Gravy: Editorials: Edition: April / June 2019

Naheem Essop, analyst at the FSCA, breathed fire and brimstone at the annual conference of the Pension Lawyers Association. This new body, different from the old, would put a stop to the corruption that he considers prevalent in the retirement-fund industry. But a few observations:

- By not identifying the funds and service providers in the examples he cited, they couldn't defend themselves and the entire industry was tarnished;
- Hammering away on fund costs, nobody dared challenge him over the effect of government performance on investment returns that have a greater impact on member benefits;
- High time that the industry began to question whether the mounting levies paid by retirement funds (a component of their costs) provided value for money from the FSCA, just as it should have (but rarely did) from the FSB;
- It's a little rich to have a go at the private sector when revelations about the state-owned Public Investment Corporation, the largest service provider of all, are pouring from a sewer.

Neither does it pass unnoticed that, much as the FSCA doesn't like the sponsorship by service providers of retirement-fund events, it itself isn't too averse to the practice.

See the FSCA's three-episode 'Insurance Apprentice' series. The episodes have been sponsored respectively by Emerald Africa, Aon and Marsh Africa.

And back to the PIC, perhaps asleep at the wheel.

Each day, titles of Independent News & Media SA continue to be produced. Each day, therefore, the group's exposure to the PIC must compound.

Difficult as it is to imagine a SA without The Star, Cape Times, Daily News etc, more difficult is to imagine why the PIC allows publication to continue.

George Herald, Jan 10

Only a Van could have produced something so multi-purpose.

CalPers, the largest retirement fund in the world, is disinvesting from tobacco stocks. But it is climbing heavily into shares of companies that produce cannabis.

They're for buying, not for smoking. Or if for smoking, then not for inhaling.

Onto the board of Sygnia has arrived former deputy finance minister Mcebisi Jonas, as an independent non-executive director, for annual remuneration of R1m. Also on the board is Prof Haroon Bhorat, non-exec chair, for R500k.

Well worth it, considering that Jonas also has experience as former PIC board chair.

In his SONA address, President Cyril Ramaphosa announced a significant gas find off the Mossel Bay coast.

Funny that, before elections, the National Party government also used to announce a significant gas find off the Mossel Bay coast.

A golfing buddy of Donald Trump told him of a fantastic dream he'd had. In it there was a huge parade, the biggest ever in Washington DC, with millions of people cheering along the route as Donald passed.

"That's really great!" said Donald. "The best! But tell me, how did I look? Was my hair okay?"

"Couldn't tell," replied the buddy. "The casket was closed."

SHAREHOLDER ACTIVISM: Editorials: Edition: April / June 2019
ASHBURTON INVESTMENTS: Expert Opinions: Edition: April / June 2019

Shareholder Activism: Editorials: Edition: April / June 2019

A fine line

To what extent is collaboration permitted between asset managers, representing such asset owners as pension

funds, without contravening the companies and competition regulations? Financial journalist Ann Crotty attempts to find out.

If you set out to design a system that would allow inept corporate executives to function unchecked by the owners of those companies, it would look a lot like the system we have. It wasn't intended to be this way.

On paper, major legislative changes over the past 20 years looked certain to enhance oversight and ensure better governance in the corporate sector. Those changes included the fundamental rewrite of the Companies Act, improved disclosures and a tougher competition regime. They pointed to a much more vigorous investment environment.

Yet practice has fallen short of promise. Powerful institutional shareholders appear to have sat on their hands while generously-paid executives weren't up their jobs at such erstwhile JSE stars as Barloworld and Edcon, Ellerines and JD Group. Even the once-great Woolworths is these days looking less great.

There are recent occasions when institutional shareholders acted to stop the slides, for example at PPC and Group 5. And a chastened Allan Gray moved adroitly to rein in the feral management at Net1 when things got really out of hand.

But by-and-large the institutions tend to prefer private one-on-one engagements to public confrontations. They're also nervous of being seen to assert their cumulative authority because of competition constraints. A block of like-minded shareholders with say 30% of a company, when knocking at the door of its board, would carry more clout acting together than each having small percentages acting individually.

A vigorous approach is all the more necessary given that the lack of liquidity in many companies' shares makes it difficult for institutions to offload large parcels when they're unhappy with the business or its management. They're essentially trapped. Of course, at a price, they could dump the shares and run as Coronation did quite spectacularly from African Bank in 2014.

