

FSB Bulletin - 4th Quarter 1999

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Reproduction and printing

Communication Promotion and Development (012) 342 1978

Subscriptions

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Insider trading claimants compensated

By Russel Michaels, Manager: Communication and Liaison

Investors who may have been prejudiced by the trading activities between 1 and 10 June 1999 of those who had inside information into Kalahari Goldridge Mining Company Limited and between 3 and 17 May 1999 of those who had inside information into Idion Technology Holdings Limited, will be compensated. To our knowledge this will be the first time internationally that a regulatory authority has recovered funds in an insider trading investigation and paid some compensation to other investors who may have been prejudiced through the activities of an insider trader.

This is in terms of provisions of the Insider Trading Act, 1998 and follows the fourth Insider Trading Directorate (ITD) meeting at the Financial Services Board (FSB) in October.

Directorate chairperson, Rob Barrow says in the case of Kalahari Goldridge Mining Company Limited and Idion Technology Holdings Limited, the Directorate has agreed to accept payment of R33 616 and R209 076 respectively in out of court settlements. The individuals whose transactions were investigated, purchased shares in the companies ahead of favourable news being released to the public. In both cases the amount settled included a punitive element as well as disgorgement of the profit made. The Directorate has also referred four matters to the Courts to institute legal action.

In terms of the provisions of the Insider Trading Act, the FSB may recover the profit made or the loss avoided by an offender as a result of unlawful trading, as well as a punitive or compensatory penalty of up to three times the aforementioned amount, including interest and legal costs.

This means that one will calculate the difference between the price at which the offending transaction was concluded and the value of the instrument after the publication of the unpublished price sensitive information.

The list below gives the status of investigations at the time of the meeting into share transactions conducted on the Stock Exchange.

SECURITY	PERIOD OF TRADING	CASE STATUS
Absec	99/04/30-99/05/19	Ongoing
Afribrand Holdings Limited	99/05/01-99/05/24	Ongoing
Fraser Alexander Limited	99/05/26-99/06/09	Ongoing
Amalgamated Appliance Holdings Ltd	30/08/1999	Ongoing
Adcock Ingram	99/10/05-99/10/06	Ongoing
Aspen Healthcare Holdings	99/03/08-99/03/19	Concluded
Beige Holdings Limited	99/08/30-99/09/03	Legal Action
Berzak-Illman Investment Corp.	99/01/14-99/01/19	Ongoing
Billcad	99/01/04-99/01/18	Concluded
Barprop Ltd. Linked Units	99/02/18-99/03/12	Ongoing
Brandcorp Holdings	99/02/22-99/03/03	Legal Action
Brainware	99/09/01-99/09/08	Ongoing
Computer Configuration Holdings 2	99/08/17-99/08/18	Ongoing

Computer Configurations Holdings 1	99/01/15-99/01/26	Ongoing
Core Holdings	99/04/09-99/04/30	Concluded
Crux Technologies	99/09/20-99/10/01	Concluded
Cyberhost	99/05/28-99/06/01	Concluded
Fralex	99/03/04-99/03/05	Ongoing
Glenrand MIB	99/02/11-99/02/25	Concluded
HIX TECHNOLOGIES	99/08/04-99/08/13	Ongoing
Idion Technology Holdings	99/05/03-99/05/17	Settled
I-Fusion	13/04/99-22/04/99	Legal Action
Iscor	99/08/02-99/08/13	Ongoing
IST Group	99/07/01-99/07/22	Ongoing
JCI/Randgold	99/04/01-99/04/30	Ongoing
Kalahari Goldridge Gold Mining Co Ltd	99/06/01-99/06/10	Settled
Kairos Industrial Holdings	99/10/01	Ongoing
King Consolidated	99/01/19-99/01/27	Ongoing
Log - Tek Holdings Limited	99/05/17-99/05/27	Concluded
LTR LA Retail Stores	99/03/09-99/03/19	Ongoing
MacMed Health Care	99/09/13-99/09/30	Ongoing
Molope Group 1	99/09/29-99/10/04	Ongoing
Molope Group 2	99/10/13-99/10/14	Ongoing
Nimbus Holdings	99/06/11-99/06/24	Concluded
Paradigm Interactive Media	99/02/01-99/02/09	Ongoing
PSG Group	99/09/27-99/10/04	Ongoing
Radiospor Technology Holdings	99/07/01-99/07/08	Concluded
Retail Corporation Limited	99/06/01-99/06/09	Ongoing
Shoprite Holdings	99/07/19-99/07/27	Ongoing
Skills Accell	99/04/15-99/07/02	Legal Action
Sentry Group	99/06/08-99/06/21	Ongoing
Technology Communication Holdings	99/01/21-99/01/29	Ongoing
Truworths International 1	99/02/25-99/03/03	Concluded
Truworths International 2	99/07/01-99/07/12	Ongoing
Terexco	99/01/01-99/02/08	Ongoing

