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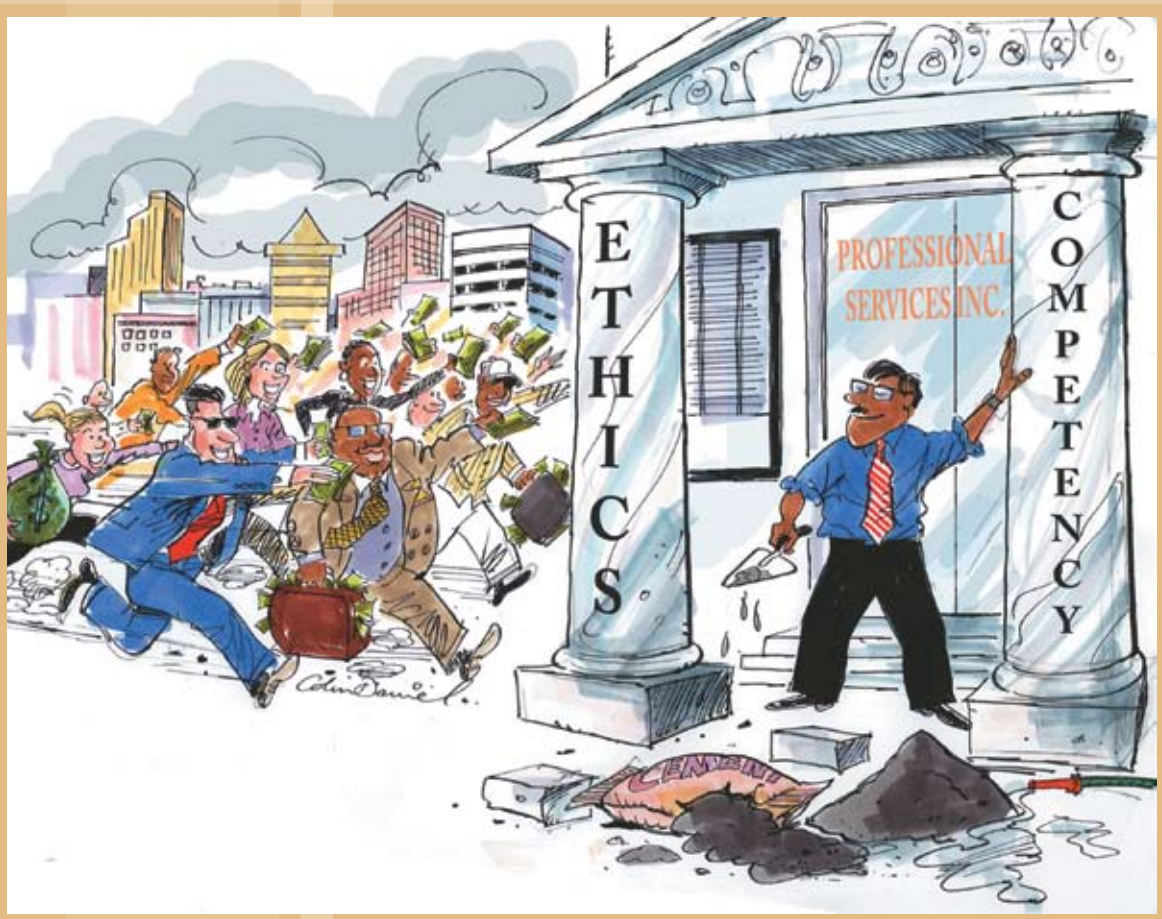

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Dube Tshidi to lead FSB team

Advocate Dube Tshidi has been appointed Executive Officer of the FSB as from 1 July 2008. Tshidi, presently serving as Deputy Executive Officer: Investment Institutions at the FSB, will be succeeding the current Executive Officer, Rob Barrow once his term expires on 30 June 2008.

Tshidi holds a Higher Diploma in Labour Law, as well as B.Juris, LLB and LLM degrees. He joined the FSB in 1994 as a junior analyst in the Retirement Funds division and has extensive exposure in working across various areas within the organisation. He served as Deputy Executive Officer in charge of Pensions for three years prior to his current post as Deputy Executive Officer in Investment Institutions, responsible for the capital markets, collective investment schemes and market abuse areas.

Tshidi brings with him a wide knowledge of the work of the FSB as well as a sound appreciation of the challenges of the organisation going forward. He is held in high regard among industry players and other stakeholders.

Source:
Media release, Ministry of Finance, 2 April 2008

Advocate Dube Tshidi

Jonathan Dixon joins FSB

Jonathan Dixon

The Minister of Finance, Trevor Manuel, approved the appointment of Jonathan Dixon as the new Deputy Executive Officer: Insurance, at the FSB.

Dixon was Chief Director, Financial Sector Policy at the National Treasury.

He assumed duty at the FSB on 1 April 2008 as Deputy Executive Officer; Insurance. FSB Executive Officer, Rob Barrow, says the financial regulator welcomes Dixon. "We are confident that he will bring significant expertise to the FSB management team, in particular the Insurance Division."

At the National Treasury, Dixon was responsible for policy co-ordination and regulatory oversight of the financial sector, including the banking, insurance, retirement fund and securities markets.

He has over nine years of policy experience with National Treasury, working in various capacities including macroeconomic policy and international financial relations.

Dixon is a Chartered Financial Analyst (CFA). He holds a Master of Science (M.Sc) in Economics from the London School of Economics and a Bachelor of Science (B.Bus.Sci) and Economics Honours, from the University of Cape Town.

Source:
Media release, FSB, 19 March 2008

Update on licences for financial services providers

FSB's Deputy Executive Officer for Market Conduct and Consumer Education, Gerry Anderson, says that progress is maintained in the finalisation of applications received from financial services providers (FSP's) for authorisation.

To date the FSB has finalised the processing of 17 201 applications. In total, 1 439 of these applications have been declined.

Source: Media release, FSB, 21 February 2008

FAIS and professionalism:

A challenge for the financial services sector

As I come to the end of 40 years of employment in the financial services sector, I have become convinced that the words *professional* and *professionalism* are probably two of the most abused words in the English language.

Some of the more recent and frequent references to professionalism in the financial services sector relates to the Financial Advisory and Intermediary Services Act, 2002 (FAIS Act). I am always intrigued when I hear people talk about how the FAIS Act is, or will be professionalising the industry. These comments come from both sides of the fence – the regulator and those being regulated.

If this is true, it would water down the real meaning of *professionalism* to such a degree that I do not think it will be worth pursuing professionalism. The reality is that the FAIS Act, like all other legislation, deals with *compliance* to *minimum standards* e.g. minimum standards of honesty, integrity, competency and operational capability. All legislation is in essence about complying with minimum standards and compliance always deals with that which "I *have* to do" – mostly with a primary motivation of wanting to stay out of trouble!

In contrast, *professionalism* has to do with what I *choose* to do – that which I do voluntarily. It deals with *commitment* rather than *compliance*. While compliance is about doing the minimum - only what I have to do, commitment is about doing what is right –what I want to do - and about setting higher standards. A true professional will hardly be concerned about the compliance aspects of a law as that would be considered

By Ben Rossouw, previously Managing Director of the South African Financial Services Intermediaries Association (SAFSIA)

a given. The true professional would rather want to be *differentiated* by the two pillars of professionalism - ethical conduct and competence - and will therefore always strive to demonstrate adherence to higher standards of conduct and competency than what the law requires.

One cannot claim to be professional if both pillars – ethical conduct and competence – are not in place. If I am competent but unethical, I will most likely take my client for a ride – I will know how to do it. If I am ethical but incompetent, I will make mistakes. In both scenarios the client will pay the price.

So often organisations and individuals will not consider setting higher standards than what the FAIS Act demands.

They fear that this will only add cost and not benefit them financially.

I do not believe that this is true and my own experience has convinced me that *professionalism is profitable*. If we understand that a professional relationship with a client always demands that I put the client's best interests ahead of my need to earn money, then we will understand why professionals will have a far greater retention of clients.

Research on this topic has shown time and again that a long term professional relationship, built on trust, will result in keeping a client. In addition, referrals will flow your way.

Research further shows that it is a lot cheaper to do further business with existing clients than securing new clients. All this points to the fact that - "professionalism is profitable". The challenge for the financial services sector is to put this to the test and to create a win/win environment where the financial services provider and consumer benefit.

