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Compliance officers under the spotlight



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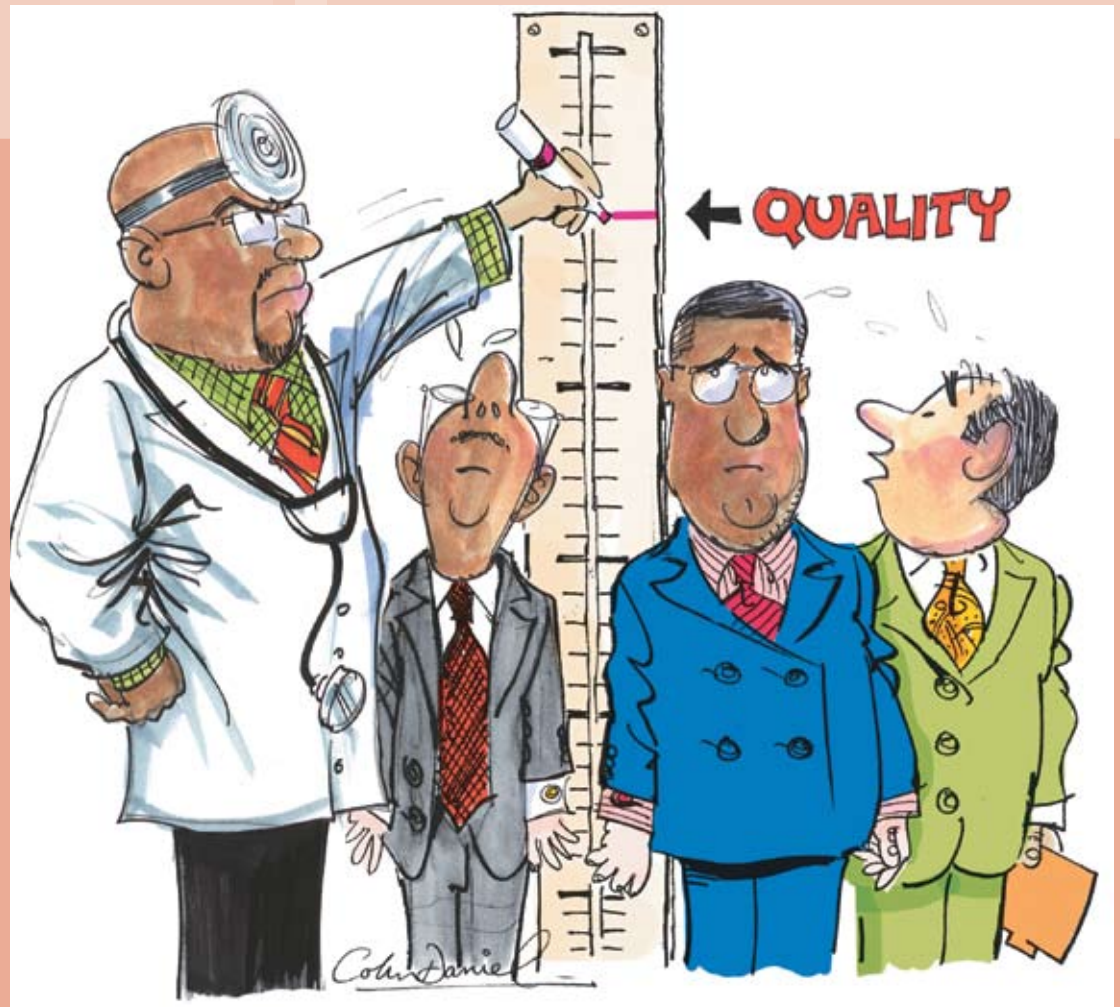
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## Fit and Proper: An update on developments



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## THE FSB BULLETIN

is available on the Internet:  
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# FAIS: Compliance officers under the spotlight

By Anton Swanepoel,  
counsellor on FAIS

**After more than three years after the implementation of the Financial Advisory and Intermediary Services Act, 2002 (FAIS Act), it is perhaps time to critically evaluate what compliance practitioners have focused on, and whether that is adequate to serve providers, who ultimately serve consumers.**

After more than three years after the implementation of the FAIS Act, it is perhaps time to critically evaluate what compliance practitioners have focused on, and whether that is adequate to serve providers, who ultimately serve consumers.

In 2007 a substantial number of compliance officers registered with the FSB. When speaking to compliance officers it is clear that they have their own interpretation of the law as well as views on compliance issues. This could be expected because not all compliance officers come from the same background, share the same knowledge or have the same experience. The following disciplines are just some of the most relevant subjects that compliance officers must understand to perform their duties in terms of the FAIS Act:

- Services that evolve around financial planning
- Services that evolve around long-term insurance, short-term insurance, health care and/or investments
- The common law
- The Collective Investment Schemes Control Act, 2002



- Product knowledge (collective investment schemes)
- The Long-term Insurance Act, 1998
- Product knowledge (long-term insurance policies)
- The Short-term Insurance Act, 1998
- Product knowledge (short-term insurance policies)
- The Medical Schemes Act, 1998
- Product knowledge (health service benefits)
- Government Gazette of 31 March 2006, No. 28690 Vol.489
- Product knowledge (unlisted property syndications)
- The Income Tax Act, 1996
- Capital gains tax
- Financial Intelligence Centre Act, 2001
- The FAIS Act, 2002 and its subordinate measures
- Case law
- FAIS Ombud Determinations

- The law of contract
- The law of evidence

A compliance officer, appointed by a provider who offers financial services under the FAIS Act whose licence makes provision for various categories, needs to have a good understanding of all the above subjects. This is an onerous obligation as the current minimum education and experience requirements for compliance officers are simply not sufficient to meet these requirements.

Providers on the other hand face another problem. They have to maintain certain servicing standards and still manage their businesses. As a result they employ compliance officers to help them establish sound processes. They also trust these compliance officers

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## Compliance officers continued from p 3



also trust these compliance officers for guidance and to design templates for their compliance process. The sad part is that most providers have allowed compliance officers, who are not adequately qualified, to prescribe to them what processes to follow and what documents to complete.

This may prove to be one of their biggest mistakes, because providers are the ones who are primarily regulated under the FAIS Act.

Although compliance officers have generally been fairly good at introducing some procedures and templates, an independent unofficial audit (done by the author) on various provider practices show that most providers lack an adequate compliance and risk management framework around their *advice* process. There is sufficient evidence that indicates that providers generally have a weak link in their compliance process, especially when providing advice as defined in the FAIS Act.<sup>1</sup>

The results of this independent audit are alarming, especially in view of providers trusting compliance officers for professional guidance just to find out that the quality of their documentation is not sufficient should it be tested by the FAIS Ombud.

Generally there is a lot of record-keeping, but in most cases the required *evidence* of compliance under the FAIS Act is absent.