FSB Act to be amended

The Financial Services Board Amendment Bill, 1999, will improve the structure and functioning of the FSB. The Bill, which has been approved by Cabinet, has the following objectives:

- The Bill settles the relationship between the executive and the board. In the Act the words “supervision” and “supervise” may mean that the board has to approve all decisions made by the executive officer. These words are now defined to refer to three types of decisions - a first level of significant decisions that the board has to approve, a second level where the executive officer makes decisions within the board’s guidelines and a third level where the executive officer makes his own decisions. This will maintain sufficient checks and balances and retain a streamlined and efficient decision-making process within the FSB.

- It clarifies the status of the governing body of the FSB and provides for the appointment of its members by the Minister of Finance to reduce Presidential workload.
- The promotion of investor education is included in the Bill as an objective of the FSB.
- It will ensure that the terms of office of the members of the board of the FSB will not expire simultaneously.
- It will expand the composition of the executive committee of the FSB. The current executive committee only comprises of the executive officer, deputy executive officers and the chief actuary. As the executive committee deals with regulatory, operational and administrative matters, it is necessary to also appoint other senior employees of the Board to the executive committee by virtue of the nature of their responsibilities.
- Provisions with regard to pension rights of officers and employees that were transferred from the public service to the FSB are repealed as they are no longer necessary.
- A compulsory consultative process before imposing levies is instituted.
- An obligation to file a report in both the previous official languages is repealed.
- The secrecy provision regarding information obtained by the FSB is relaxed so as to allow the FSB to provide information and assistance to other regulatory authorities, local as well as abroad.
- The indemnity in respect of the performance of functions by certain persons and bodies is expanded.
- Usage of the name and logo of the FSB is provided for.
- In light of the change referred to in the status of the FSB's governing body, the constitution of the Board of Appeal is amended. Certain procedure aspects are also amended.

The FSB Amendment Bill will enhance the FSB's ability to supervise regulatory activities and clarifies the relationship between the FSB and executive officer.

Cottrell honoured

By Bessie van der Lingen, sub-editor, FSB Bulletin

FSB's Executive Officer, Mr Rick Cottrell has been elected as an honorary life member of the South African Institute of Chartered Accountants (SAICA). Although the SAICA constitution has allowed such elections by its Board, no such members had been appointed in the past. The other three members who have been elected as honorary life members through their international involvement are Mr Selwyn MacFarlane, Mr Peter Wilmot and Mr Des Arnold.

Source:

Accountancy SA, Executalk, p45, October 1999

Meet the FSB's new chairperson

By Russel Michaels, Manager: Communication and Liaison

Gill Marcus' years in exile were spent clipping South African newspapers for the ANC, discussing radical politics and making sandwiches in Knightbridge's best lunchtime hangout.

On her return from exile she took the post in the ANC's Department of Information and Publicity where she quickly became one of the party's more prominent voices.

Before the 1994 elections she criss-crossed the country tirelessly, training ANC media workers and voter educators and accompanied former President Nelson Mandela on his many forays into the provinces.

Elected to Parliament, she quickly established a widely respected reputation for her efficient, effective and no nonsense approach to her position of chairperson of the Parliamentary Joint Finance Committee.

She held this position from June 1994 until June 1996 when she was appointed Deputy Minister of Finance. On 1 July 1999 she was appointed Deputy Governor of the Reserve Bank and with effect from 1 September, new chairperson of the FSB.

Sidney Maree appointed as new Board member

By Bessie van der Lingen, sub-editor, FSB Bulletin

The FSB's new Board member is a world class athlete. Sidney Maree is a two-time US Olympian in track and field and the former world record holder in the 1500m.

Sidney Maree has been appointed new Board member by President Mbeki with effect from 1 September. He replaces Solly Kotane who has resigned.