Fever complaints to Ombudsman for Long-term Insurance

For some years, the total number of complaints received by the Office of the Ombudsman for Long-term Insurance had increased steadily each year. During the second half of 2006, however, there was a marked decrease to a level which remained steady during 2007. As a result, the total number of complaints received in 2007 was 7 923, a reduction on the 9 234 complaints received in 2006.

The graph only shows the full cases finalised by the office, excluding mini-cases, out of scope complaints and complaints which are transferred to insurers. Over the past three years the Office has managed to finalise more full cases, with the result that the volume of work on hand is currently reduced than was the case in previous years.

Nature of complaints

For the past year the nature of complaints finalised has produced no surprises with the proportions of the various types of complaints remaining much the same as in 2006. The biggest categories remain claims declined (43% of complaints) and administrative problems (26%). Dissatisfaction with policy performance has again declined (to 7%) as is to be expected when markets perform well. The office finalised fewer misselling complaints, also largely as a result of the improved market performance – policyholders are less likely to question the

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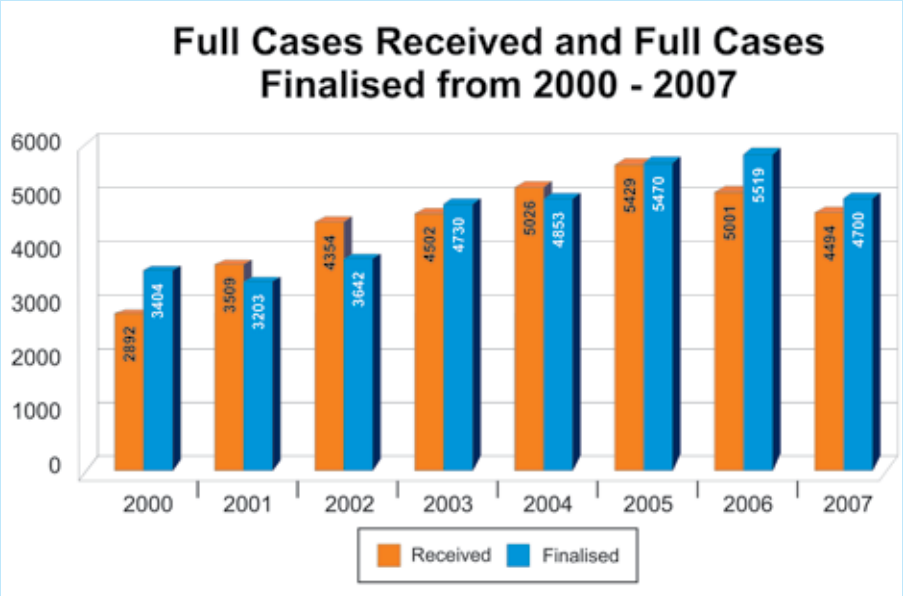
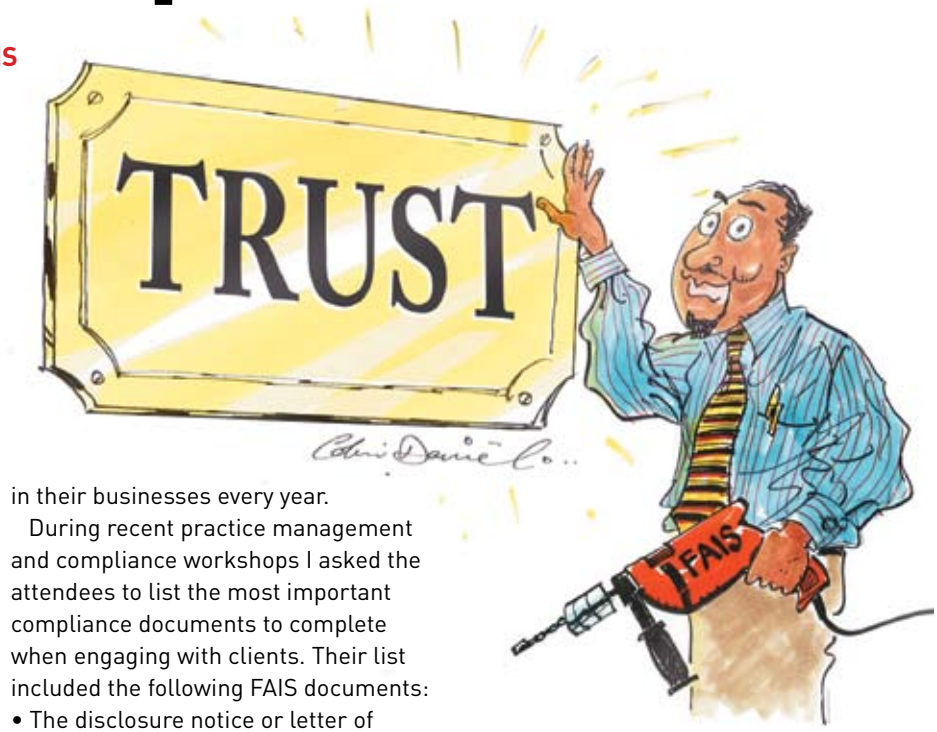


FAIS – A unique business tool for best practice

By Anton Swanepoel, Counsellor on FAIS

We are in our fourth year of rendering financial services under the Financial Advisory and Intermediary Services Act, 2002 (FAIS Act) and the majority of providers still appear to have a compliance mindset when completing documentation for record-keeping purposes.



Only a handful of providers have managed to use the prescribed process and records as business tools, thereby establishing and building their most valued foundation in their relationship with their clients, namely trust. In all our workshops advisors and intermediaries agree that client relationships are established and transactions concluded under the FAIS Act are done on the basis of trust.

The purpose of this article is to show that providers have a choice of whether to be irritated by the process and paperwork as prescribed in the General Code of Conduct or to use the FAIS Act as a sound guideline to establish trust.

The provider who chooses to keep records with a compliance mindset will always be irritated by the regulator and will continue to be influenced by the negative issues around compliance. However, the provider who chooses to use the prescribed process and record-keeping requirements as trust-building tools will realise that the FAIS Act and General Code of Conduct offer a fantastic framework for doing bigger and better business. Providers who have managed to embrace the Act since 30 September 2004 have experienced significant growth in their businesses every year.

During recent practice management and compliance workshops I asked the attendees to list the most important compliance documents to complete when engaging with clients. Their list included the following FAIS documents:

- The disclosure notice or letter of disclosure[1]
- A document containing the client's personal information[2]
- A financial needs analysis questionnaire[3]
- A risk profile questionnaire[4]
- A client service request, instruction, or service level agreement[5]
- FICA documents[6]
- A proposal document[7]
- A quotation or fund fact sheet (when applicable)[8]
- An advice agreement[9]
- An intermediary service agreement[10]
- An application form[11]

Within an hour after the workshop had started, all advisors and intermediaries agreed that none of these documents are actually compliance documents, but vital instruments in establishing and building trust. If providers choose to use these documents as trust building tools, they will have to apply them in the order described below, as the one document flows from the other.

First meeting between provider and potential client

- **Professional introduction**

Providers should always remember the importance of making a good professional impression on the client during the first meeting.

You never get a second opportunity to make a good first impression.

The *letter of disclosure* or *disclosure notice* can be used as a dull compliance document or an executive business card. It is a simple matter of choice. Most providers seem to print out a black and white A4 document that contains all the required documentation as prescribed

in Sections 4 and 5 of the General Code of Conduct. The document is used as a compliance document and the client is requested to sign a copy for the file.

There are a few leaders in the financial services industry who have recognised that the letter of disclosure can be used as a professional introduction of themselves and their services. Some use it as a business card with a difference: A professional letter of introduction on a colorful letterhead. Others introduce themselves on a different level by designing a professional brochure and including additional information such as the vision, mission and value proposition of the business. By using the information required by law in a way to impress a client instead of depressing the provider, it offers a vital first step towards building confidence and trust.

• Personal information

Providers agree that getting personal information from clients is a basic practice in the business of financial advice and intermediary services. It should not be seen as a compliance requirement, but as a basic building block in the process of knowing your client and building a long term business relationship.