The FAIS Ombud, Charles Pillai, highlighted that *poor record-keeping is at the heart of their determinations.*<sup>2</sup>

One has to ask the question: “*What is the use of keeping good records of bad evidence?*”

If one is searching for the *right evidence*, the following documentation should offer a sound framework for compliance purposes in the advice process:

- Letter of introduction/Disclosure notice<sup>3</sup>
- Terms and conditions of engagement<sup>4</sup>
- Personal client information or business information<sup>5</sup>
- Letter of authority to obtain information that is considered confidential (e.g. policy and/or investment information)
- FICA documents (if applicable)<sup>6</sup>
- Needs analysis<sup>7</sup>
- Risk profile<sup>8</sup>
- Written proposal<sup>9</sup>
- Quotation(s) (if applicable)<sup>10</sup>
- Advice agreement<sup>11</sup>
- Intermediary services agreement<sup>12</sup>
- Application form
- Minutes of meetings between provider and client.

It must be remembered that evidence required in a sound compliance process is *not* found in the heading of the document, but in its content. During unofficial auditing of provider files, the quality rating of the documentation should be a source of concern, not only for the relevant providers, but also for the FSB and industry. It is alarming that the most important documentation from an evidence point of view scored the lowest rating on a scale of one to ten.

- Letter of introduction/Disclosure notice (9)
- Terms and conditions of engagement (6)
- Personal client information or business information (9)
- Letter of authority to obtain information that is considered confidential (9) (e.g. policy and/or investment information)
- FICA documents (if applicable) (9)
- Needs analysis (8)
- Risk profile (6)

- Written proposal (7)
- Quotation(s) (If applicable) (8)
- Advice agreement (2)
- Intermediary services agreement (2)
- Application form (8)
- Minutes of meetings between provider and client (6).

According to advisers and intermediaries, the biggest risk lies in the advisory and intermediary services process. This is the client interaction process from the point of introduction until becoming a client and thereafter. During this process a number of agreements are reached between the parties and the legal relationship between the parties in terms of mercantile law principles with specific reference to the law of contract.

*“The law of contract fundamentally underlies all rendering of financial services under FAIS.”*  
Dr. Franso van Zyl<sup>13</sup>

He went even further and stated that:

*“In the area covered by FAIS, I fail to see how any compliance officer can ever properly perform its functions in the absence of such documentation.”*

Van Zyl dedicated a number of pages in his FAIS Manual to the significance of contracts and continued on the same topic in the *FSB Bulletin*.<sup>14</sup>

*Where providers deal with several categories in the FAIS codes of conduct, it is a strict requirement that the registrar of financial services providers must approve the initial contract (see the Notice on Codes of Conduct for Administrative and Discretionary FSPs, 2003, and Code of Conduct for Authorised Financial Services Providers, involved in Forex Investment Business, 2004).*

*It also seems that in many cases where financial services are to be rendered, the need will arise for additional contractual arrangements between the parties. Legal certainty will then require that*

**Unfortunately it appears that there is a big difference between the current standards applied by compliance officers and the quality of record-keeping that the Ombud's office requires. If so many compliance officers do not understand what it is they should monitor in their sampling process, what is the point?**

*all such supplementary contractual arrangements will also have to be reduced to writing in proper terms.*

Apart from numerous books and articles that have been published on the topic, the FAIS Act and General Code of Conduct refer to the importance of the contractual arrangement:

**Section 20(3) of the FAIS Act**

The objective of the Ombud is to consider and dispose of complaints in a fair, informal, economical and expeditious manner and by reference to what is equitable in all the circumstances, regarding -

- (a) *the contractual arrangement* or other legal relationship between the complainant (the client)<sup>15</sup> and any other party to the complaint (the provider)<sup>16</sup>; and
- (b) the provisions of this Act.

**Section 3(1)(d) of the General Code of Conduct**

When a provider renders a financial service, *the service must be rendered in accordance with the contractual relationship*<sup>17</sup> and reasonable requests or instructions of the client, which must be done as soon as possible and with regard to the interests of the client which receive priority over the interests of the provider.

**Section 7(1)(a) of the General Code of Conduct**

Subject to the provisions of this Code, a provider other than a direct marketer, must provide a reasonable and

appropriate explanation of *the nature and material terms of the relevant contract or transaction to a client*, and make full disclosure of any information that would reasonably be expected to enable the client to make an informed decision;

**Section 8(1)(c) of the General Code of Conduct**

A provider other than a direct marketer, must, before providing a client with advice-  
(c) identify the financial product or products that will be appropriate to the client's risk profile and financial needs, *subject to the limitations imposed on the provider under the Act or any contractual arrangement.*

Of the files audited only 20% of the providers entered into a written initial agreement and none entered into advice and/or intermediary services agreements with their clients. Despite these statistics, all the providers indicated that their compliance officers were happy with the quality of their record-keeping. Unfortunately it appears that there is a big difference between the current standards applied by compliance officers and the quality of record-keeping that the Ombud's office requires.

If so many compliance officers do not understand what it is they should monitor in their sampling process, what is the point? In view of the above, it is clear that there is a serious need for better qualified and more experienced compliance officers, a specific code of conduct and a standardised induction training programme for compliance officers under the FAIS Act.

**References**

<sup>1</sup>See section 1(1) of the Act

<sup>2</sup>See SAFSIA inform April 2006

<sup>3</sup>See section 5 of the General Code of Conduct

<sup>4</sup>See sections 3(1)(d) of the General Code of Conduct and the question in the 2006 and 2007 annual compliance report: "Does the FSP enter into a written contract before rendering a financial service to clients?"

<sup>5</sup>See section 8(1)(a) of the General Code of Conduct

<sup>6</sup>See the Financial Intelligence Centre Act

<sup>7</sup>See section 8(1)(a) and 8(1)(b) of the General Code of Conduct

<sup>8</sup>See section 8(1)(c) of the General Code of Conduct

<sup>9</sup>See section 9 of the General Code of Conduct

<sup>10</sup>See section 16(2)(a) of the Act and sections 7 and 9 of the General Code of Conduct.

<sup>11</sup>See section 20(3) of the Act and sections 3(1)(d), 7(1)(a), 8(1)(c) and section 9 of the General Code of Conduct

<sup>12</sup>See section 16(2)(b) of the Act and section 3(1)(d) of the General Code of Conduct

<sup>13</sup>See Swanepoel 2004: *Comply like a pro*: p 92

<sup>14</sup>See Van Zyl 2007: FSB Bulletin Second quarter 2007: p 6

<sup>15</sup>My insert

<sup>16</sup>My insert

<sup>16</sup>See the Dr. Birken determination FOC 2629/05 GP 1 (paragraph 4)

# SA economy still growing – how rosy is the picture really?

By Flip Meyer, a freelance financial writer\*

**The South African economy is still booming and has achieved positive growth for nearly 15 years. All indications are that the economic growth rate for 2007 will be close to 5%.**

As expected, 2008 will be another year of economic growth of 4% or more. The picture looks rosy, but for consumers there are major concerns.

The economy has grown for various reasons. One of them is the amount of credit consumers have been using to live beyond their financial means. The effect

of the rise in interest rates over the past 18 months has become more visible. Thousands of consumers are in dire straights because they cannot keep up with the higher home-loan payments.

Therefore the strong overall economic growth does not show some of the financial problems consumers will have to face. An underlying weakness is visible.

The year 2008 could be a period of biting the bullet for many households.

Over the past 18 months interest rates have increased by 3,5%. In December there was a further rise of 0,5%. Another increase of 0,5% in February is not unlikely.

Normally there is a time lag from

the date on which interest rates are increased until consumers curtail spending. At this stage many consumers know they have exceeded their credit limits.