Maree is the CEO of Zamani Asset Management, a joint venture between the South African based Zamani Financial Services and the global group, Franklin Templeton. He was recently appointed Chairman of the United States-South Africa Leadership Development Programme. The organisation's main objective is to develop leaders who will enhance democratic values and the quality of life at all levels of South African society by drawing on American, South African and other resources.

In 1993 Maree joined Fleming Martin in New York, with the responsibility of broadening South African equity sales to American Institutional Investors, including State and City pension funds. Two years later he was transferred to the Johannesburg office as Corporate Finance Manager to spearhead Fleming Martin's privatisation efforts. He was a member of Fleming Martin corporate finance team and director of Fleming Martin Asset Management.

FSB signs Memorandums of Understanding with Portugal and Isle of Man

By Russel Michaels, Manager: Communication and Liaison, FSB

The FSB has signed Memorandums of Understanding (MOUs) with the regulatory authorities of Portugal and the Isle of Man for the exchange of information about the respective countries' financial and provident markets.

The aim of the agreements is to promote mutual consultation and co-operation between the authorities to protect among others, the interests of the various investors.

The MOUs were signed by the FSB's executive officer, Rick Cottrell, his Portuguese counterpart, Dr José Nunes Pereira, and John Aspden of the Isle of Man.

In a statement the three regulatory authorities say they recognise the importance of international co-operation to the development and maintenance of open, fair, ordered and sound domestic financial and provident fund markets in their countries.

"The increasing international activity in these markets and the consequent need for mutual co-operation and sharing of information for the administration, law enforcement, regulations and market rules, lead to the agreement.

"The authorities intend to provide one another with assistance under the MOUs as permitted by the laws, regulations and rules of their respective jurisdictions."

Similar agreements are also expected to be signed with the regulatory authorities of Jersey and Guernsey.

IRI operated as unregistered insurer

By Russel Michaels, Manager: Communication and Liaison, FSB

Inspectors of the FSB have found evidence that Transiedor Een en Twintig (Pty) Ltd, trading as International Risk Indemnity (IRI), has been operating as an unregistered insurer.

IRI, with offices in Table View Cape Town, Bloemfontein and Pinetown, is headed by Mr Pieter de Bruyn.

The business of IRI consists mainly of the marketing of a specific short-term insurance policy (an accident and health policy) and a long-term insurance policy (an assistance, or so-called funeral policy).

The inspectors revealed that IRI, for the period from 17 November 1998 to August 1999, received premiums of about R476 000 from the general public.

In doing so, IRI conducted unregistered insurance business and contravened provisions of the Long-term Insurance Act, 1998 and Short-term Insurance Act, 1998.

The public is cautioned that policies effected with IRI may prove to be worthless in the event of a claim.

Media release issued
29 September

De Bruyn strikes again

Unregistered insurer in new guise

The FSB warns the public against dealing with an unregistered insurer who claims to have the backing of a reputable insurer.

FSB Head of Market Conduct, Oppie Opperman says: "Pieter de Bruyn, based in Bloemfontein, recently canvassed undertakers and funeral parlours, offering the services of Group Funeral Assurance Scheme underwritten by A-Risk International (Pty) Ltd and assured by Hollard.

The Registrar of Long-term Insurance and the Hollard group want to make it clear that Hollard is not associated or dealing with any of these companies.

The public is reminded of a warning issued at the end of September against de Bruyn who headed an unregistered insurance concern, Transiedor Een en Twintig (Pty) Ltd trading as International Risk Indemnity.

The public is warned that policies claimed to be effected by de Bruyn with the above companies may prove to be worthless in the event of a claim.

Interested parties may contact the FSB at the toll-free number 0800 110 443 or Hollard at 011 240 6021.

Media release issued
4 November

Memorandums of Understanding signed at CISNA meeting

By Bessie van der Lingen, sub-editor, FSB Bulletin

The FSB has signed Memorandums of Understanding (MOUs) with the regulatory authorities of Swaziland, Mozambique and Zambia at the fourth meeting of the South African Development Community's (SADC) Committee for Insurance, Securities and Non-banking financial Authorities (CISNA). This follows an invitation by the FSB to all member countries to conclude MOUs on exchange of information, co-operation and consultation. Most other countries have indicated their willingness to enter into MOUs, but are restrained from this due to current legislation.