• Financial needs analysis

Although the FAIS Act does not use the term Financial Needs Analysis (FNA), this term is well known to providers. The practice of completing an FNA is common among financial advisors. An FNA is a template, which is designed to ask a potential client basic, yet important information to determine his or her financial needs and objectives. It also serves as an instrument that encourages providers to write down information regarding clients' needs and objectives.

Some providers see this FNA questionnaire as a compliance exercise, while others use it as a trust building tool. Remember the following valuable principle:

Seek first to understand, then to be understood.
Stephen R. Covey

People only start trusting others when they feel understood. The financial needs analysis questionnaire is designed to lead providers into a better understanding of their clients and their circumstances. International research indicates that financial advisors and intermediaries talk too much during their first meeting with their clients. This prevents the provider from identifying all the client's essential needs. The FNA allows you to ask appropriate questions, followed by careful listening and writing down of important information – all vital components in communicating how much you care about the client's circumstances.

Very few things establish confidence and trust as quickly as a person who listens well, asks relevant questions and writes answers down. When top advisors and intermediaries are asked whether an FNA is a compliance document or a trust building tool, all have agreed so far that it is a great business tool, serving as a trust building document.

• Risk profile questionnaire

Some risk profiling questionnaires are fundamentally flawed while others are based on sound fundamentals. If the risk profiling questionnaire is based on sound fundamentals, it serves a similar purpose as the needs analysis: An instrument in the hands of the provider in his or her search to understand the client's preferences, insurance and investment character. It is designed for the provider to ask questions, listen and write down important answers.

Any document that helps to understand the needs and objectives of the client puts the advisor in a better position to communicate to the client that the advice process is all about the client and not the advisor. This message is important as it enhances confidence in the advisor, which ultimately leads to trust. The risk profile questionnaire is therefore not a compliance document, but another important building block in the establishment of trust.

• Client service request

There are still advisors and intermediaries who do not use written client requests or instructions in their processes with clients. These advisors are missing an ideal opportunity to establish a sound professional relationship and to continue building on a trusting relationship. If used correctly, the client service request or service instruction serves as a trust building agreement as it should contain a summary of what service the client expects and whether a fee will be charged for that service. If the client service request or service instruction contains an accurate summary of what is agreed between provider and client, the client will not mind signing the document. In fact, if the provider commits and signs the document first, the client would be happy to sign the document, especially if he or she will get a copy of the agreement. Providers have a choice when it comes to agreements between themselves and their clients: They can either use an agreement as a protection tool or as a professional trust building instrument.

Second meeting between provider and client

• Written proposal

Some advisors still attempt to conclude financial transactions based on a quotation and an application form. Leaders in financial advisory and intermediary services distinguish

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Best practice Continued from p 7

themselves when it comes to making proposals. True professionals include the following in their written proposals:

- A letter of thanks and confirmation of the purpose of the proposal[12]
- Confirmation of the client's financial needs and objectives[13]
- A summary of the client's current financial position[14]
- Calculations[15]
- A recommendation regarding the financial plan
- A recommendation, guidance or proposal regarding a financial product[16]
- Key features and benefits of the recommended financial product[17]
- Terms, conditions and exclusions of the recommended financial product[18]
- Provider's service proposal[19]
- Fees, commission and/or costs[20]

The above are the key elements of a financial proposal that will lead a client into making a well-informed decision, ultimately building trust.

• Quotation (long-term and short-term insurance) or fund fact sheets (collective investments)

Disclosure is not primarily a compliance issue, but a vital component of open communication, which is a non-negotiable requirement for building trust. Some product suppliers still have some way to go in their product disclosures to assist providers in their disclosure as required under the FAIS Act.[21] Quotations and fund fact sheets that contain the key benefits, terms, conditions and exclusions as required in terms of FAIS turn out to be trust building documents, helping providers to lead their clients into making well-informed decisions. A quotation or fund fact sheet with all the necessary product information goes a long way to assist in that process.

• Advice and intermediary agreement

For a client to make a well-informed decision there are five key elements to be disclosed and agreed to:

* The client's needs and objectives;
* The key features and benefits of the proposed financial product solution that is aimed at addressing the client's needs and objectives;
* The terms, conditions and exclusions regarding the proposed financial product solution;
* The provider's service value proposition; and
* The remuneration of the provider such as fees and commission.

If the advice agreement serves as the record of advice (as it should) and the client is offered a copy of this executive summary of advice, it could serve as the ultimate trust building business tool.

• Application form

Providers agree that the application form is not a compliance form, but an application to submit business and should therefore be scrapped as a compliance document. If the application form is a true reflection of the advice given and the client's acceptance of the advice, the product supplier's proposal form will seal the trust relationship between provider and client.

In view of the above, one cannot blame the regulator if providers still battle with the concept of FAIS compliance in the advice process after almost four years since the Act became effective. I firmly believe that the majority of providers still choose to use compliance documents prescribed by law in their process with a compliance mindset in stead of using the FAIS Act and General Code of Conduct as sound trust building guidelines.

References

[1]See sections 4 and 5 of the General Code of Conduct
[2]See section 8(1)(a) of the General Code of Conduct
[3]See section 8(1)(a) and 8(1)(b) of the General Code of Conduct
[4]See section 8(1)(a), (b) and (c) of the General Code of Conduct
[5]See section 3(1)(d) of the General Code of Conduct, section 20(3) of the Act and Step 1 of the Six Step Process suggested by the Financial Planning Institute of South Africa
[6]The requirements in terms of the Financial Intelligence Centre Act must be adhered to, but for purposes of this article FICA will not be dealt with in detail. The focus will be on the process specifically prescribed by the FAIS Act and General Code of Conduct
[7]See section 16(2) of the FAIS Act and section 9 of the General Code of Conduct
[8]See section 7(1)(c)(vii) of the General Code of Conduct
[9]See sections 3(1)(d), 7(1)(a), section 8(1)(c), section 9 of the General Code of Conduct and section 20(3) of the Act
[10]See sections 3(1)(d), section 9 of the General Code of Conduct and section 20(3) of the Act
[11]See sections 3(1)(d), 7(1)(a), 9 of the General Code of Conduct and section 16(2) of the Act
[12]See sections 2 and 3(1)(a)(iii) of the General Code of Conduct
[13]See section 8(1)(a) of the General Code of Conduct
[14]See section 8(1)(a) of the General Code of Conduct
[15]See section 8(1)(b) of the General Code of Conduct
[16]See section 8(1)(c) of the General Code of Conduct
[17]See section 7(1)(a) and (b) of the General Code of Conduct
[18]See section 7(1)(a), (b) and (c) of the General Code of Conduct
[19]See section 3(1)(d) of the General Code of Conduct
[20]See section 7(1)(c)(v) and (vi) of the General Code of Conduct
[21]See section 7 of the General Code of Conduct

Complaints cont. from p 5

appropriateness of a product when it performs well.

The percentage of cases resolved wholly or partially in favour of complainants (w/p) during the year was 44% in total, being the same as the previous year. An analysis of the various categories over the past few years shows an increase in w/p for dissatisfaction with surrender or paid up values, reflecting the number of cases in which the office was able to negotiate increased payments from insurers on surrender.

Source: Office of the Ombudsman for Long-term Insurance

BESA opted for demutualisation

By Elmarie Kruger, Manager: Capital Markets Department, FSB

On 27 November 2007 the Registrar of Securities Services approved the demutualisation of the Bond Exchange of South Africa (BESA) in terms of section 53 (1) of the Securities Services Act, 2004. On 3 December 2007 BESA became a public company with limited liability, and its name was changed to the Bond Exchange of South Africa Limited.

All seat holders became ordinary shareholders in the company in the exact proportion to their seat holdings. Demutualisation refers to the transition process of an exchange converting from a "mutually-owned" association to a company "owned by its shareholders". It transforms the legal structure of an exchange from a mutual form to a business corporation. After demutualisation, the ownership, management and trading rights at the exchange are segregated from one another.

Although demutualisation constitutes a statutory change in the legal structure of BESA, it more importantly creates the foundation for BESA's future positioning. Converting to a company provides BESA with easier access to capital necessary to drive growth in the business, upgrade technology and address product development. It also enhances the possibility of new alliances, joint ventures and strategic partnerships with other exchanges and technology providers.