*Sake24*, a financial publication in *Beeld*, *Die Burger* and *Volksblad*, runs a unique competition called Economist of the Year. Economists from different institutions compete and submit monthly predictions. Because the economy changes so rapidly, the beginning of the year's predictions are changed monthly. Some economists prefer to stick to their guns and don't change.

## Predictions

The person in the street can use the information published in *Sake24* every month. Predictions are made regarding the growth of the economy, consumer spending, interest rates, the inflation rate as well as other economic variables.

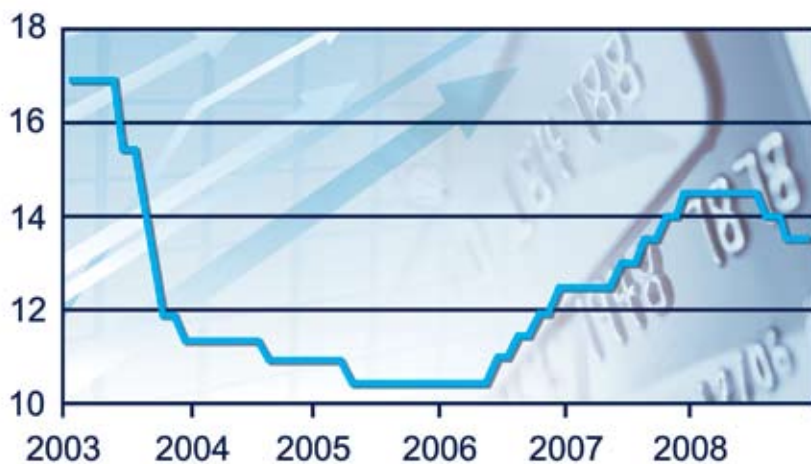
The most important indicators to watch for are predictions regarding interest rates as well as the inflation rate.

When inflation rises, chances are that the Monetary Policy Committee (MPC) of the Reserve Bank will increase rates. It is the Reserve Bank's job to keep the inflation rate between 3% and 6%. The current inflation rate is above 6%.

Tito Mboweni, governor of the Reserve Bank, has indicated that interest rates will rise until the Monetary Policy Committee reckons the inflation rate will decrease.

In October 2007 the 31 economists participating in the Economist of the Year competition predicted that the average inflation rate for 2007 would be 6,29%.

## Prime interest rate (%)



Source: Standard Bank Group

## There is still a lot of bite in economic growth. Although consumers will be spending at a lower rate in 2008, the economy will be driven by sectors like construction.

### Stanlib economic report

Core consumer inflation (CPIX) is set to rise well over 8% in the short-term, after reaching 7.9%/y in November 2007, says Stanlib in its latest overview.

If the MPC increases the repo rate by 0,5% it would mean that the prime lending rates of banks would rise from 14% to 14,5%. The cost of credit would be very high as it would be about 7,5 percentage points above the inflation rate.

One of the factors putting upward pressure on the inflation rate is the record high oil prices nearing \$100 a barrel. The South African oil and diesel prices are determined by the oil price in rand.

### Analysis

An analysis of Econometrix shows that the petrol price would be about R9,15 per litre should the price of crude oil be maintained at \$100 a barrel. Should the average oil price be \$90 a barrel, the petrol price would be close to R8,50 a litre.

Consumers are very sensitive to petrol price increases. Rises in fuel prices leave them with less money to spend. It has the same effect as increases in interest rates.

Higher interest rates and fuel prices could prevail deep into 2008.

### Interest rates

Economists of Standard Bank foresee interest rates starting to decline towards the middle of 2008. No economist can predict the oil price and therefore it is assumed that the price will not increase much further from its current level. Should the oil price rocket to over \$100 a barrel, steeper increases in the petrol

and diesel prices could be expected.

The economists base their predictions on interest rate rises based on the prevailing oil price. These predictions are based on a rand/dollar exchange rate of R7,83.

Economists generally expect the value of the rand to decline in 2008. Should this happen, it will not be good news for consumers of petrol and diesel.

The value of the rand plays a big role because should the currency weaken from its present level there would be upward pressure on the oil price in rand and therefore on petrol and diesel prices.

Transport costs are increasing above the average inflation rate. A spokesman for Wesbank says the cost of operating a truck fleet could rise between 10% and 15% in 2008.

The cost of toll roads has been increasing by more than the inflation rate.

Wesbank is the leading vehicle financing company in South Africa and

does research on cost implications to its clients. Any increase in transport costs would eventually be passed to consumers.

### Doom and gloom

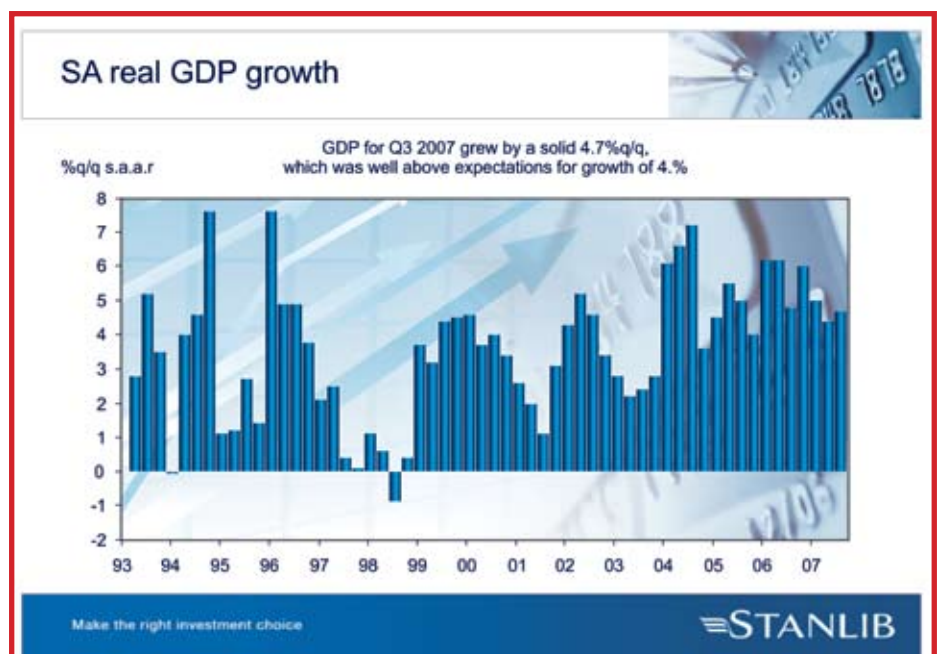
Despite the consumer doom and gloom expected, households have decided to spend in December 2007.

There is still a lot of bite in economic growth. Although consumers will be spending at a lower rate in 2008, the economy will be driven by sectors such as construction. South Africa is getting ready for the 2010 Soccer World Cup tournament and huge capital projects have to be completed.

Consumer confidence might be down but the economy will still be growing and hopefully produce more jobs.