The CISNA meeting which took place on 4 and 5 November in Windhoek, Namibia was opened by Namibia's Minister of Finance, Mr Mbumba. "The purpose of CISNA meetings is to arrange for the exchange of information between countries, to get to know the nature and structure of SADC's supervisory authorities, to discuss various cross-border activities, to harmonise legislation and to develop a strategy with specific short, medium and long term plans," he said.

A survey has recently been initiated by South Africa to provide a basis for CISNA's strategic plan, which will be available for comment in January. "SADC has to attract significant foreign capital and therefore CISNA's progress is vital. We have to work towards complying with the best international standards - only then will the region be in the position to attract funds.

"The plan will be based on bilateral and multilateral initiatives to accommodate all participants to provide overall direction and establish time-frames," says Melonie van Zyl, specialist at the FSB's insurance department.

The next CISNA meeting will take place in Tanzania before April 2000.

Final curatorship of Oehl Trust granted

By Elmarie de la Rey, Senior Legal Advisor, Legal and Policy, FSB

Final curatorship of the Oehl Group was granted by the Cape High Court on 5 November. This follows the FSB's application during January to place the business of various companies and close corporations controlled by Mr Werner Oehl, under provisional curatorship. Five companies incorporated in Namibia and one close corporation incorporated in South Africa were affected by the order. Oehl operated from offices in Belville and Windhoek.

Oehl vigorously opposed the final curatorship order.

Investors were brought under the impression that the Oehl Group would buy and sell shares on their behalf on the Johannesburg Stock Exchange. However, the documents they were required to sign provided that they were buying shares in certain Namibian companies, either Premier Holdings Group (Pty) Ltd or Capital Strategic Investments Ltd, both controlled by Oehl. Contrary to legal requirements, no share certificates were issued and all shares purchased were held in trust by Oehl Trust Integrated Financial Services (Pty) Ltd. When investors wanted their money, their shares were "bought" back by another Oehl company, at a price randomly determined on a daily basis. No satisfactory explanation could be given for the manner in which the daily price was determined.

Some investors were offered a monthly income scheme and some were advised that their money had been invested in treasury bills, but no evidence could be found of any investments actually made in such treasury bills.

The judge found that, "...The principal cause of the losses which investors may suffer is the fact that they purchased, at inflated prices, shares of very little value in small unlisted companies incorporated in Namibia."

Oehl's companies placed under final curatorship are Oehl Trust Integrated Financial Services (Pty) Ltd (Namibia); Sharelink (Pty) Ltd (Namibia); Capital Strategic Investments Ltd (Namibia); Premier Holdings Group (Pty) Ltd (Namibia); Premier Investment Corporation (Pty) Ltd (Namibia); and Wosprop 40 CC.

Investors are warned, before making any investment, to:

- check whether funds are being entrusted to an investment manager approved by the FSB;
- ask for audited annual financial statements, if offered shares in a company;
- be careful about paying a premium on unlisted shares, especially if no audited financial statements are available;
- carefully check any investment offering to pay a monthly income, other than that offered by a registered financial institution such as a bank or long-term insurer.

If any monthly income is said to be part of the profits of the company, it should be remembered that companies can only pay final dividends once they have been declared and approved by the annual general meeting of shareholders, although interim dividends may also be paid. Monthly dividend payments would be highly unusual.

FSB warns against foreign, unapproved operators

The FSB has warned the public to be careful when dealing with foreign investment companies.

The warning comes against the foreign-based investment companies, Mendes Prior Europe, Mendes Prior Orient and Mendes Prior Offshore.

The FSB has been inundated with complaints and enquiries from the public about the Mendes group.

Foreign investment managers solicit money from South Africans to invest on foreign licensed exchanges and collective investment schemes.

The FSB does not control the actions of the investment manager abroad, but it regulates the marketing methods they employ. To market in SA, an entity must be approved and the Mendes group is not approved.

The Mendes group is not approved to solicit funds in South Africa for investment in overseas listed securities, derivatives or gilts nor for investment in foreign licensed or registered collective schemes.

Media release issued

5 November

Ethiopia hosts Africa insurance conference

By Bessie van der Lingen, sub-editor, FSB Bulletin

The National Bank of Ethiopia hosted the Unctad/African Association of Insurance Supervisory Authorities (AAISA)/African Insurance Organisation conference. The conference with the theme of “Building effective insurance supervisory capability”, took place from 4-7 October in Addis-Ababa. Who attended this conference and what happened there?