The 2008 Companies Act of 2008, effective from 2011, appeared set to shake things up. It states as part of its mission that "the law should protect shareholder rights, advance shareholder activism and provide enhanced protections for minority shareholders". These bolstered rights were supposed to introduce a fundamental shift in power to shareholders.

Unfortunately, exercising these rights requires the consent of the board. Ask activists such as Albie Cilliers or Chris Logan how easy that is. Even powerful institutional investors struggled against recalcitrant boards at PPC and Group 5.

And there certainly wasn't much sign of the enhanced rights' effectiveness when a group of shareholders got together in 2018 to try and appoint directors in a bid to halt the sharp decline at Grand Parade Investments. After a remarkably hostile shareholders' meeting in October, which was unilaterally abandoned by the board, the GPI activists had to await the annual general meeting to secure appointments of their two candidates.

Also last year, a group of powerful institutional shareholders was reduced to pleading with various boards of the Resilient group, urging them to resolve the allegations that had prevailed for several months. In the fourth letter, sent eight months after the initial allegations had already wiped out billions of rand in value, the shareholders said they believed "that the boards need to act more decisively in order to unambiguously address these concerns".

The tone was more ‘Sunday school ma’am’ than financial hitman. But this was evidently as far as asset-manager signatories (including the PIC, Allan Gray, Prudential, Sanlam, Stanlib, Investec, Old Mutual and Coronation) felt they could go. Even then, one signatory admitted to being extremely nervous about dispatching the letter.

The tone was more ‘Sunday school ma’am’ than financial hitman. But this was evidently as far as asset-manager signatories felt they could go.

Notwithstanding the new Companies Act, after 16 years the ‘Comparex case’ still haunts many institutional investors. Back in 2003 the Securities Regulation Panel (forerunner to the Takeover Regulation Panel) had to rule on whether three asset managers – which together owned more than 35% of voting shares in JSE-listed Comparex – had acted in concert to reconstitute the Comparex board.

A shareholding of 35% being considered to represent control, the issue was whether the shareholders’ joint action represented a change in Comparex control and so triggered an offer to minorities.

The SRP found that the three firms – Allan Gray, Coronation and Sanlam, joined by RMB group, bringing their total to almost 46% in various portfolios – had not initiated an “affected transaction”. They therefore did not have to make a mandatory offer for the buyout of Comparex minorities.

“We won the legal battle but we lost the war,” recalls one. The institutions were unable trade their shares for the two years that the case dragged on. It was a public fight that absorbed substantial resources for minimal return, and for the two years the institutions faced the chilling prospect of making an offer for 100% of Comparex. This was a nightmarish set of circumstances for shareholder activism.

Now move on to March 2012 when, in an attempt to encourage activism, the UN-backed Principles for Responsible Investment body sought guidance from the Takeover Regulation Panel on the circumstances that would trigger a mandatory offer by institutions acting cooperatively.

The response from the TRP was vague. It indicated that there'd be no problems if the investors simply discuss matters of mutual interest or share their views relating to concerns about particular companies. "A concert party is only formed where shareholders agree a common plan under which to work together," said the PRI.

However, its guidance note elaborated that acting in concert doesn't automatically trigger a mandatory offer even if investors hold more than 35% ahead of any agreement. The critical issue is whether any additional shares were bought after agreeing to the action.

TRP deputy executive director Basil Mashabane says he can't recall, subsequent to promulgation of the new Companies Act, when any institutions acting in concert were forced to make a mandatory offer: "The panel would have to consider an allegation. Every case is different."

But it's no longer just the JSE-related regulators watching out. The institutions must also ensure their cross-shareholdings don't run afoul of the competition regulations.

Remarkably, the Competition Commission wasn't dragged into the Group 5 battle launched by Allan Gray which had significant stakes in other construction-sector stocks. The battle saw the Group 5 board being restructured in a move that could have flagged a change in control.

In the US, where the three biggest index funds (BlackRock, Vanguard and State Street) together constitute the largest shareholder in 88% of S&P 500 firms, authorities are concerned that firms are less likely to compete vigorously with each other if they have common owners. This is notable in the US banking and the airline industries.