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*\*Flip Meyer is the chief organiser of the Economist of the Year banquet. He is a former editor of Sake24 and a founder of the Economist of the Year competition. He has his own media company, Flip Meyer Media ([www.flipmeyer.com](http://www.flipmeyer.com)).*



# Harmonisation of financial regulation within SADC

**Jurgen Boyd, Deputy Executive Officer Pensions, of the FSB in October last year addressed delegates at the Africa Sovereign Pension Fund Summit on the harmonisation of pension fund regulations within SADC.**

One of The New Partnership for Africa's Development's (NEPAD) primary objectives is the need to enhance Africa's full and beneficial integration into the global economy. The Southern African Development Community's (SADC) harmonisation initiative is in keeping with this NEPAD objective, as it strives to strengthen the financial services industry within the region.

## **CISNA's history and objectives**

Nine years ago, regulators in the non-banking industries recognised the need for co-operation within SADC, which gave birth to the Committee of Insurance, Securities and Non-banking Financial Authorities (CISNA).

Since then, the original intention of co-operation has been replaced with a more strategic vision of facilitating the development and implementation of a harmonised risk-based regulatory framework within SADC. Its purpose is to enable market growth and development, mobilise capital flows and contribute to regional prosperity.

Key to achieving CISNA's vision is the harmonising of legislation to ensure consistency and adherence to international regulatory standards and best practice.

A practical consequence of all this is



that in the not too distant future, the concept of passporting can be considered where, for example, a collective investment schemes manager, if licensed in Namibia, will be able to offer his products throughout SADC, without having to go through the licensing loop in each member country. Such a framework will require fully harmonised legislation and robust regulatory authorities to prevent regulatory arbitrage.

## **Membership**

CISNA has 13 member-countries, comprising 19 supervisory authorities. The supervisory structures are diverse from integrated regulators such as South Africa's FSB and Namibia's NAMFISA, to multiple supervisory structures like the three in Zimbabwe. CISNA also has diverse supervisory approaches, e.g. South Africa's Anglo-Saxon approach compared to the Franco approach of

Mauritius. Uganda and Kenya, have observer status and standing items on the agenda are presentations from representatives of EASRA (East African Securities Regulatory Authority) and the Committee of SADC Stock Exchanges. This interaction ensures that CISNA members are kept abreast with other African regional initiatives.

The World Bank regularly attends CISNA meetings. Its main interest is in funding initiatives to modernise legislative platforms, as well as training needs.

The member authorities co-operate and share information by way of multilateral memoranda of understanding. The objectives of CISNA have been captured to in a memorandum of understanding that forms part of the SADC protocol. CISNA reports bi-annually on its activities to the SADC Committee's members of finance which

is evidence of the political oversight and support necessary for an organisation of this nature.

### International standards

CISNA deals with matters relating to capital markets, collective investment schemes, insurance, retirement funds and intermediary service providers. Financial consumer education has also become part of a number of CISNA members' agendas.

International bodies, namely the International Organisation of Securities Commission, International Organisation of Pension Supervisors, International Association of Insurance Supervisors are regulatory standard setters and CISNA's efforts of harmonisation is aimed at benchmarking against these standards.

The aim is to get all member countries to have a regulatory framework

that is compliant with these international standards. Some countries have already passed, or are in process of amending legislation in line with these standards.

### Conclusion

CISNA's progress in achieving its objective is quite slow, because of the political and economic history of its member countries. Nevertheless, CISNA is confident that it will achieve its mission and that this initiative, together with those that are taking place elsewhere in Africa, will assist in growing the African financial markets. This will have a positive effect on the African pension fund industry, as it is a major institutional investor in the financial services industry.

# Ombudsman recognises excellence



**By Monique Pillay, Marketing Consultant, Ombudsman for Banking Services**

It is entirely appropriate, although coincidental, that in the year South Africa won the Rugby World Cup because of excellent performance, the Ombudsman for Banking Services (OBS) should seek to recognise excellence.

The prestigious independent annual awards in recognition of excellent performance by banks was held on 15 November 2007 at the University of Johannesburg's School of Hospitality and Tourism. Two main awards were presented: The OBS Award of Excellence: Bank - in recognition of

the bank that has excelled at dispute resolution in 2007, and the OBS Award of Excellence: Bank Individual, which recognises the bank individual that has excelled in dispute resolution. Each award has two categories. The OBS Office determines who receives the awards, without any input from research bodies. Categories, are according to case numbers opened and the bank's market asset share, thus recipients change every year.

So how was the Bank recognition award of excellence assessed? It all depended on the time in which responses

**From left: Les Barrett (Standard Bank), Thomas Naidoo (Standard Bank), Adv Clive Pillay (Ombudsman for Banking Services), Sonette Botha (African Bank), and Muhammad Ali Chaudhry (HBZ Bank Limited-SA)**

were supplied; the comprehensiveness of responses; overall fairness in settling the complaint; and general support for OBS initiatives.

Standard Bank Limited walked away with the 2007 award in category A, while HBZ Bank Limited received the category B award.

*Continued on p 17*

# Trustees' duties in the regulation

**This article forms part of a series of articles regarding trustees' duties in the regulation of occupational pension funds. The first article serves as an introduction by looking into the history of pension funds and pension funds as a form of 'trust'.**

**By Adv. Mathome Thulare, Pension Funds, FSB**

The governance of pension funds has become a key feature of debate in the retirement fund industry. The headline of an article by Bruce Cameron of *Personal Finance* titled Trust nothing and nobody, consumers told, demonstrates the magnitude of the problem. The collapse of Enron, WorldCom and Andersen Consulting in the United States has alerted people to ensure that savers, investors and employees are protected as far as possible from such problems. The Fidentia scandal came at a time when the issue of governance was high on the national agenda of the retirement fund industry.

Finance Minister Trevor Manuel, introducing the National Treasury's annual report to Parliament, observed that "there have been some instances of flagrant disregard of the high ethical and fiduciary responsibilities expected of people in our financial institutions". He continued: "These often involve hundreds of millions of rands plundered from companies or from ordinary South Africans who spend a lifetime saving relatively small amounts annually."

## History

To understand the regime of occupational pension funds, it is important to understand the origin of the schemes, their benefits, how they are administered, and the nature of the rules that govern them.

It appears that before the introduction of occupational pension funds, pensions paid by private employers were entirely

ex gratia in nature.

Nobles explains that elderly employees who were too sick to work would ask their employer to make some provision for their retirement. Pensions paid were originally as a gesture by the employer.

The establishment of retirement funds is now regulated by the Pension Funds Act, 1956 (the Act). The law requires that every pension fund must apply to the registrar for registration. A retirement fund can take different forms; it can be a pension, provident, preservation or retirement annuity fund. The Act does not distinguish between the different types of retirement funds - the Income Tax Act, 1962, provides this distinction. The Act applies to all types of retirement funds, regardless of description and form.

There is no compulsion for employers to establish an occupational retirement fund. However, if the proposals contained in the Discussion paper on Social Security and Retirement Reform are anything to go by, the situation may change to compulsion. At present, the establishment of retirement funds is a product of collective bargaining and in other instances, a voluntary employer's incentive to attract and retain employees.

On registration a pension fund shall under its registered name, and in so far as its activities are concerned, become a body corporate capable of suing and being sued in its corporate name and of doing what is necessary to perform its functions in terms of its rules.