Delegates from 30 African countries attended the Africa Insurance conference. Topics included discussions on the state of African insurance supervisory authorities, market conduct, liberalisation and financial strength of the industry.

State of supervisory authorities

“Compared to other African countries, South Africa remains the biggest premium paying and collecting country,” says Mr Oppie Opperman, Head: Market Conduct (Insurance) at the FSB. South Africa, Ghana, Zambia and Uganda are financed by levies, while all other African supervisory authorities are government-financed. “As a result, these countries experience government interference in applying financial laws,” he adds.

South Africa has had insurance legislation since and in certain cases even before the 1920’s, while other African countries have only had such regulation for the past seven to 15 years. Uganda and Tanzania have only supervised insurance companies for the past two years. South Africa and Namibia are the only African countries that supervise all financial institutions, excluding banks. Lesotho and Ethiopian insurers are supervised by the Central Bank,” explains Mr Opperman.

The MD of Standard and Poor Ratings, Mr Andrew Campbell delivered a paper in which he explained how to rate insurance companies. “An interesting fact is that no insurance company may be rated higher than the credit rating of the said country. This can reflect a well-run, strong insurance company in Africa in a poor light if the country is badly rated,” he says.

Market conduct

Mr Opperman delivered a paper on market conduct, stressing competency and integrity of directors and senior staff of insurance companies, the influence of unregistered entities, cross-border fraudulent activities, the urgent attention of networking and information sharing between insurance supervisors in Africa.

The meeting also took note of the important role that consumer protection will play in future.

“During discussions of this paper it appeared that the industry is experiencing problems with rogue brokers collecting premiums and issuing fraudulent certificates regarding shared capital.

“Complaints by the public were also discussed. All supervisors agreed that although an ombudsman may be in place, one must consider regulatory intervention.

“Like South Africa, problems are also experienced in Africa with credit life insurers,” says Mr Opperman.

Liberalisation

Spain was invited to deliver a paper on their liberalisation experience. “During the 14 years after liberalisation, the number of their insurance companies have shrunk from 682 to 364. During the same period, foreign capital of Spanish companies grew from 4.4 to 29 percent,” he says.

Strategic plan

The rest of the seminar was spent on a vision for AAISA. “Unfortunately the strategic plan and constitution for AAISA was not distributed by the secretariat. Discussion hinged around recollection of members being present in Morocco in May 1999 when the strategic plan and budget was drawn up by South Africa,” says Mr Opperman.

Several other topics were also discussed, including networking, problems with the secretariat, the constitution and the possibility of well-organised regulatory bodies in Africa to assist one another with training.

To strengthen insurance supervision in Africa, it is necessary for all regulators to unite in building a strong regulatory network.

FSB’s Inspectorate boasts new CA

By Bessie van der Lingen, sub-editor, FSB Bulletin

Pascalis Mokupo, inspector at the FSB is one of only five students who passed the chartered accountant’s exam of Lesotho in June this year.

Pascalis, who has always had a flare for figures, enrolled at the Lesotho Centre for Accounting Studies after school. “Although it was tough, I enjoyed every minute of my course,” he says. “My favourite subjects were financial management, accounting and auditing practice and information for control and decision making.”

Before joining the FSB, Pascalis completed his articles at Ernst & Young’s Lesotho Office. He then worked as accountant at Link pharmacy and internal auditor at Premier Food.

So what motivated him to become a CA? “My brother, who is an architect, motivated me most of all. Other young managers such as the head of the Inspectorate also influenced me to complete my CA. But without the support of my wife and friends, I would not have been able to make it.

“When I decided to study accounting, it was not the money that motivated me. Recognition is what motivates me,” says Pascalis.

Pascalis is also busy with his Masters in Business Administration (MBA) and is in his second year of studies.

But how could he cope working full-time while studying for his final CA exams and doing his MBA? “The more you have to do, the more you can do,” he believes.

And his advise to other students studying for their CA exams? “Be determined, dedicated and believe in yourself.”

New annual reports available from FSB

The FSB has issued the Forty First Annual Report of the Registrar of Pension Funds, 1998; The Thirty Sixth Annual Report of the Registrar of Friendly Societies, 1998 and the Annual Report of the Registrar of Unit Trust Companies, 1998.