Key drivers for demutualisation of exchanges

The key drivers which are forcing exchanges to demutualise are:

- Increasing pressure from the market for low cost cross-border access;
- Technological change in the form of new electronic and alternative trading systems;
- Globalisation;
- Growing competition and more concern for investors' interests, which increase the need for stock exchanges to be cost-efficient, transparent and more widely accountable; and
- More cost-conscious investors. It is inevitable that the winning stock exchange or trading market will be a low-cost service provider. In a fast changing environment, the monopolist, self-regulated, mutual stock exchange tends to be seen as an institution of the past.

Advantages of demutualisation

There are obvious advantages to demutualisation:

- Financial agility - Demutualised entities have wider access to capital and can have wider horizons compared to mutual exchanges. This gives the demutualised exchange a competitive edge in securing business and a better position to embrace the technology evolution (although there is no evidence of this yet).
- Lack of "peer pressure" - The major weakness of a mutual exchange is its constitution. Mutual exchanges are ultimately geared to maintaining their members' interests. The interests of the members are not necessarily the same as those of the exchange. Therefore there is a disparity. The separation of shareholders, management, and users in a demutualised exchange makes for better strategic decision-making, rather than protecting vested interests.
- Access to greater variety of capital

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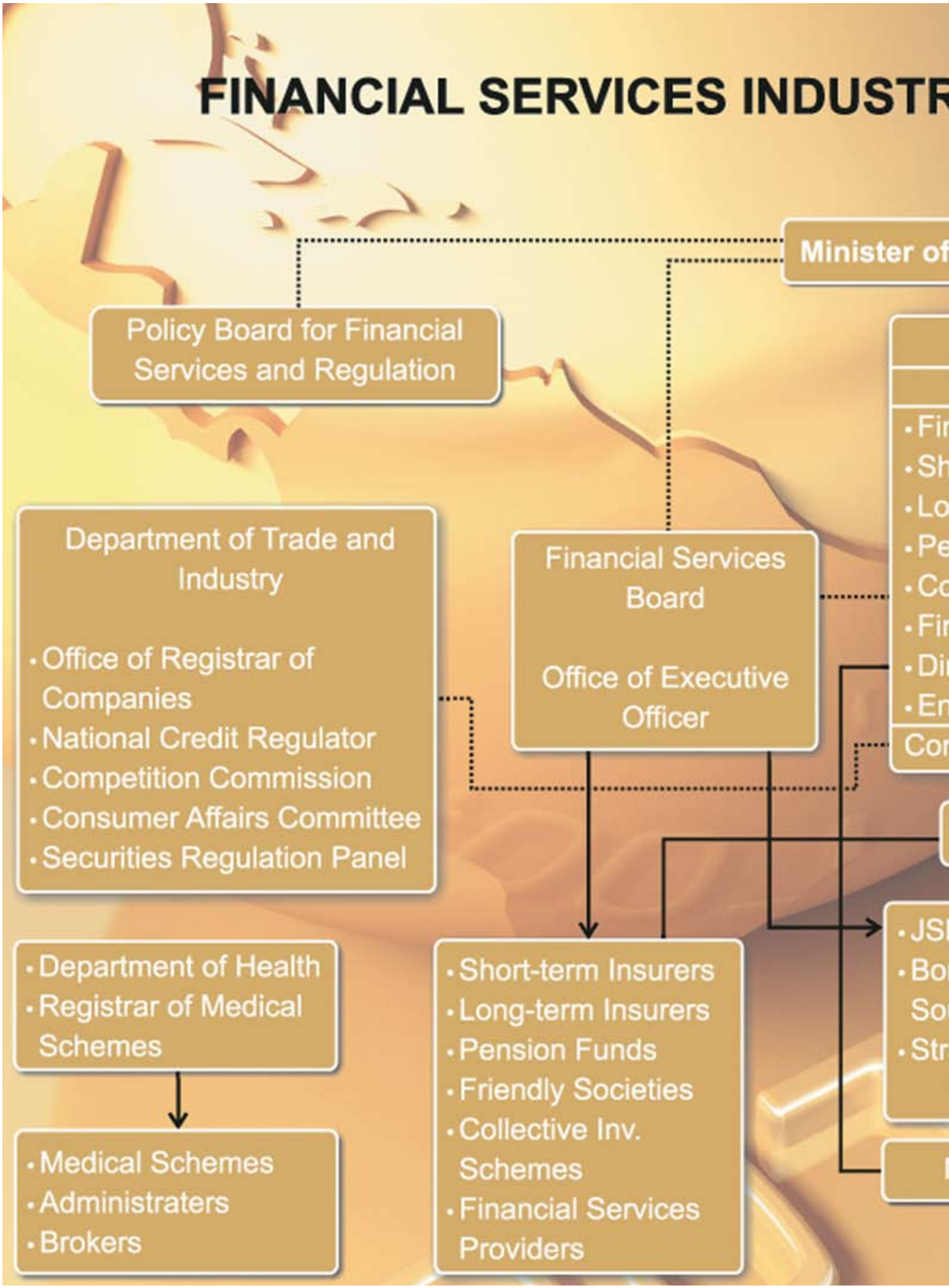
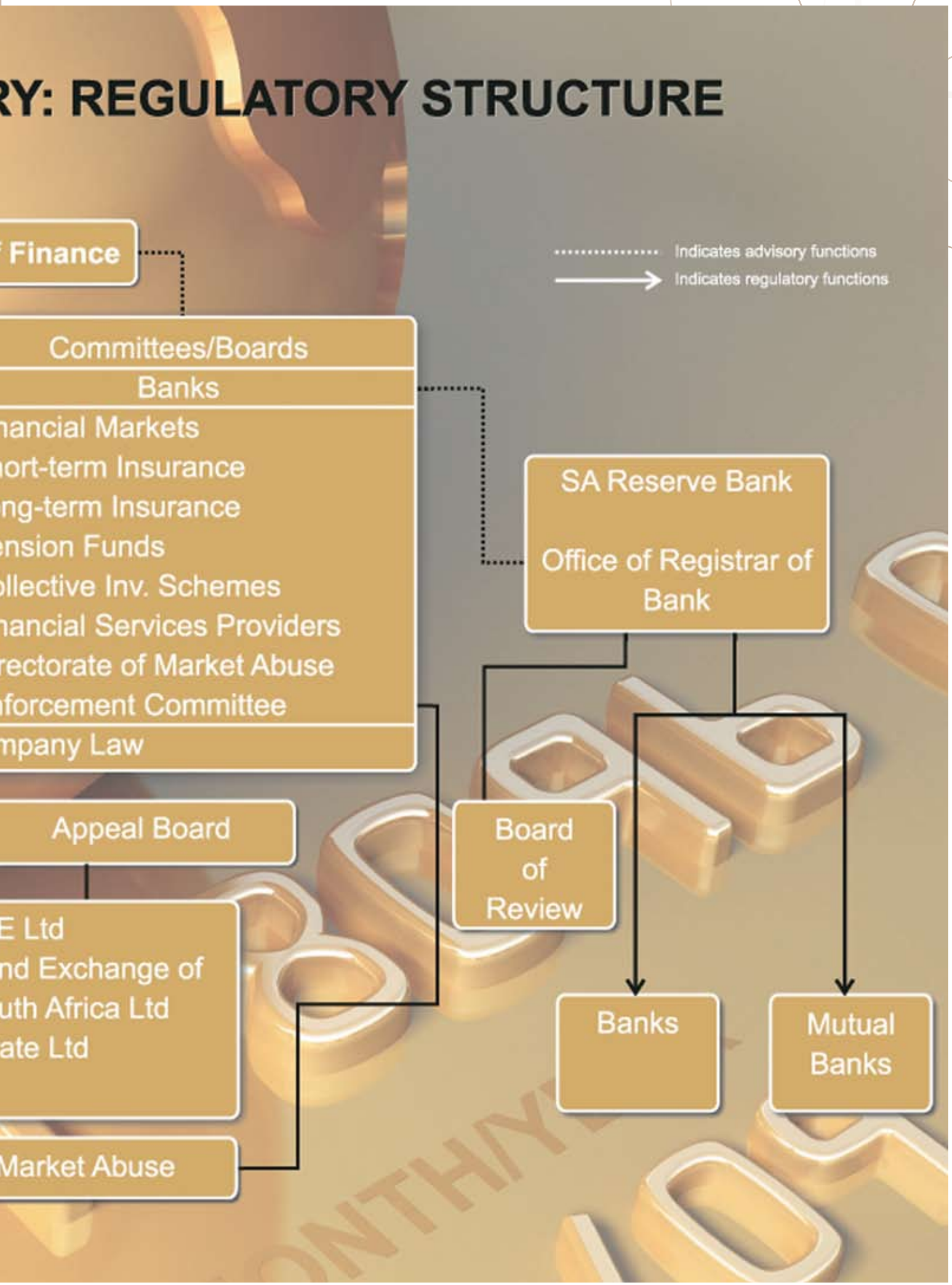

