loss is certainly the FSB's gain as this receiver of the Rising Star Award, MTN's Women in the Media in 2005, plans to give her new role everything she's got.

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