In SA the trend might be in the opposite direction. Certainly, the number of major players has increased significantly since the 1980s when Old Mutual, Sanlam and Liberty dominated the investment landscape. In addition, the opening up of the economy has seen international investors holding upwards of 30% in several JSE-listed companies.

Despite this, amendments to the Competition Act require the Commission and Tribunal to consider the extent of cross-holdings in any merger. And, as in the battle over Sovereign Food, a board under siege from shareholders cooperating can always scuttle off to the commission with claims there’s been a change in control.

Old Mutual Investment Group’s governance and engagement manager Rob Lewenson says the PRI is seeking clarity on the scope for collaborative engagement within SA’s competition law. Taking the Resilient matter, he’s pleased with the outcome of engagement with the group companies and describes a complex cooperative process designed not to contravene regulations or antagonize the targeted boards.

It might need more than PRI guidance notes to persuade institutions to set aside their seemingly instinctive aversion to publicity and to risk relationships sustained behind closed doors. There’s also an aversion to disclosing their hands to competitors, which is a precondition for cooperation.

Many SA asset managers are signatories to the PRI, as they are to the Code for Responsible Investing in SA. Both seek to promote shareholder activism. How better than if asset managers and asset owners, such as pension funds, cooperate (“collude” being such an ugly word) in the interests of their clients and beneficiaries without fear of consequence?

Roll on a test case.

[IMPACT INVESTMENT: Editorials: Edition: April / June 2019](#)
[GRAVY: Editorials: Edition: April / June 2019](#)

Impact Investment: Editorials: Edition: April / June 2019

Capitalist manifesto

There’s a revolution to be embraced. Sir Ronald Cohen* urges that the marriage of financial goals and social good be hastened.

The existing social contract has expired: we need to draw up a new one. Following the summer G20 summit in Hamburg, it is worth asking again how to address our most pressing global challenges.

Racked by rising inequality and human and environmental crises, capitalism as it exists today isn’t delivering on its promises to increase prosperity and social progress for all. The gap between rich and poor grows every day. Meanwhile, the toll on our environment continues to rise – from climate change to deforestation and the pollution of our oceans.

The dominant model of capitalism practised today is more than two centuries old. Our problems have changed and so too must our response.

This moment calls for nothing short of a revolution, for a new approach that asks the question: how can we reach our financial goals while also doing measurable good? Cue the impact revolution.

Capitalism as we practise it is deeply flawed but not hopeless. When it comes to how we invest there is an exciting shift under way, one that takes current thinking about financial risk and return and adds a third dimension, impact, that measures positive outcomes for society and the environment.

Using this new financial model, social impact matters just as much as company earnings. This inspires us to maximise both profit and impact as normal levels of risk, to create the kind of world that everyone wants to live in. Together, we are reinventing modern finance and reshaping modern business.

The private sector is the cause of any number of social and environmental ills but it also fundamental to solving them.

Innovation, risk-taking, achieving scale and the dogged pursuit of measurable results – these are hallmarks of entrepreneurs and the private sector. They are also key to solving complex problems and enacting changes quickly and efficiently.

The tech revolution showed us what happens when private capital meets scrappy and disruptive entrepreneurs. It's time we took a page out of its book. By introducing impact, the risk-return-impact model brings out the best in entrepreneurs and the private sector in addressing our urgent social and environmental problems, which governments and philanthropists are unable to handle by themselves.

Valuing impact does not have to mean sacrificing profit. On the contrary, we can deliver high rates of return because of impact, rather than in spite of it.

Cohen . . . world authority

The millennial generation is different from its forebears. Millennials want to do more than collect their pay. They genuinely care about doing good. They want to shop, work, launch companies and invest in ways that express their values. And investors, including large asset managers and pension funds, are moving in the same direction. Businesses are taking note. There isn’t a boardroom on the planet where the subject of social impact hasn’t come up.

If impact investing is our rocket-ship to social change, impact investing is our navigation system. We need to rethink it. For too long we have measured social impact in ways that are imprecise, inconsistent and incomparable.

Many people dismiss impact measurement as impossible. The truth is, we can measure social impact with greater accuracy and vigour than we do financial risk. We just need to be serious about doing it. The absence of measurement leads to a huge failure of our system to deliver social and environmental improvement, at great cost to the world.