Every pension fund is required to adopt rules which must comply with certain

formal requirements set down by the Registrar. On registration, the rules of a fund shall be binding on the fund, its members, shareholders and officers, as well as anyone who claims under the rules or whose claim is derived from



# n of occupational pension funds



**There is no compulsion for employers to establish an occupational retirement fund. However, if the proposals contained in the Discussion paper on Social Security and Retirement Reform are anything to go by, the situation may change.**

The pinnacle of a pension scheme is the provision of income security which serves to express a nation's cohesion and values.

(who are called beneficiaries), of whom he may himself be one, and any one of whom may enforce the obligation.

It is clear from the above definition that there is a duty on the trustee to act in the beneficiaries' best interests. The trustee is not the owner of the property over which he or she exercises control. The trustee holds property on behalf of others and therefore must not act for his or her own benefit or any third party. Du Toit points out that the definition is premised upon the consideration that control over the property, rather than ownership of property, is the definitive feature of trust.

The main idea of being a trustee places trustees at the pinnacle of those who hold duties towards others, above strangers, bailees or agents.

For a pension fund, "trust", means that the board of trustees holds a fiduciary position towards the members of a fund. Fiduciary duties and obligations mean a trustee must act in good faith in the interests of beneficiaries and not for any collateral purpose.

Each of the fund's trustees is required to act in a way that advances the interests of the fund above his or her own interests. If one is dealing with a duty that is not fiduciary in nature, it means that the trustee could place other interests before that of the member, and a breach of that duty is actionable only if the member suffered a loss as a result.

The next article will examine the important function of management of pension funds with particular focus on the board of trustees.

## A form of 'trust'

The word 'trust' refers to the duty or accumulation of obligations that rest upon a person described as trustee. The responsibilities relate to property held by his or her under his control.

Burgess defines a trust as an equitable obligation, binding a legal person (who is called a trustee) to deal with property under his control (which is called the trust property), for the benefit of persons

someone claiming on their behalf.

A pension fund is not permitted to carry on any business other than the business of a pension fund. The object of a pension fund is to provide benefits to beneficiaries as described in the rules.

# Fit and Proper: An update on developments

By Charene Nortier, Manager:  
Supervision, FAIS Department, FSB

A recent article discussed the past, present and future of the Fit and Proper requirements of the FAIS Act, 2002. This article discusses ideas on future developments. The Fit and Proper Forum is supported by seven working groups, which span the financial services industry.

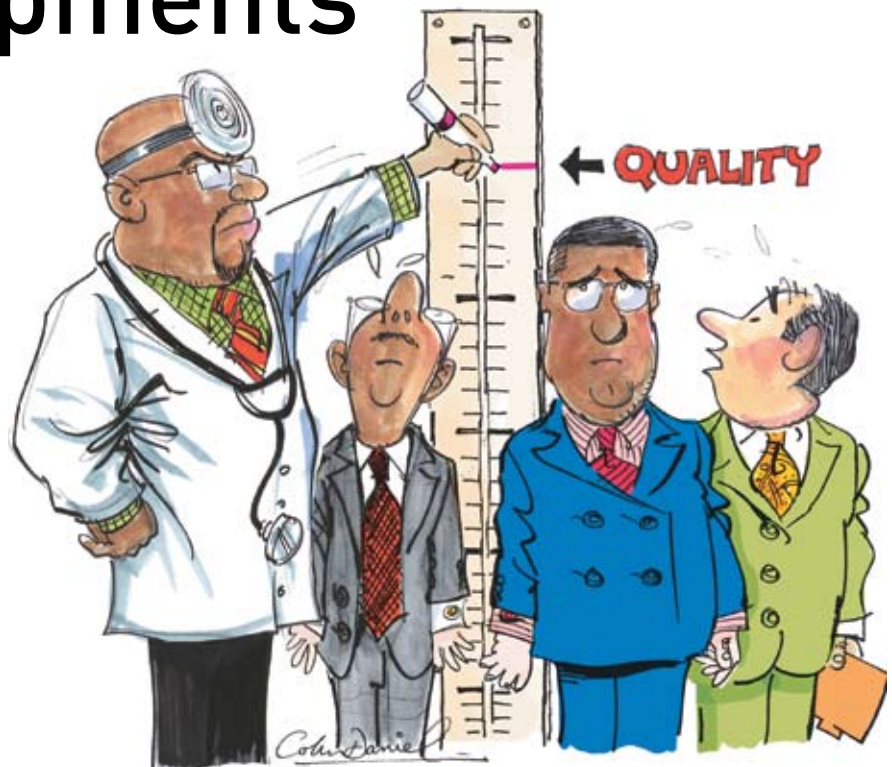
The following is an overview of the discussions and deliberations, of the Forum, the results of which have not yet been finalised.

## Who is affected?

According to the Determination of Fit and Proper Requirements for Financial Service Providers, Board Notice 91 of 2006, three persons are affected by Fit and Proper requirements: the applicant, key individual and representative.

The applicant is the financial services provider. In the case of a sole proprietor, the applicant is also the sole proprietor. The law regards the person who applies for a licence as the applicant. In other words, if Mr Xoko applies for a licence to act as a financial services provider, as he wants to set himself up as an independent broker selling life insurance, and he acts as a sole proprietor, he is the applicant.

There are different ways in which a key individual can act. In the Financial Advisory and Intermediary Services Act, 2002 (FAIS Act), a "key individual" in relation to an authorised financial



services provider, or representative, carrying on business as –

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

Given the above definition, it is useful to clarify how the key individual looks, and what he/she needs to comply with. (See table on p 13.)

From this table, it is clear that the common denominator is always the responsibility to manage and oversee the

activities of the business or part thereof. This is the crux of the matter – if the person does not have this responsibility, he/she does not meet the criteria of the definition.

The second issue is to establish whether the key individual also manages and oversees representatives and the third, to establish whether he/she also acts as a representative. Should such a person should be formally appointed as a key individual in addition to the appointment as representative, this person must then meet the requirements imposed on both key individuals and representatives.

The third person in terms of Fit and Proper requirements is the representative.

The representative is the individual who, after appointment by the financial

services provider, gives advice to clients regarding financial products or renders intermediary services in connection with the products. One must remember that not everyone who works for a financial services provider is automatically a representative. Representatives are those people whose activities are defined under “advice” or “intermediary services” in the FAIS Act.

### Experience requirements

Although there are ongoing discussions, the indications are the following:

- There will still be experience requirements, but there will be a difference between the experience required for advice and for intermediary services;
- In most instances, the experience requirement will be more onerous for advice than for intermediary services;
- Experience can be gained simultaneously if a representative is appointed for multiple financial products; and
- The experience requirement does not default to the financial product with the most onerous requirement. It means that the representative must gain experience against all the financial products he/she is appointed for, and a record must be kept of the process.

Representatives without the relevant experience can be appointed, and will serve under supervision until they have met the experience requirements. Applicants and key individuals must have the required experience before they can be appointed for a specific financial product or category.

Key individuals will be required to provide proof of the following types of experience:

- Management and oversight of financial services business;
- Deciding how the services are rendered;
- Actually rendering the services; or
- Supervising those who render the services.

### Qualification requirements

Minimum qualification requirements will still be applicable to all categories. These requirements will depend on the complexity of the financial products. As a result, current thinking identifies two groups of financial products with simple minimum qualification requirements, namely Long-term Insurance Category A (funeral assistance business) and Friendly Society Benefits. Although the decision has not been made, indications are that it will hinge around the ability to show basic literacy and numeracy in the language used, rather than a formal scholastic level. This approach is pragmatic, as there are many operators in the informal economy that do not have documents proving their school leaving status.