FINANCIAL SERVICES INDUSTR
Minister of
Policy Board for Financial Services and Regulation
Department of Trade and Industry
• Office of Registrar of Companies
• National Credit Regulator
• Competition Commission
• Consumer Affairs Committee
• Securities Regulation Panel
Financial Services Board
Office of Executive Officer
• Department of Health
• Registrar of Medical Schemes
• Medical Schemes
• Administraters
• Brokers
• Short-term Insurers
• Long-term Insurers
• Pension Funds
• Friendly Societies
• Collective Inv. Schemes
• Financial Services Providers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Banks
Mutual Banks
Market Abuse

Some light during the present doom and gloom

By Flip Meyer, an economic consultant

The once mighty US dollar has fallen from grace.

The greenback, as this currency is known, no longer holds the number one position amongst international investors. This is supposed to be good news for the rand because normally the South African currency increases in value when the US dollar takes a dive. However, this has not happened because of certain negative developments in South Africa.

Since January 2000 the rand has been one of the worst performers in the world currency markets. The weaker rand has and will still put pressure on the inflation rate. The recent announcement by Eskom that electricity rates will be increased by 60% over the next few years has created fears that the inflation rate will increase by close to 10% in the foreseeable future.

The economic world has changed and South Africans must take notice and see the bigger picture.

Investors prefer the euro and even in some cases the Chinese Yuan. Travellers no longer favour the US dollar.

Oil producing countries are experiencing particular challenges, as oil is priced in US dollars. Exchanging their (oil producer) dollars for other major currencies like the euro becomes a disaster when the US currency erodes.

The expected deep recession in the US and financial shocks in this country have placed the value of the dollar under immense pressure. The rest of the world, including South Africa, will be watching the economic turmoil in the US closely.

Value of the rand

The 37 economists participating in the Economist of the Year Competition of *Sake24* predict that the value of the rand would average close on R8 to the US$ in the last quarter of this year. The consensus prediction seems optimistic. The consensus at the end of February was that the inflation rate as measured by the CPIX would average 7,78% in 2008. The CPIX measures price increases excluding interest rates on home loans.

A weaker rand will put upward pressure on the fuel prices. The only saviour would be a decline in the dollar price of crude oil. However, it seems as if the price of a barrel of crude oil will remain above or at least close to $100 a barrel.

The international oil market is demand-driven due to the huge growth in China and India. Where there are demands and a shortage of supply, prices go up. And oil is no exception.

Petrol prices have an enormous physiological influence on consumer and business confidence. The problem that Eskom has in supplying households and business with electricity has already taken its toll. Consumer and business confidence has fallen. High petrol, diesel prices and the Eskom shocks have and will have a huge impact on confidence.

This all sounds like doom and gloom. However, there is also cause for optimism.

The 37 economists mentioned above predict that the Gross Domestic Product of South Africa will grow by 3,5 percent in 2008. This paints a picture of an economy taking a breather after a growth rate of 5% last year.

Part of the sound economic growth can be attributed to the fact that there is still a lot of activity in the construction sector. Massive projects are rolling and

a decline in the value of the rand cannot bring them to a standstill. However, capital projects require imports; should the value of the rand decline further imported goods will become more expensive. A decline in the value of the South African currency stimulates exports and South African exporters will receive more rands for every dollar or euro they earn.

Commodity prices like gold and platinum have reached their highest levels in decades. South Africa, being a major producer of gold and platinum, will benefit. However, retailers and many consumer-related industries feel the pinch of an economic slowdown. Therefore the overall economic growth should be seen in perspective. According to a survey conducted by the Buro for Economic Research from the University of Stellenbosch, confidence amongst retailers has declined. And this is just one sector of the economy.

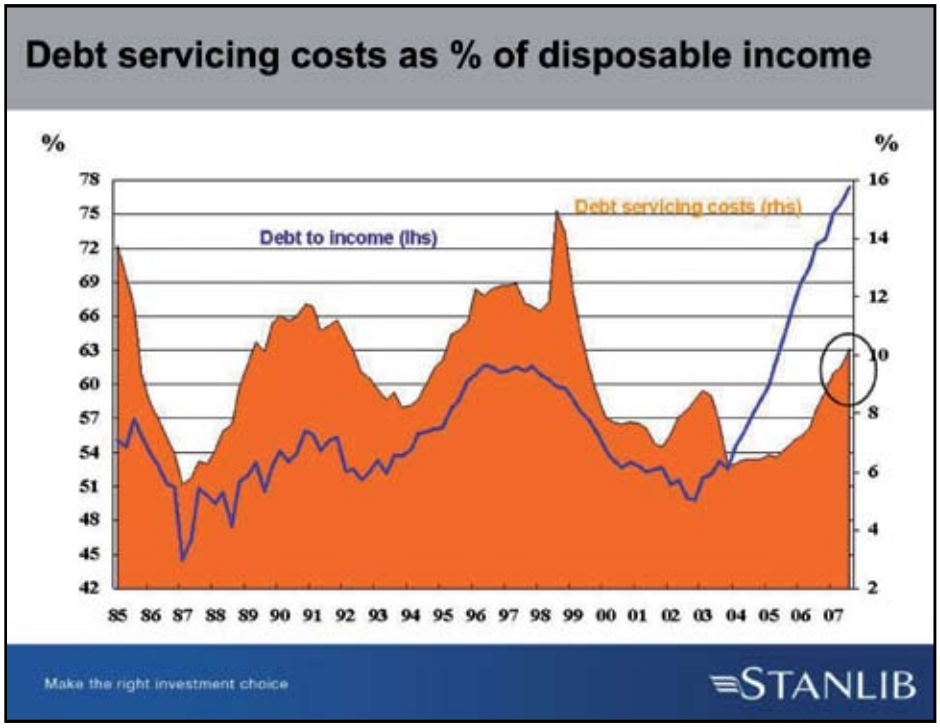
The shortfalls on the current account are one of the reasons why there is pressure on the value of the rand. As long as commodity prices increase, South Africa will benefit. Hopefully exports will increase at such a rate that the gap between the value of imports and exports will narrow.

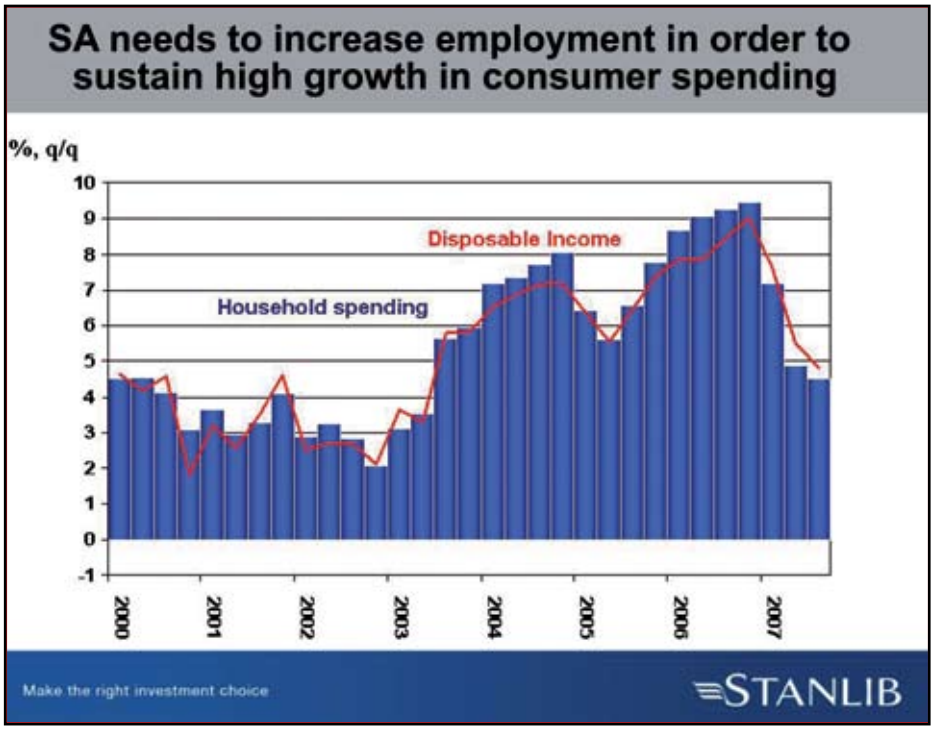
If the 37 economists are to be believed, all this gloominess might be history in a year's time. The predicted average growth (consensus) rate for next year is 4% and the inflation rate will come down to 5,59%. This prediction was made at the end of February before the increase in Eskom tariffs was announced.