Over the past 20 years, we have seen numerous initiatives to establish a standard for impact measurement. One of the most promising, advanced by the Global Steering Group for Impact Investment and the Impact Management Project, is to weight conventional financial accounts for impact. It involves applying coefficients to sales, employment costs, costs of goods sold – all the way down to the profit line – and doing the same for the balance sheet.

Impact-weighted financial accounts will allow for financial measurement and comparison by investors. When every company publishes impact-weighted accounts alongside financial ones, impact will have assumed its place in investment and business decision-making.

We are seeing promising changes. Investors and businesses are becoming socially and environmentally conscious; impact entrepreneurs are gaining access to capital they need to bring brilliant, life-improving ideas to scale; governments are seeing the value in harnessing the innovation of the private sector, channelling its talent and capital to find better solutions to society’s challenges; philanthropists are beginning to fund the delivery of measured outcomes.

It is time to accelerate these changes, and demand more.

The G20 leaders committed in their declaration to “endeavour to further create enabling conditions for resource mobilisation from public, private and multilateral resources, including innovative financial mechanisms and partnerships, such as impact investment”.

Impact investing means evolving capitalist systems to build a better world, one that values social impact just as highly as profits. It means exposing the myth that social good comes at the expense of profit, and the accompanying myth that impact cannot be reliably measured and compared.

Ending the plight of billions of lives and the decline of our planet depends on our urgent, collective action. There is a way. There has never been a greater need or a better time than now.

** Cohen, a venture capitalist and first chairman of independent social-investment bank ‘Big Society Capital’, is widely published abroad. A prominent philanthropist, he is author of ‘On Impact: A Guide for the Impact Revolution’ and has advised the UK government.*

SA SUPPORT

Comments from Mabatho Seeiso, a professional trustee:

I heard Sir Ronald Cohen speak at a forum of the Industrial Development Corporation last November. In my opinion, he was the most powerful speaker of the day.

He gave me hope that we can fix the challenges we face in the SA economy, and the continent in general, if we integrate impact investing into our decision-making. On pension funds' boards the argument is too often heard that, as fiduciaries, we cannot expose our members to the risks of impact investing.

Seeiso . . . highly impressed

It helps to hear from someone like Sir Ronald, who has decades of experience across different continents, attest to impact investing not necessarily meaning lower returns. In fact, it can generate enhanced returns. Let us do the real work to understand impact investments rather than rely on generalisations that are often uninformed.

Innovation is required in our financial-engineering solutions. Many of our pension-fund members have given us a clear message that they want us to engage in impact investing in the interests of themselves and their children. We must invest in the real economy to stimulate growth, to develop an economy based on social justice.

I entirely agree that the new model of investment should be based on three pillars: risk, return and impact.

TRANSFORMATION: Editorials: Edition: April / June 2019
SHAREHOLDER ACTIVISM: Editorials: Edition: April / June 2019

Transformation: Editorials: Edition: April / June 2019

Action stations

Retirement funds must get to grips with a new set of disclosure requirements. Here’s help for trustees.

The amended Financial Sector Code (FSC), gazetted and now effective, is at present a voluntary dispensation for compliance by retirement funds. This is because many aspects of the B-B BEE requirements cannot be relevant to them.

For example, the funds have little or no influence over their membership demographics. Neither do they usually have a large number of employees. But they do make decisions, amongst other things, on the appointments of private-sector service providers.

Nonetheless, because the funds hold over R4 trillion in members’ savings, the Financial Sector Transformation Council (FSTC) points out that they play a vital role in transformation itself. Accordingly, funds will be measured against particular metrics such as procurement and member education.

Says the Codes of Good Practice at s9(1): “The B-B BEE annual reporting by retirement funds should include a narrative on the B-B BEE score achieved and future plans for improving the score. The (FSTC) will measure transformation on an annual basis. This may include relying on surveys that are available in the public domain. If sufficient disclosure by pension funds does not materialise, then consideration will be given to revising this dispensation."

The FSC document is not the easiest of reads and the schedule on retirement funds isn't either. To help trustees through the detail, *TT* requested that certain terminologies be clarified. Trevor Chandler, special advisor to the Association of Savings & Investment SA (ASISA) and the FSTC, was happy to oblige.