Again, although not final, indications are that the minimum qualifications requirement for the other financial products in category I will be Matric or

equivalent qualifications, and a NQF level 6 qualification for Categories II and III. The NQF level 6 qualifications will need to be appropriate to the financial services industry. The list of appropriate subjects will be changed where necessary.

The current “column four” or “conditions/restrictions” requirements in terms of Fit and Proper requirements will be replaced with a new set of requirements. There will probably be two types of acceptable options in this regard:

- Results of examinations against set standards/criteria; or
- Qualifications that meet the requirements.

The set of qualifying examinations will be based on criteria that address the following:

- Core criteria that deal with:
  - \* the requirements of the FAIS Act

**Continued on p 14**

Activity	Key individual option 1	Key individual option 2	Key individual option 3	Key individual option 4
Manage & oversee the activities of the business/ part of the business	x	x	x	x
Manage & oversee the business or part thereof and also manages the representatives		x		x
Manage and oversee the business or part thereof and also act as a representative (own clients)			x	x

## *Fit and Proper continued from p 13*

### **“The Fit and Proper Forum, with the support of the working groups still has many issues to deal with. The progress to date has been impressive.”**

- and subordinate legislation;
- \* specific legislation relevant to certain financial products; and
- \* other general standards that apply to all financial products and categories
- Specific criteria for key individuals and compliance officers (this includes people who act as their own compliance officers);
- Criteria relevant to specialist classes:
  - \* Product related criteria that differentiate between advice and intermediary services.

These requirements are intended to ensure that applicants, key individuals, representatives and compliance officers actually know and understand the legislative requirements and specific duties they execute on behalf of the financial services provider.

#### **Services under supervision**

The current exemption in terms of services under supervision only addresses representatives who do not have the required experience regarding a specific financial product, and is also limited to Category I financial services providers. The proposal is that the services under supervision will be included in the Fit and Proper requirements, and that it will apply to all representatives, regardless of the category of financial services rendered. If a financial services provider appoints a representative, who only meets the minimum qualifications requirements, the representative will in future function under supervision until he/she meets the experience and qualifying criteria requirements.

Let's consider this scenario:

- The ITU Financial Services Provider appoints Ms Nkewu as a representative when she completes Matric.
- She is appointed to give advice on Long-term Insurance Category B products.
- She will work under supervision until she has completed:
  - \* her qualifying exams (she has five years from appointment); and
  - \* the relevant experience has been gained (at least one year).
- At the end of her first year of appointment Mr Itu, her supervisor, is satisfied with her progress, but she has only completed half of the relevant qualifying examinations applicable to her role.
- She will remain under supervision until she completes the rest of the qualifying examinations.

There will be more detailed guidelines clarifying what will be accepted as proper supervision, to ensure that there is parity in terms of the standards applied. The approach will be more principles-based, with the principles underlying the provision of services under supervision clearly stipulated.

Financial services providers can expect that the principles will be similar across categories I to III, with representatives under supervision in Category II and III financial services providers subject to stricter controls.

#### **Continuous Professional Development (CPD)**

The industry consensus is that CPD “is a good idea in theory, but how will it work”? There are professional

organisations that have successfully implemented CPD requirements for a long time, and their approaches will certainly be studied in depth. Some of the concerns include:

- CPD requirements should have real value for the industry, and not create a situation where people merely participate in a “points” gathering exercise;
- The logistical issues of providing CPD-related activities over the wide geographic spread in the country;
- The cost of CPD initiatives should not be prohibitive;
- Accessibility is an issue – this impacts on face-to-face delivery and electronic delivery.

#### **Timelines**

The timelines that the Fit and Proper Forum is working towards are:

- Industry consultation – mid-February 2008;
- Draft Fit and Proper requirements presented to the FAIS Advisory Committee – March 2008;
- Transitional arrangements agreed and published – mid-year 2008
- New Fit and Proper requirements published – third quarter of 2008
- Implementation of transitional arrangements – 2009

#### **Conclusion**

The Fit and Proper Forum, with the support of the working groups still has many issues to deal with.

The progress to date has been impressive, and the FSB would like to thank the institutions, professional bodies, corporate institutions, individuals, SAQA and the financial SETAs for their contributions and participation. Without their continued participation the development of new, pragmatic and practical Fit and Proper requirements would not be possible.



**Front row from left (seated): Linda Makhubo (FSB), Milly Viljoen (Council for Medical Schemes) and Busi Ngwenya (Competition Commission). Back row (standing): From left to right: Elliot Modisa (FSB), Manala Botolo, Fati Manamela (Gauteng Consumer Affairs Office).**

## FSB participates in training programme for consumer educators and trade advisers

**By Elliot Modisa and Linda Makhubo of the Consumer Education Department, FSB**

The purpose of the Resource File Training Programme is to give provincial consumer educators and trade advisers insight into the regulators' roles and responsibilities so that they can convey consumer messages on their behalf.

The information in the resource files includes the Acts administered by regulators, complaints handling procedures, copies of presentations and brochures.

Before the programme, the FSB hosted a plenary meeting for regulators to agree on an action plan.

- Two-day training programmes took place in Gauteng (Boksburg and Midrand), Kwa-Zulu/Natal, the Eastern Cape and Free State, where the provinces received two resource files per regulator. The FSB, National Credit Regulator, Council for Medical Schemes, National Consumer Regulator and Competition

Commission participated.

Provincial Consumer Affairs Offices hosted the training programmes and covered the costs for venues and catering, while the Council for Medical Schemes paid for one of the training sessions.

Attendees gave feedback on the programme and its effectiveness. Feedback was very positive and included a suggestion, that such information should be shared with delegates from rural areas. A need was also identified to do similar workshops for communities, NGOs, government employees and employee assistance programme practitioners.

Regulators agreed to organise a follow-up session to give feedback on the utilisation of the resource files, to clarify areas of concern and to update the file content. Provinces will also get an opportunity to demonstrate how they will make use of the Resource File to convey consumer messages on behalf of regulators at a follow-up session.

Regulators further undertook to continue empowering their stakeholders, including community-based paralegal offices in the nine provinces by the end of 2008.