The Pension Funds and Friendly Societies reports are available from Carol Roestorf at (012) 428 8011 (phone) or (012) 347 0221 (fax), while the Unit Trust report is available from Patience Sikwane at (012) 428 8019 (phone) or (012) 347-1379 (fax).

The First Annual Report of the Registrar of Long-term Insurance, 1998, and the First Annual Report of the Registrar of Short-term Insurance, 1998 will soon be available from Bongi Molapo at (012) 428 8041(phone) or (012) 347-8788 (fax).

All the reports will cost R50 each.

Call for fair pension tax

By Anthony Asher, Director of Actuarial Studies, University of the Witwatersrand

The current tax regime governing retirement funds is unnecessarily complex, needs to be less attractive to lump sum retirement benefits, and has to be considered in conjunction with the means test for old age benefits.

The future of retirement fund taxation in South Africa is still not clear. Government has partly implemented the recommendations of the Katz Commission of Inquiry into Certain Aspects of the Tax Structure of South Africa, 1997 (The Katz Commission) by taxing investment income. A number of people both inside and outside the industry have vigorously opposed this tax. The Commission's other recommendations have also not found much favour.

There appears, however, to be general agreement that the current tax regime governing retirement funds is unnecessary complex and needs to give greater incentive to pensions as against lump sum retirement benefits. This article attempts to outline one way forward.

One vehicle

It is widely agreed that government should combine the different retirement funding vehicles defined in the Income Tax Act, 1962. This means eliminating the distinction between pension, provident, retirement annuity and benefit funds, as well as funds serving the public and private sectors.

In order to avoid unnecessary disruption to the industry, this single retirement fund category should be subject to the current ETT approach. (The E refers to contributions that are tax-deductible, the first T to the tax on income, and the second T to the tax on benefits.) This approach does not give any special concessions to retirement funds. It can be justified as a way of mitigating the effects of applying progressive tax rates to arbitrary periods of one year. It is not unreasonable to allow members to defer income from their working years, when they are paying a relatively high tax rate to their retired years when their rates are likely to be lower.

Proposals

It would be simpler to eliminate all restrictions on the deductibility of contributions to retirement funds. Government however would find it difficult to accept the initial reduction in the tax collected by the fiscus. A reasonable limitation on the deductibility of contributions appears to be an acceptable compromise. The current percentage limitations are complicated and, in some instances, rather low. A simple suggestion would be for a flat limitation, of say 20%, including contributions made by employers on a member's behalf. The expected value of defined benefits could be taken into account when calculating the 20%.

This would probably have a minimal effect on government revenue. A flat rate for all ages would be simple and provide an incentive for people to provide earlier for their retirement.

The current tax regime is unfair in giving tax incentives to lump sum payments on withdrawal and retirement, but none to pension payments. Part of each lump sum is completely tax free, while the balance is taxed at average rates of tax, which are normally lower than the member's future marginal rate. If retirement funds were to have tax privileges in order to encourage people to save for retirement, logic would require part of the pension rather than part of the lump sums to be tax-free.

The simplest way to tax retirement fund benefits is to treat them all as income in the year they are received and to tax them at marginal rates. This provides an in-built incentive not to take lump sums, as the marginal rate applying to the lump sum is likely to be higher than the rate paid on other earnings.

There is probably a political need to retain some of the existing tax exemptions enjoyed by lump sums. Members should be allowed to transfer these to pension benefits. In other words, existing exemptions from tax should be applied to the first retirement benefits taken from a fund, regardless whether they are taken as lump sums or pensions.

It may appear that this would create difficulties for the South African Revenue Service (SARS), as it will have to monitor pensions and other income from many different sources. SARS, however, has to develop a system to combine individuals' earnings from different employers, retirement funds, life-assurers, banks and other institutions. If benefits are to be taxed in any form, then retirement funds have to report on their members' income to the revenue authorities. By far the easiest approach is to treat all income in the same way.

Interest and net rental earnings of retirement funds were previously exempt from taxation. This represented an unjustifiable privilege. It is now accepted that the taxation of the income of retirement funds does not represent double taxation, nor is it a tax on capital. (See, for instance, Brown RL (1994); "Tax Assistance to Qualified Retirement Savings Plans: Deferral or Waiver?" *Journal of Actuarial Practice* vol. 2,1).