***TT:* For compliance, what is the approximate dividing line between "large retirement funds" and funds not considered sufficiently large?**

Chandler: We include the top 100 funds measured by assets. The definition includes all types of funds including umbrellas but excluding retirement annuities.

Where does "management control" reside in a fund? Presuming it to be in a fund's board, then how does it reconcile with the right of members to elect up to 50% of board members e.g. if no trustees elected by members are black, or if there are no black candidates for election? Will the fund be penalised for not being adequately transformed and, if so, how will it be penalised?

Management control vests mainly with the board, but also with the principal officer and other employed executives in the few instances that this exists. Funds are penalised only through the allocation of fewer points on the management-control scorecard. You're correct that the fund does not have control of the people that either the member or the employer puts forward. Principal officers will need to sensitise trade unions, employers and others to this dynamic.

Chandler . . . key terms explained

Is the fund's principal officer included or excluded under the definition of "management control"?

The principal officer would be seen as equivalent to the chief executive officer in a corporate.

When it comes to amounts spent on “approved training” and “member education”, what if no amounts are spent by the fund itself for these purposes e.g. where trustees and/or members attend courses offered by service providers who pay for them? Will the fund be expected to report on these and be credited/penalised accordingly?

Funds are not scored on their skills-development spend for staff or financial education of members. They simply need to disclose information on training that was provided. This could include sponsored training.

They are not penalised in any way if they do not spend. Of course, rules of the Financial Sector Conduct Authority around gratuitous support must be considered. But this is beyond the scope of the Code.

Do funds usually record the racial profiles of their members? If not, any advice on how they might cost-effectively go about creating records that separate black from non-black members and men from women?

No, funds don’t usually record such profiles. But the data is often available from employers. Again, this is merely a disclosure requirement and not something that’s scored.

On “preferential procurement”, specifically on funds’ allocations of assets for management, would only the 48 asset managers listed in the latest 27four BEE.conomics survey qualify as “black-owned”? For reference, which other surveys are available in the public domain?

There are no other surveys of which I’m aware. However, the FSC rules are based on the FSC level and not only on ownership. There are many asset managers with good broad-based statuses e.g. Level 2 or Level 3. B-B BEE is about a wide range of balanced scorecard measures.

The FSTC says that, if "sufficient disclosure" by pension funds does not materialise, then a revision of the voluntary dispensation will be considered. Some guidelines of "sufficient"? Some indications of possible revisions?

It's too early to comment. Now that the Batseta Council of Retirement Funds is a formal part of the FSTC, it would have to agree on compulsion. Decision-making at the FSTC is by consensus.

EDUCATION GUIDANCE

Previous *TT* editions have dealt with the FSC scorecard for trustee and consumer financial education.

For practical detail, retirement funds and service providers are referred specifically to the guidance note for criteria and measurement of this aspect. The note GN500 is available on the FSTC website.

ECONOMIC EMPOWERMENT: Editorials: Edition: April / June 2019
IMPACT INVESTMENT: Editorials: Edition: April / June 2019

Economic Empowerment: Editorials: Edition: April / June 2019

Big and black

With adjustments in shareholding, Sanlam Investments is catching the wave for pension funds' procurement choices.

In a stroke, a deal with African Rainbow Capital **has** shot Sanlam's third-party asset manager to the top of B-B BEE rankings for assets under management. By virtue of its brand and base, Sanlam Investments (SI) moves to a pole position for the attraction of business from pension funds in terms of the Financial Sector Code.

At present, compliance with the code is voluntary but progress will be annually measured by the Financial Sector Transformation Council. A critical metric is that large retirement funds – which implicitly include umbrellas – compile and publish annual scorecards for preferential procurement. So an easy win is to appoint a black-owned asset manager.

The council warns that, if sufficient disclosure by pension funds does not materialise, "consideration will be given to revising this (voluntary) dispensation". In measuring transformation progress, it says, there may be reliance on surveys in the public domain. The only such survey is BEE.conomics (*TT* Nov '18-Jan '19).