**For more information  
on the FSB visit our  
website  
[www.fsb.co.za](http://www.fsb.co.za).**

**When looking back at 2007, it is easy for the South African Insurance Association (SAIA) to mention several highlights.**

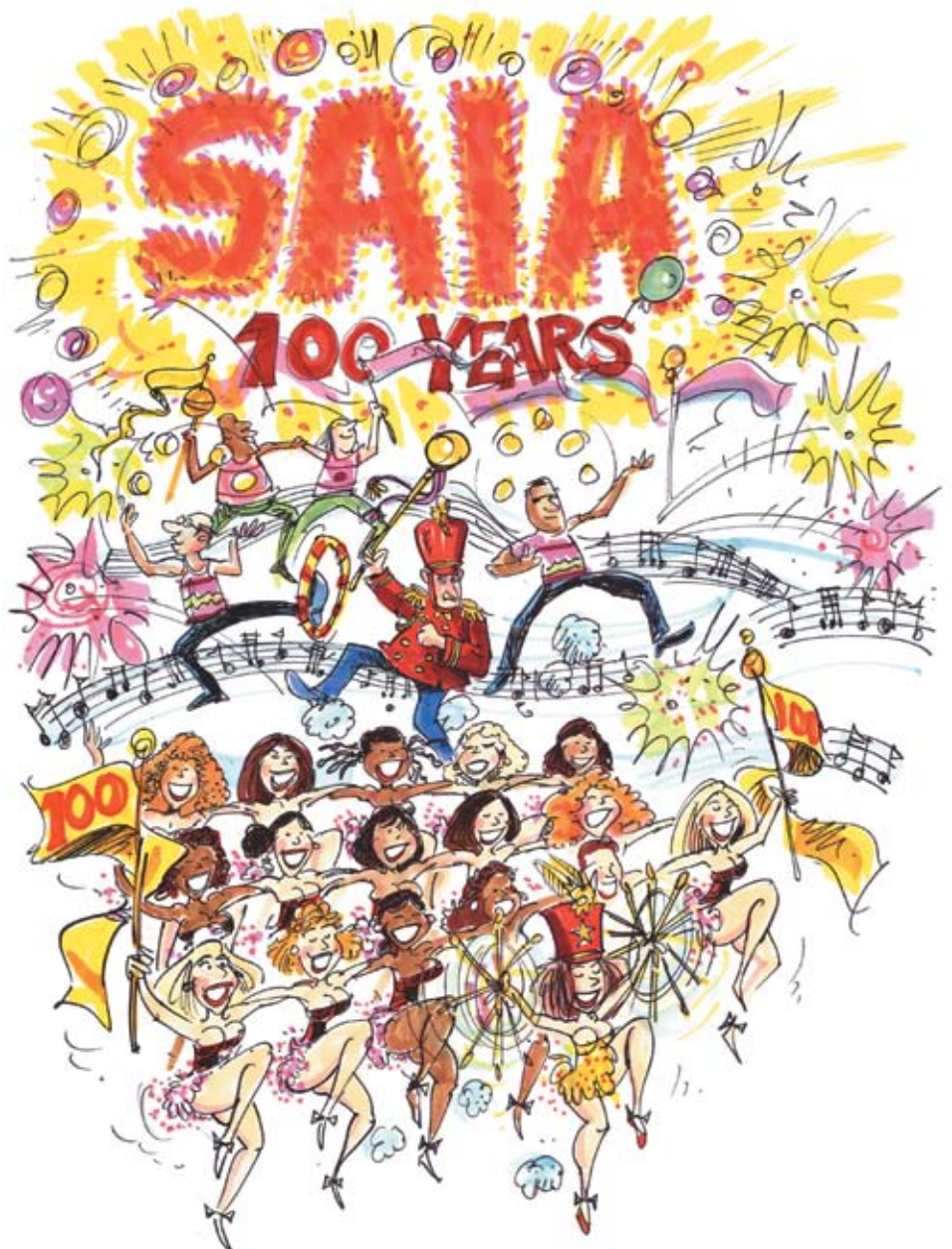
The most momentous highlight of 2007 is that the SAIA, as representative body of the short-term insurance industry in various guises since 1907, turned a century in 2007. This occasion was celebrated with a stepped up image and reputation campaign which included several public relations events such as the hugely successful SAIA Centenary Gala Dinner and the making of a CD about the history of the SAIA. However, as the image and reputation campaign is aimed at reputation and image building of the industry rather than just the SAIA, several campaigns were undertaken to increase the visibility of the activities of the short-term insurance industry.

The successful continuation of the SAIA Financial Sector Charter Consumer Education Initiative is one of the campaigns that we are proud of. In line with our decision to support projects that would not only benefit the industry, but also the bigger scheme of things in South Africa, we remain committed to the upliftment of financial literacy in the lower income groups. The SAIA FSC Consumer Education Projects were successfully implemented for the third successive year running in 2007, and other new projects are also being implemented.

The SAIA is very proud of its members for continuous contributions to the SAIA FSC Consumer Education Initiative. This enables us – on behalf of the short-term insurance industry – to conduct financial literacy training and awareness creation in the lower income market. Our projects have proven that a huge need exists and that our efforts are making a difference. We are also grateful for the contributions and partnerships from and with others, specifically the FSB and the Life Offices' Association (LOA).

# SAIA: Looking back at 2007

**By Vivienne Pearson, SAIA Stakeholder Relationship Manager**



The SAIA, on behalf of the industry, continues to be involved in the fight against crime. Our 6th annual contribution to Business Against Crime SA was made in 2007, and we have been very involved in the Big Business Work Group, as well as with Business Against Crime. Much hard work has been done and I am certain that the difference will be noticeable in 2008.

### Sponsorship

We are also very excited about our newly announced sponsorship of a detective training project to further assist in the fight against crime. In terms of this sponsorship, 500 detectives will be trained in Gauteng to assist in the detection of crimes, as well as the eventual successful prosecution of crimes due to better presented evidence. The SAIA continues its philosophy of partnerships, with our partners for this project the Gauteng Provincial Police Service and Business Against Crime South Africa.

The progress with the plans to possibly create an Insurance Crime Bureau, is a big step towards addressing insurance fraud. The aim of the Insurance Crime Bureau is to address organised insurance crime, at first concentrating on insurance fraud. This will have a direct impact on the risk of insurance companies and will save them – and ultimately the policyholder – some money. We believe that the crime syndicates identified through the Insurance Crime Bureau would also most likely be involved in other types of crime which could affect organised crime in South Africa.

Apart from the image and reputation related projects, the SAIA addressed several other issues in 2007. The rest of the article touches on some of these.

The ever increasing regulation experienced in recent times continued in 2007. Although the SAIA supports effective legislation and regulation, it is aware that increased regulation has had

an effect in terms of changed business practices, as well as the increased time, money and effort spent on compliance. This is why the SAIA supports the proposed review of legislation for the financial services sector.

Regarding health insurance, the industry unfortunately still does not have clarity. This debate will continue in future.

Concerns regarding alleged undesirable practices within the consumer credit insurance arena, which ultimately ended in Consumer Credit Insurance Commission hearings, occupied SAIA, the LOA and other role players in the latter part of 2007. Some companies in these industries received criticism, but there is now an opportunity for the investigation to result in showing the value of this type of product, while enabling the industry to address shortcomings. The SAIA is awaiting the report with interest.

Motor insurance as a general business class has increasingly been experiencing difficulties in 2007. An increase in crime, and specifically hijackings, continued high accident rates, and increasing average motor repair costs have been putting pressure on this business class. Motor insurance will remain a focus area in 2008, as well as efforts in the vehicle crime arena and road safety.

Transformation continues to be an area of importance for the industry. The difficult and lengthy progress towards the gazetting of the Financial Sector Charter kept the role players busy in 2007.

Hopefully, when the Charter is gazetted, implementation would be able to go ahead swiftly as the process followed was a consultative one, resulting in the sorting out of outstanding issues to ensure general buy in from all role players.

In conclusion, 2007 was a year full of highlights that included exciting ones such as the Centenary Celebrations, and more challenging ones. We are looking forward to a similar mix in 2008!