Several of the 37 economists believe that interest rates will increase later this year due to the higher inflation rate, but the consensus is that the prime-lending rate of banks (the rate which banks charge their top clients) will remain at 14,5% towards the end of 2008. These predictions could change soon should the inflation rate be higher than expected. When the 37 economists hand in their next predictions at the end of March the inflation rate forecasts could be higher.

In conclusion, 2008 will be a year characterised by big uncertainties. But let us not be blind to the positives.

**Meyer is a former editor of Sake24 a daily financial publication. At present he is a freelance journalist and economic consultant. His web site address is www.flipmeyer.com*





Beware of SIM swap fraud

Fraudsters use spoofing and phishing (scam e-mail) to gather personal information from bank customers. Once fraudsters have your personal details, they use these details to request a SIM swap at the cell phone service provider on your cell phone number, thereby accessing your bank account, by changing the method whereby you would be notified of transactions on your internet bank account.

How the scam works

Spoofing is a fraudulent practice to lure you to a look-alike website to defraud you, while phishing is a form of fraud where criminals attempt to access your confidential information. Phishing is done either by an e-mail request for information or also by luring you to a false website. In both instances, the fraudster would pretend to be from a legitimate company (for example the bank), and would ask you to disclose confidential financial and personal information - like passwords, credit card account numbers, ID numbers or cell phone number.

The Ombudsman for Banking Services also received complaints as a result of the use of computers at internet cafés. These are specifically targeted as Trojan viruses installed on such computers are used to record confidential information – thereby providing information to individuals who purport to act on behalf of the individual's bank.

The randomly generated security passwords or "One Time Password" (OTP) facility available on the banks' systems is time sensitive and used as an added security on selected internet banking transactions. The password can be sent to you by e-mail or SMS and is valid for one internet banking session. Amendments made on the account would entail that the password is SMS'd to the fraudster's phone. Once in possession of the password, the syndicate would amend the OTP preferred method of delivery from SMS notification to e-mail, without the bank system requiring a further OTP reference. The loss, which may range from a few hundred rands to hundreds of thousands, is usually only detected when you notice a transfer from your account to a beneficiary not created on the internet banking profile.

Previously, for customer convenience, the system allowed the switch between OTP over e-mail and SMS within an internet banking logon without the requirement for an OTP. This was done to help clients who frequently traveled and were in areas where there was no cell phone coverage or e-mail access. By allowing the customer to switch the preferred method of delivery, they could conduct sensitive transactions on their internet banking without being in possession of their phone or having access to their e-mail accounts. In order to achieve this, the customer would need to divert their OTP through an alternative channel.

The Code of Banking Practice, which members of the Banking Association subscribe to, is very clear that they undertake to: "provide reliable banking and payment systems services and take reasonable care to make these services safe and secure". As a result of the weakness in the previous process on the bank's system, the banks were commended for the additional requirement introduced, whereby an OTP is now needed for validation before the mode of delivery can be changed.

But how can the bank customer help to prevent SIM swap fraud?

Prevention

- Protect your information.
- Do not disclose your ID number on websites unless you have verified the legitimacy of the site. The bank already knows your ID number and will not require you to give it again.
- Do not disclose your cell number on websites unless you have verified the legitimacy of the site. Phishing sites often request information such as ID number, e-mail address, e-mail address password, physical address, etc.
- If you receive an SMS from your cell phone service provider warning that a SIM swap has been conducted on your cell phone number, please contact your provider immediately. If the SIM swap is prevented, the fraudsters will not be able to receive your OTP and will not be able to make fraudulent transactions.
- If you receive an "OTP Alert" and you are not purporting any internet banking transaction, a fraudster may have hacked into your account. Immediately contact the bank.
- Always make sure that your contact details on internet banking are valid and correct. You should never respond or reply to any e-mail that:
  - Requires you to enter personal information directly into the e-mail or submit that information some other way.
  - Threatens to close or suspend your account if you do not take immediate action by providing personal information.
  - Solicits your participation in a survey where you are asked to enter personal information.
  - States that your account has been compromised or that there has been third-party activity on your account, and requests you to enter or confirm your account information.

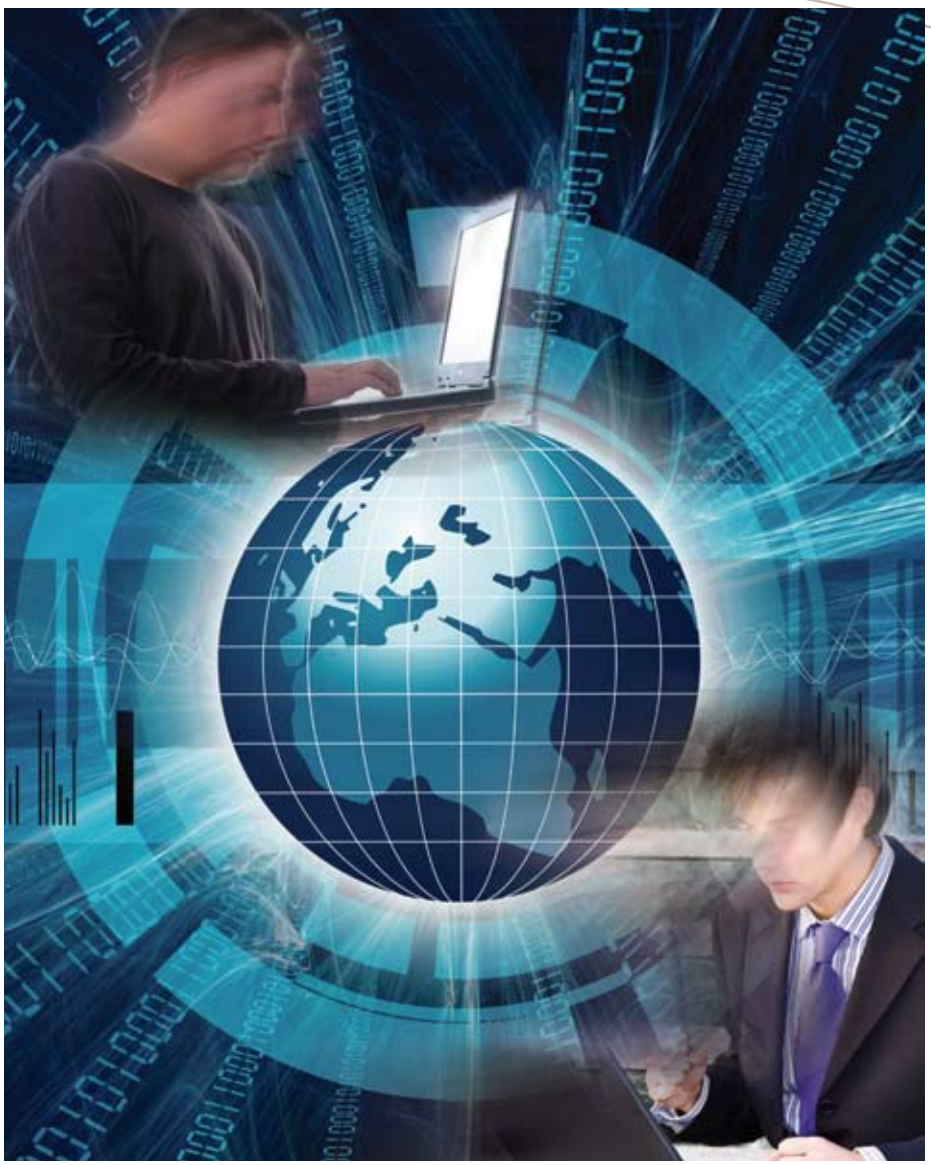
- Asks you to enter your user ID, password or account numbers into an e-mail or non-secure web page.
- Asks you to confirm, verify, or refresh your account, credit card, or address information.