In terms of the survey's black-owned definitions, ranking firms by size of assets under management the first is Taquanta (R146bn) followed by Aluwani (R57bn) and Mazi (R48bn). SI will eclipse them all, perhaps soon to have assets under management that will equate double the R410bn size of the top 10 put together. Don't be surprised if at least one additional black-owned firm is soon merged for shares into the restructured SI. Read more…[wgl_spacing spacer_size="17″]

“We’re contemplating one or two similar transactions,” says ARC joint chief executive Johan van Zyl. “The idea is to have a firm with R800bn of assets under management, which will be at least 60% black-owned, by the second half of this year.” [*Read more…*]()

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Cover Story: Editorials: Edition: April / June 2019

Wake up! Pay up!

Were it only so easy.
Proper thought must be given, and appropriate action taken,
over the R50bn of pension assets not being used as they should be.

Terms have meanings, frequently emotive and rarely neutral for conveying an impression.

“Unclaimed benefits” and “unpaid benefits” can be used interchangeably, but they carry different connotations. “Unclaimed” implies that the obligation rests with former members of pension funds that they get off their butts to demand entitlements. “Unpaid” denotes a responsibility on the fund, the employer or the fund administrator to find beneficiaries who’re owed payments. Read more…[wgl_spacing spacer_size=”17″][wgl_spacing spacer_size=”17″]

ANOTHER PERSPECTIVE

We are not going the Liberty route for the reinstatement of closed funds. Our situation is different from Liberty where closed funds still had assets.

Unclaimed benefit funds, and occupational benefit funds, have typically implemented policies around unclaimed benefits and gone through extensive efforts to trace individuals, then to pay them once traced. Alexander Forbes’ funds are no exception. Read more…[wgl_spacing spacer_size=”9″][wgl_custom_text font_size=”14″ google_fonts_text=”font_family:Montserrat%3Aregular%2C700|font_style:400%20regular%3A400%3Anormal” custom_fonts=”true”]*Michael Prinsloo, head of employee-benefits consulting strategy at Alexander Forbes, comments:*[/wgl_custom_text][wgl_spacing spacer_size=”40″]

PAIA Application: Editorials: Edition: April / June 2019

In search of truths

Contradictions and clarities revealed in public servants' unhappiness with R5bn loan from PIC to Eskom.

Yet another confrontation has befallen the beleaguered Public Investment Corporation. This time it's been to explain the inner workings of its relationship with the Government Employees Pension Fund, the PIC's major client, specifically over the grant of a R5bn bridging loan from the PIC to Eskom.

The purpose of the loan was to allow Eskom time, through a short-term operational liquidity crunch, to arrange longer-term borrowings from financial institutions. Fundamentally at issue were whether or not:

- The loan, granted in February 2018, was guaranteed by government. (If it wasn't, which is denied, there are at least explanations of how government considers the guarantees take effect.).
- The GEPF was consulted. (The PIC, represented by thenchief executive Dan Matjila, said that it was consulted. The GEPF, represented by principal executive officer Abel Sithole, said that it wasn't.)
- The GEPF board ever discussed the loan either prior or subsequent to it having been granted. (Because the investment mandate of the GEPF to the PIC is kept confidential, respective obligations aren't in the public domain.)

This latest dispute came about because the Public Servants Association, a 230 000-member strong trade union with a seat on the GEPF board, has applied to the North Gauteng High Court under the Promotion of Access to Information Act for disclosures that relate not only to the loan but also to the ministerial appointment of PIC directors.

What happens next? Will witnesses be called, either to the PIC commission of inquiry or to give evidence in court? Both options are debatable.

No date for the PSA hearing has been scheduled. It could be that a hearing is unnecessary because much of the requested information is already revealed in a series of voluminous affidavits. So it would be over to the commission, should it want, for a deeper dig into how the PIC operates.

The affidavits have been deposed by PSA general manager Ivan Fredericks in launching the notice of motion, then by the various respondents: Stadi Mngomezulu of National Treasury for the Minister of Finance, Matjila for the PIC and Sithole for the GEPF. (Incidentally, Mngomezulu is also a GEPF trustee and Sithole is also acting commissioner of the Financial Sector Conduct Authority.)

Sithole . . . no consultation

In essence, the PSA wanted to know how the PIC directors were appointed; for example, whether the Minister had exercised "due regard" to nominations submitted to him by depositors. It turned out that there were none. The PSA additionally wanted to see documents in support of the PIC's contention that the loan had in fact been guaranteed by government.