It is now difficult to justify a rate of tax that differs from the rate charged on life assurance funds. It would, therefore, simplify matters to tax retirement fund investment income at the same 30% of investment income, less expenses, that applies to life assurers. The 30% rate is a reasonable estimate of the average marginal rates of members.

The rate is higher than which will apply to lower income people if they make direct investments. The economies of scale and scope of investing through retirement funds can however compensate for the additional taxation payable.

Means test

The effect of the old age assistance means test on low-income members of retirement funds has a much greater impact than this tax on interest and rent. The arguments from some that this investment tax penalises the poor, without at the same time calling for the abolition of the means test, seem to me to be self-serving. It is also a great pity that government did not use the tax revenue generated by the new tax to abolish the means test.

The means test increases the tax incentives given to lump sum benefits. It effectively taxes pensions on low-income individuals at 50%, while at the same time exempting lump sums in most cases.

The means test is unjust, inefficient, and impossible to administer and should be abolished.

It is unjust because it only applies to pensioners who have incomes of between R100 and R1 300 per month. These people are "taxed" at 50% of their savings - which is higher than the top marginal rate of tax applied to earnings over R100 000. The Smith Committee report on Strategy and Policy Review of Retirement Provision in SA (December 1995, p.38) suggests that 10% of people drawing pension are 'cheating' the means test.

It is inefficient as it requires detailed information about income and assets from almost all pensioners. The Department of Welfare has not been particularly successful checking age, let alone income and assets. SARS battles to evaluate the income of 500 000 provisional taxpayers; the Department of Welfare cannot possibly evaluate both the income and assets of 1,7 million pensioners.

Part of the cost of abolishing the means test can be met by abolishing the special rebate for those over 65, and by levying income tax on the pension.

It is argued frequently that withdrawals from retirement funds should be limited because this will save government from having to support people in their old age. Abolishing the means test largely takes away this argument, and would be consistent with removing all distinctions between provident and pension funds. It, however, would become less important to give tax incentives to retirement funding, and so be consistent with less generous approach to the taxation of lump sum benefits.

Overall effects

The proposals outlined above would be very much simpler and fairer than both the approach currently used and that suggested by the Katz Commission. They can also be introduced quickly and with minimal administrative effort by government.

The cost of abolishing of the means test has been estimated by between five hundred million and two billion rand. This is less than half the tax on retirement fund investment income, and is likely to be matched again by the proposed additional tax on lump sums. There is, therefore, likely to be no net cost to government.

Those who want government's share of the GNP reduced are likely to oppose any increase in tax. These proposals are, however, simple, fair and will reduce government's administrative costs and its interference in people's lives by means test investigations. They will also provide a universal basic pension, which is a requirement of our Bill of Rights.

Parliament's role in financial legislation

By Samantha Anderson, former parliamentary researcher for the Portfolio Committee on Finance

All legislation governing the financial services sector is referred to the Portfolio Committee on Finance after being tabled in the National Assembly. However, the Usury Act, 1968 falls under the Department of Trade and Industry, so matters covered by this legislation are dealt with by the Portfolio Committee on Trade and Industry. Although the Minister of Finance is the only one who can table legislation in the National Assembly for referral to the Portfolio Committee on Finance, the FSB and the Registrar of Banks are often responsible for generating the legislation.

Financial services legislation falls within what is defined as Section 75 legislation by the Constitution. This legislation affects the interests of Provinces and is of national importance. The Constitution dictates how Houses of Parliament (the National Assembly and the National Council of Provinces (NCOP)) are required to process Section 75 Bills. The National Council of Provinces does not have veto powers over Section 75 legislation and can only suggest amendments to the National Assembly for consideration. If there is a deadlock between the NCOP and the National Assembly, formal mediation between the two Houses takes place until agreement is reached.

Members of Parliament convey the concerns and interests of their constituents when scrutinising legislation. The most common interests they convey regarding the regulation of the financial services mainly focusses on market conduct regulation. Members of the public often feel helpless when it comes to dealing with financial institutions. This is not surprising as a large percentage of our population is illiterate and the complexities of investments confuse even the most educated members of society. Members of Parliament often amend legislation to ensure that the provision of important information is in different languages and in a simple format. The protection of individuals in society from fraudulent insurance sales people, fund managers and brokers is also a key concern. Therefore, Members of Parliament view the education of the public about the proper conduct of financial institutions as very important.