### Excellence from p 9

To qualify for the award of excellence presented to a bank official, the nominee had to liaise with the OBS Office, be involved in dispute resolution, as well as the customer complaint handling process. This includes qualities such as

- treating all complainants with equal dignity and respect and giving all complaints the necessary level of attention;
- providing fast and efficient service to the complainant and the OBS;
- providing initiatives and improving measure and/or service level agreements to enhance his or her bank's level of service in complaints handling;
- being knowledgeable about his or her bank's products, services and processes, including internal complaint handling mechanisms as well as those of the OBS.

Les Barrett of Standard Bank was the category A winner and Sonette Botha of African Bank, the category B winner.

The Ombudsman for Banking Services, Advocate Clive Pillay, said that although the demands of good corporate governance and the plethora of legislation may be stifling when trying to resolve matters, where strict adherence to policy, systems and procedures may inhibit finding what is most fair in resolving a complaint, "We have found that banks and employees that flourish in the dispute resolution sphere are those with the will to lead and those who are change agents culminating in service excellence and customer satisfaction". He aptly cited a quotation by John C. Maxwell, "The pessimist complains about the wind. The optimist expects it to change. The leader adjusts the sails".

# The Fundisa Fund



## What is the fuss about Fundisa?

By Di Turpin, Chief Executive Officer of the Association of Collective Investments

**The collective investment schemes industry recently introduced an innovative product, Fundisa Fund. The fund - a collaborative venture in the true sense of the word - is a partnership between collective investment scheme companies, as well as an initiative between government and business.**

Fundisa arose out of the Financial Sector Charter as the collective investment industry attempted to find a practical solution to meeting the access requirements of the Charter. According to the Charter, low income earners must have a means of buying and servicing the product, the product must be appropriate and affordable, as well as simple and easy to understand. Although one can argue that a basic unit trust meets these

criteria, it does not necessarily mean that the low income earner is going to buy the product as savings are generally a very low priority with all the other financial demands on the household.

It was clear that the intermediary market that traditionally services this market was unlikely to sell such a unit trust anyway, as the financial compensation of a unit trust could never compete with group scheme and life assurance type arrangements. So another pull factor had to be found – the obvious one being a reward to the actual saver for making an investment.

After a wide ranging literature research which looked at developed and emerging countries, the Canadian market offered the most useful concept which the local collective investments industry believed could be applied in South Africa. The Canadian model offers an incentive, linked to a specific saving goal, to provide for education.

The Canadian Education Savings Grant introduced by the Canadian government

in 1998 was a reform to Registered Education Savings Plans (RESP's) introduced in 1972. Their popularity have increased dramatically since then. The grant matches investor contributions at a predefined ratio.

The Canadian grant scheme targets university education. In the South African context the scheme applies for education undertaken at public institutions such as the Further Education Training (FET) Colleges (i.e. further education up to Grade 12 equivalent (N3) and post N3 studies (N4-N6)), as well as the conventional tertiary institutions such as the universities.

The collective investments industry sees the inclusion of this sector in post school training as integral to skills development and employment creation in South Africa.

Like the Canadian model, it was decided that this incentive had to be linked to a specific saving goal, such as education. However the incentive is not linked to tax in order to appeal to all

sectors.

The World Bank regards jobs as the main source of income and route out of poverty for the poor (World Development Report 2005). Similarly, the latest World Economic Outlook report from the IMF (2007) states that countries must make increased access to education a priority.

There is an overriding theme from all experts and institutions. In order to break the cycle of poverty, economic growth has to be targeted. One of the key drivers of this is productivity, which can only be as a result of a skilled labour force which has had the opportunity to be educated.

The Fundisa Fund is a means for parents/family/friends to contribute to the cost of further education for a child. Investors are able to put away as little as R40 at a time, either as a lump sum or as a monthly investment. There are no penalties for missed payments when things are tough at home.

The incentive is that the investor receives a 25% bonus or reward for

making the savings. For example, if the investor saves R2 000 in a year, another R500 is added to his or her investment. The annual limit on the bonus is R600, meaning that investors benefit for saving anything up until R2 400 or R200 a month each year.

Fees are low. There are no initial fees, unless a financial adviser is involved. Even then no more than a 1% initial fee may be charged. An annual fee of 1,25% plus VAT is charged off the income in the Fund. Fundisa is a fixed interest Fund, as it was felt that the primary target market would not be able to stomach any short term capital losses possible in an equity portfolio, particularly as it is unlikely that there is any adviser assisting in the process.

One of the best features of Fundisa is that anyone can save for a child. The beneficiary does not have to be related to the investor and in fact, the investor may from time to time decide to change the beneficiary if for example the chosen

learner decides not to study further. The learner must start studying by the time that they are 35.

Investors may access their savings at any time, like a normal unit trust. However, if they do need to do so they will lose the proportionate bonus portion. At no time is the money from the bonus portion directly available to the investor. At the point that the learner decides to study, the money is paid directly to the chosen institution.

The bonus has been made possible by contributions from the Department of Education as well as donations from leading collective investment scheme companies. Fundisa is a three year pilot project and the bonus money will be used on a first come, first served basis. Fundisa Fund is available from Standard Bank, Nedbank, Stanlib, ABSA and the Post Office. Details on the Fund can also be obtained from [www.fundisa.org.za](http://www.fundisa.org.za)

## 'No' to a single ombudsman for finance sector

A study by Finmark Trust advises against a single, independent ombudsman scheme for the financial services industry, while acknowledging that the maze of state-recognised sectoral ombudsmen was causing confusion at the expense of consumer protection.

Finmark said in January that creating a statutory super-ombudsman for the financial services sector would throttle accessibility and the flexibility of existing dispute resolution mechanisms in one of South Africa's strongest economic sectors, leaving multitudes of consumers in the cold.

Financial services ombudsman, Charles Pillai, has called for a single independent ombudsman scheme for the financial services industry to stop a "jurisdictional labyrinth" and restore consumer confidence in the sector.

Analysts concurred with FinMark's findings, saying a single ombudsman would be "retrogressive and cumbersome".

FinMark is an independent trust that promotes access to financial services by the unbanked in Africa.

"Establishing a super-ombudsman or a single conduct regulator for the financial services industry is not entirely desirable, particularly in a marketplace that requires greater accessibility, less formality and greater flexibility," it said.

"It is therefore recommended that the Financial Services Ombud Schemes Council should play a more active and stronger role in addressing problems such as lack of consumer awareness and overlapping and unclear jurisdiction."

Finmark said there was consensus among ombudsmen interviewed that the dispute resolution landscape in financial services was "confusing" and consumer

awareness was low. Incorrect referrals between different ombudsmen were common and there were grey areas in jurisdictions between the ombudsmen.

"There are two problems relating to the jurisdiction of ombudsmen. The first is that jurisdiction cannot be determined with ease, leading to confusion. For whatever reason, jurisdiction also appears to be a sensitive subject among ombudsmen who, in some cases, seem to overstep their jurisdictional boundaries."

The second problem was the lack of a systematic referral system. All ombudsmen referred cases to other ombudsmen. In some cases this was done in writing to both the consumer and the other ombud. In other cases consumers were told to call another ombud office.

**Source: Business Day  
16 January 2008**

**FSB** Bulletin *fourth quarter 2007*