What should you do if you suspect a fraudulent SIM swap has been done?

• Contact your service provider immediately. If the SIM swap can be prevented, they will not be able to receive your OTP.
• Immediately change your Internet banking logon credentials until an investigation into the SIM swap can be completed. The changing of your logon credentials can be done on the Internet banking site and takes a few minutes.
• Contact the banking call centre immediately and report the unauthorised SIM swap.
• Never access the site via a link. Rather type the address into the browser address bar or save the address as a "favourite".

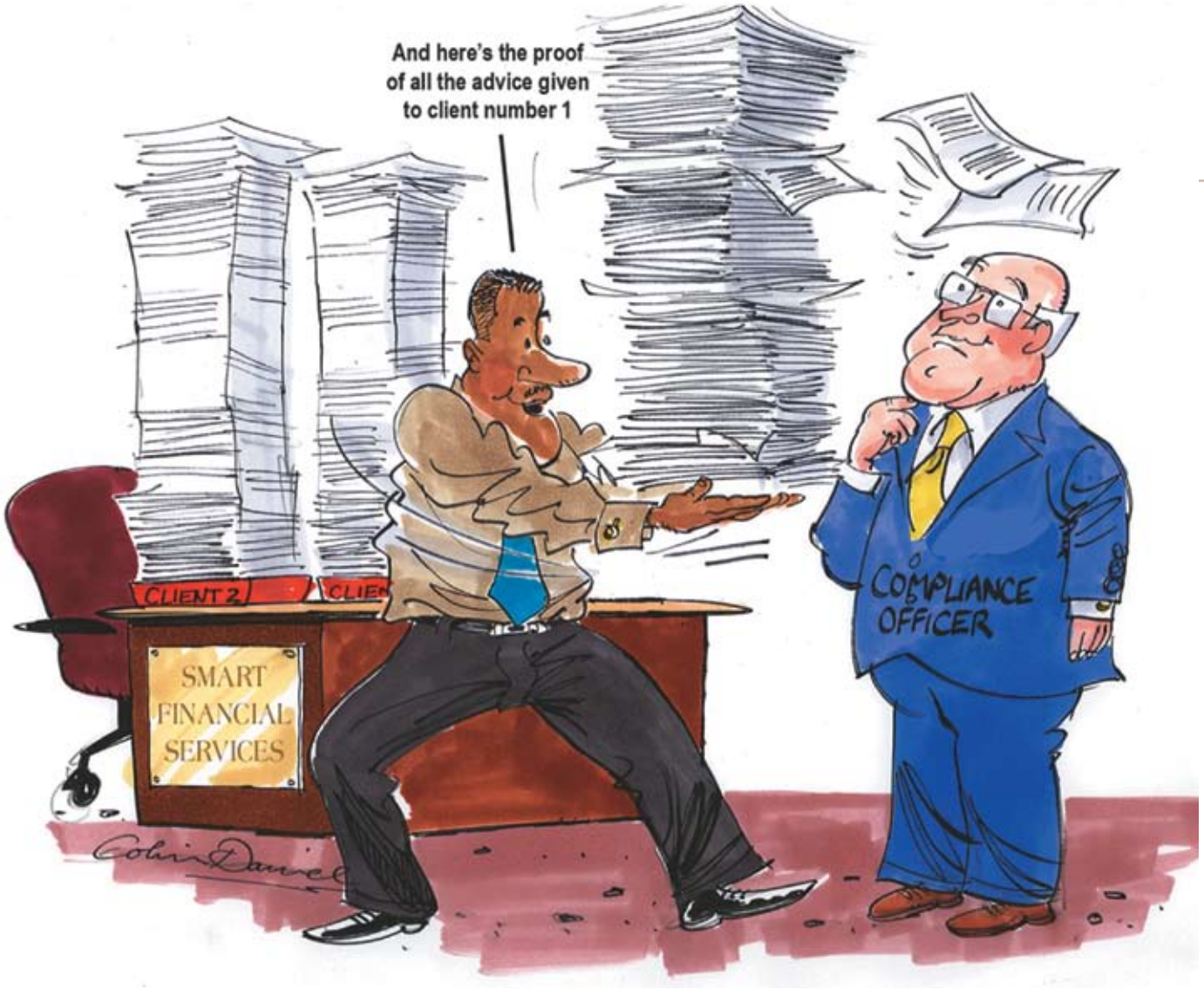
With every new security measure introduced by the banks, the fraud syndicates try to find innovative ways in which to circumvent them. The syndicates however need certain passwords and information to attempt to access a customer's account. It is therefore imperative that customers take all the precautions as mentioned. Customers can also visit the banks' websites to get advice on how to prevent SIM swap fraud. The Ombudsman further recommends that customers sign up for and make use of every security measure offered by the bank so as to avoid unlawful access and to be aware of unlawful transactions at an early stage.

In making a decision on any given matter, the Ombudsman will consider any possible negligence by the bank customer (negligently responding to fraudulent e-mails, spoof websites, etc). The Ombudsman's office will further consider whether the bank took reasonable precautions to protect the customer from losses due to fraud.



The Ombudsman's office received 90 internet banking fraud complaints in 2007. In the majority of cases the Ombudsman found that the bank was liable for the entire or a portion of the loss. The Ombudsman only receives those complaints that the bank was unable to settle with the customer, or particularly complex complaints which are difficult to resolve. Losses due to internet banking fraud can vary from a few thousand rand to hundreds of thousands depending on the account accessed, the transfer limits on the account, etc. Internet banking fraud and identity theft is a very serious problem world wide and bank customers must make themselves aware of the possible ways in which their personal information can be fraudulently obtained. Under no circumstances would any of the major banks ever request personal information such as account number, cell phone number or logon details, via an e-mail.

Source: Ombudsman for Banking Services, SABRIC, bank websites and fraud prevention agencies



Many compliance officers fail to understand purpose of FAIS

Robbie Stutterheim a compliance officer of Compliance Systems Development CC, reacts to Anton Swanepoel's article, *FAIS: Compliance officers under the spotlight*, which appeared in the FSB Bulletin, Fourth Quarter 2007.

Allow me to congratulate Anton Swanepoel for having captured the essence of FAIS compliance in his article. However, this is submitted from an outsourced compliance officer's perspective.

After having looked at my material, a compliance officer with a large compliance practice asked me whether "this was all that I gave my clients", referring to all kinds of documents, e.g. records of advice, which Anton points out to contain waiver of rights clauses that are contrary to all that the Financial Advisory and Intermediary Services Act, 2002 (FAIS Act) stands for. *My answer was that I give my clients nothing, other than my 26 years' experience in the industry.*

What many compliance officers fail to understand is the purpose of the FAIS Act, which is *"to put clients in the best possible position to make informed decisions about taking out/investing in financial products that will enhance their financial positions and future security".*

The FAIS Act has two very distinct components. The first is what I call the *licensing conditions*. The Act is very specific about certain requirements that a financial services provider (FSP) must adhere to in order to maintain its licence. For me and my FSP clients this is not negotiable, you simply put it in place and maintain it, end of story!

The more onerous element of the FAIS Act is the General Code of Conduct for FSPs and specific codes for *discretionary* or *administrative* financial services providers. In this sense the FAIS Act is an Act of "best practice". What is best practice? *Is there such a thing as "best*

advice"?

One can record all the information about the client's needs, medium and/or long-term goals, and then base one's advice thereon. One must then advise the client on the "best" possible way/product to achieve these goals. If one had to ask a so-called "expert" to evaluate the quality or merit of the advice, one would probably get as many responses for and against as the number of 'experts' asked. As Anton has pointed out, the FAIS Ombud is currently the sole "referee" determining whether best practice has been followed. But the Ombud has been challanged in a few cases as is evident from appeals against his judgments of late.