Technical issues such as prudential regulation are generally entrusted to the FSB and the Registrar of Banks as they have the necessary skills and capacity to ensure that legislation adequately deals with the financial soundness of institutions. When the new Insurance Acts were considered, the actuarial calculations contained in the legislation were largely ignored by Members of Parliament and questions concerning these clauses were put to the FSB.

The relationship between the FSB and Parliament is extremely beneficial to the quality of legislation that is enacted. The concerns about the market conduct of institutions expressed by Members and the technical expertise of the FSB ensure that legislation fulfills the needs and interests of the public and financial institutions.

The Portfolio Committee also relies on public participation when considering legislation. The Committee has developed a meaningful relationship with the Consumer Institute to include the views and concerns of consumers of financial products. Public participation is not only confined to non-industry organisations, bodies such as the Life Offices' Association and people acting in their own capacity are always present at public hearings and are given equal opportunity to express their views.

When all parties that make up the Portfolio Committee are comfortable with the provisions contained in any legislation before the Committee, a motion of desirability is passed which signifies the beginning of the formal process of adopting a Bill. Once

the motion of desirability has been passed, the Bill before the Committee is scrutinised to ensure that changes that were agreed to have been made. When each clause has been agreed to, the Committee adopts the Bill. For this process, there must be quorum of at least fifteen members present in the Committee from any party in accordance with Parliamentary rules.

The formal process of Bills being passed through Parliament culminates when the Portfolio Committee reports to the National Assembly on whether or not it has decided to adopt the referred legislation. The plenary then votes and the Bill becomes an Act once the President has signed it.

Delegates from World Bank and IMF visit FSB

Delegates from the World Bank and International Monetary Fund (IMF) visited the FSB in October as part of a financial sector assessment of South Africa. This visit followed similar visits by the two organisations to other countries. South Africa had volunteered to be part of the pilot project.

The main objectives of the project were to assist South African authorities in:

- Assessing the strength of the financial system, and examining key issues that govern its efficiency and functioning;
- Assessing observance of international standards in their financial system; and
- Identifying any potential vulnerabilities and exposures of the financial system that could have significant macro-economic consequences, and designing mechanisms to address them.

FSB Bills to be tabled in Parliament

*Financial Services Board Amendment Bill, 1999 (*See article p.4)

*Pension Funds Amendment Bill, 1998 (to be changed to 1999)

The Bill's expected date for submission to Cabinet is late 1999 or early 2000. The Bill is in the early stages of redrafting and discussion with interested parties. It replaces the previous Bill which has been withdrawn. It deals with the contentious issue of pension fund surpluses.

*Collective Investment Schemes Control Bill, 1999

This Bill has been submitted to the Department of Finance and Cabinet approval is awaited. The Bill will replace the Unit Trusts Control Act, 1981, and the Participation Bonds Act, 1981, to regulate all types of collective investment schemes where assets are pooled on behalf of investors.

*Pension Funds Second Amendment Bill, 1999

The Bill will be submitted to the Department of Finance for Cabinet approval later this year or early 2000. It provides for various technical amendments relating to housing guarantees and the like.

*Financial Institutions (Investment of Funds) Amendment Bill, 1999

The Bill has been submitted to the Department of Finance and Cabinet approval is awaited. The Bill provides for various technical amendments to improve curatorship provisions, civil remedies and definitions.

*Financial Advisers Bill, 1999

This Bill will be submitted to the Department of Finance for Cabinet approval late 1999 or early 2000. The Bill will regulate provisions for the authorisation of

financial advisers and compliance with codes of conduct and other enforcement measures.

***Investment Services Bill, 1999**

This Bill is still in drafting stage. It will inter alia consolidate the Stock Exchanges Control Act, 1985, the Financial Markets Control Act, 1989, the Custody and Administration of Securities Act, 1992, and the Insider Trading Act, 1998 into a single Act that will regulate all exchanges and related matters.

***Insurance Laws Amendment Bill, 1999**

This Bill's expected date for submission to the Department of Finance for Cabinet approval is late 1999 or early 2000. The Bill provides for various technical amendments to correct and improve the Long-term and Short-term Insurance Acts, 1998.

New Amendment Act to enable merger of Exchanges

The Financial Markets Control Amendment Act, 40 of 1999, came into operation on 1 October. The Act enables the merger of the three exchanges, the Johannesburg Stock Exchange, the Bond Exchange of South Africa and the South African Futures Exchange.