Having said this, however, the principle in the FAIS Act is sound. The FSP must ensure that his client is well informed and in a position to make an informed decision *about the financial product he wants to buy/invest in.*

This brings us to the record of advice. I agree with Anton that it should be more than merely an acknowledgement in the form of a signed document that the advice was given. It should show what the client was advised to do, which may not necessarily be contained in a single document.

As Anton points out so clearly - record, record and record again! *It is all about proof that the advice was given, i.e.* evidence about what was disclosed.

But one must also understand the specific industry one is advising on. As Anton has pointed out, "advice risk" is arguably the biggest risk that any FSP has. Allow me to use the short-term insurance industry as an example. There is no doubt that some clients lie through their teeth to have a claim paid and often lie in their claim submissions.

While the FAIS Act regulates the financial services provider, it does not regulate the client's conduct. *This will always be a factor.* How does one cover this? I think that this is the essence of any compliance officer's duty to his client. Make sure that you can prove to any institutional body, whether it is any of the voluntary ombuds, the FAIS Ombud or the Court.

This in turn brings us to a very important point regarding compliance with the FAIS Act. As mentioned and in line with Anton's article, compliance with FAIS deals with how one conducts one's business.

Best practice dictates that one should look at how something is done *and not merely at the end result.* Therefore my clients and I do a work-study analysis of all processes and procedures and evaluate all the documentation related to each step in the process. This ensures that the right thing is done at the right time with the right material.

More than traditional role

In this regard, I honestly feel that the role of the compliance officer under the FAIS Act entails much more than the "traditional" role of a compliance officer in monitoring a FSP's compliance with a certain Act.

With many Acts one can merely do this by way of a "yes" or "no" tick-box approach. Not so with the FAIS Act! A compliance officer under the FAIS Act must be able to evaluate whether his client is doing the right thing, at the right time, and with the right result. *To do this the compliance officer has to be knowledgeable about the field that the client operates in.*

The compliance officer's task then becomes first and foremost to look at the FSP's client files to establish whether the correct procedures were followed and the correct material used to give the necessary information. Well organised files with demarcation of different aspects of the product and service delivery, e.g. underwriting, claims and so on, will go a long way in monitoring compliance.

Another interesting fact highlighted by Anton is that most FSPs have not read, and probably do not know exactly what the FAIS Act expects of them. This is similar to the situation that most clients also do not read their policy/product documents.

I see it as the duty of a compliance officer to make clients aware of this and to try and overcome this in another way. FSPs can use special explanatory letters or regular newsletters to highlight contentious issues in the policy/product contract.

And then I also think that the compliance officer must emphasise the content of the FAIS Act with clients at every opportunity. In this sense an audit visit is not necessarily an audit but could also take the form of a training or information session.

Demutualisation continued from p 9

- Wider customer base
- Improved shareholder value — payment of dividends, better relationships
- More profit driven
- Better cost control
- Increased market capitalisation
- More focused management
- Quicker decision making
- Flexibility, efficiency and competitiveness

Conclusion

Demutualisation can, and does offer unprecedented opportunities but only where the end result is a structured organisation that -

- is transparent to its shareholders, management, staff and users.
- truly segregates its stakeholders (users and shareholders) from the management of the business.

Trustees' duties in the regulation of occupational pension funds

By Adv Matome Thulare, Pension Funds Department, FSB

This article is the second in a series of four articles regarding trustees' duties in the regulation of occupational pension funds. The first article focused on the history of pension funds and pension funds as a form of "trust". This article examines the important function of management of pension funds with particular focus on the board of trustees.

The board of trustees has certain statutory duties[1] as well as duties imposed by common law. The board is required[2] to take steps to protect the interests of members in terms of the rules of the fund; act with due care, diligence, and good faith; avoid conflicts of interest; and act with impartiality in respect of members and beneficiaries. It has the power and responsibility to control and oversee the operations of the fund in accordance with the applicable laws and the fund's rules.[3]

Nature of fiduciary duties

In considering the nature of a fiduciary duty, the Supreme Court of Appeal, in the recent decision of *Phillips v Feldstone* 2004(3) SA (SCA) held that:[4]

"There is no magic in the term "fiduciary duty". The existence of such a duty and its nature and extent are questions of fact to be adduced from a thorough consideration of the substance of the relationship and any relevant circumstances which affect the operation of that relationship".

Trustees of pension funds must avoid conflicts of interest and act impartiality in respect of members and beneficiaries.

Where structural conflicts[5] exist, board members must act without regard for personal interests and the interests of those who appointed them. In a number of cases[6], it is apparent that decisions were not taken because they had financial impacts on the employer. For example, where a fund fails to remit contributions to the pension fund, the law requires that trustees must take certain steps against the employer. Trustees seldom institute legal action against defaulting employers.

More often, the chairperson of the board will be the employer's representative or even worse, the managing director of the company. Ordinarily, it becomes impossible for the board to act against the employer in such instances. Trustees must be mindful that they are not accountable to the person who appointed them to the board.

Board members' competencies and skills

Board members must be competent persons who can make meaningful decisions about the fund's future. In some cases,[7] the board relies on the service provider for advice as it lacks expertise and knowledge.

In worse cases, the board is under the impression that it must take instructions

from the service provider, while the opposite is the case.

The law does not require a trustee to be an expert or a jack of all trades. The law,[8] however, expects of the board to get expert advice on matters where they lack sufficient expertise. The board should consider such advice and be free to seek a second opinion.

Due to the onerous task of being a trustee, board members must be able to deal with their responsibilities diligently and thoroughly.[9] This can be achieved through structured training for new trustees and continued training on aspects posing challenges to the fund's governance, such as risk management, investment risks and strategies, benefit structures, legal issues and regulatory requirements.

In the UK[10], and in the Myners Review research, a lack of investment understanding was highlighted among trustees. Recommendations were made that trustees should be legally obliged to make investment decisions and be familiar with investment issues. However, given the unique history of our society, such a recommendation is against the efforts to empower members of retirement funds to have a say in their own future, more so as the majority of these board members are illiterate.

Over the years, we have witnessed the tradition of lay trusteeship in South Africa. All of this has to be understood in the historical and political context of the country. It is true that democracy in South Africa and by extension in retirement fund management is a new phenomenon. Any attempt to legislate core competencies for trustees will shake the democratic foundation on which board representation is founded.

Nature and the power of delegation of board duties

The law does not prohibit delegation of duties and requires trustees to get expert advice on matters where board members may lack sufficient expertise.[11] However, a complete abdication of responsibility in favour of another is not permissible.[12] Responsibility cannot be delegated.

Case law[13] in the UK has confirmed that trustees should be judged on what they ought to know rather than what they know. It is common for a board of trustees to delegate certain operational functions such as benefit administration and asset management to professional service providers. That being said, it does not detract from the important oversight responsibility that the board must exercise over these service providers.

Where the board has established sub-committees, the powers and duties of these sub-committees must be spelled out.

The view of the Registrar[14] on the matter of delegation of powers to sub-committees has been that the full board bears the overall responsibility for the execution of the delegated function, with the result that the sub-committee cannot execute any decision ahead of the ratification thereof by the board. A trustee who delegates must still take the necessary decisions and exercise his discretionary powers personally[15].

References

[1]Section 7D
[2]Section 7C (2)
[3]Section 7C (1)
[4]Tashia Jithoo Do fund trustees owe fiduciary duties directly to members or only to the fund Pension World 2005
[5]According to Circular PF 130, A structural conflict of interest may arise where a board member finds himself or herself in a position in which his or her duties as board member conflict with his or her direct or indirect personal financial interests or the financial interests of a stakeholder in the fund, of which he or she is an employee in which he or she is a shareholder.
[6]This refers to the on-sites visit conducted by the surveillance and enforcement team on pension funds of which the writer is responsible for execution.
[7]This is loosely based on experience from visiting and conducting interviews with board of trustees of retirement funds over a period spanning more than five years.
[8]Section 7D
[9]PF Circular 130
[10]Martin Jenkins and Martin Poore The Pensions Act 2004
[11]Section 7D(e)
[12]F Du Toit South African Trust Law
[13]Lansing Linde v Alber [200] OPLR 1 taken from Martin Jenkins and Martin Poore The Pensions Act 2004
[14]This view was not shared by others in the pensions industry, notably, Alexander Forbes, who argued that the registrar was misconstruing both the legislation and his powers in that regard.
[15]F du Toit South African Trust Law

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