On February 5 last year the PIC issued what purported to be a joint announcement by itself and the GEPF. It stated that the PIC, on behalf of the GEPF, had agreed to advance Eskom the bridging loan for the purpose of funding Eskom's operations for the month of February; that the PIC had obtained approval in line with its investment mandate and corporate governance requirements; that the GEPF and PIC board took comfort from the fact that the bridging loan was fully backed by a government guarantee; and that the PIC and GEPF were encouraged by the recent changes in Eskom governance.

A few days later, on February 13, the PIC issued a statement expressing its concern about the “false, misleading information” in the media about the decision by the PIC and GEPF to provide Eskom with the short-term R5bn loan facility. “The decision to advance the bridging loan facility to Eskom was taken in consultation with the GEPF,” it said.

In replying to the respondents’ answering affidavits, however, Fredericks contends that this PIC statement is directly contradicted by Sithole. Under oath, Sithole now said that the PIC had not submitted an application for the bridging loan to the GEPF; that the application had not been considered by the GEPF, and that the GEPF “did not participate in taking any decisions relevant to the Eskom bridging loan”.

Fredericks further insists that National Treasury did not have any records relating to the PIC board request and that, on the Minister’s version, there was clearly no valid government guarantee for the loan. Whereas the PIC claimed that the Minister had considered and approved the guarantee, the Minister said “that he did not and that it was not necessary for him to have done so”.

In his affidavit for the Minister, Mngomezulu addressed the PSA’s concern that the PIC board’s media statements – to the effect that there is a guarantee – are untrue: “I can confirm that a guarantee does indeed exist. Part of the guarantee is used towards a Domestic Medium Term Note (DMTN) Programme, which Eskom is proceeding with, under the oversight of the JSE.”

He explained that Eskom does not have to request government approval prior to issuing notes under the DMTN programme. Instead, for monitoring purposes, Eskom needs only to notify National Treasury of issuances made against the loan’s amount.

“There is thus no loan agreement entered into or discussed with the lenders,” the affidavit continues. “There is furthermore no individual guarantee documentation for note holders which is prepared for individual issuances, such as in the case of the R5bn in notes bought by the PIC…I (therefore) submit that the DMTN programme presents no cause for alarm."

The DMTN programme provides for government to issue guarantees, in respect of notes issued by Eskom, so that Eskom is enabled to raise finance for its capital-expenditure programme. No note has been disclosed in relation to the short-term R5bn bridging facility and neither has a guarantee related to this facility been produced.

So far as the GEPF is concerned, Sithole pointed out that it was not a party to the loan agreement and that the PIC had not submitted to it an application for the bridging loan. The GEPF is a defined-benefit fund and the members' entitlements to benefits "are not in any way affected by any of the investments which it makes," he added.

In any event, said Sithole, the GEPF denied that it had failed to exercise its fiduciary duties. The PSA's allegations had ignored the facts that the so-called bail-out – fully backed by a government guarantee – was not free because Eskom was obliged to repay the full R5bn plus interest and had done so.

On affidavit for the PIC, Matjila stated that the PSA was aware from the outset that the PIC had not only complied with its requests but also that the documents requested could be obtained from the Minister and/or National Treasury. Unfortunately, he added, the PSA had adopted an unreasonable approach by subjecting the PIC "to this frivolous and unnecessary litigation".

Should the PSA persist with this approach, he warned, the PIC's answering affidavit "serves as a notice to PSA that…the PIC will seek a punitive costs order against the PSA".

Since the PSA now has much of the information it sought, unclear is what's to be done with it. For the contradictions exposed, there's at least clarity on how the guarantees are seen to be valid and on how the PIC works in relation to the GEPF.

Most usefully, the request for information on how the Minister appoints PIC directors appears to have borne fruit. Indications are that in future the PIC board, as with the GEPF board, will include representatives of stakeholders; in other words, presumably, trade unions such as the PSA.

Lawyers in this PAIA application were Fasken Inc (for the PSA), State Attorney (for the Minister), Werksmans Attorneys (for the PIC) and Ndobela Lamola Inc (for the GEPF).

[RESPONSIBLE INVESTMENT: Editorials: Edition: March / May 2017](#)
[SANLAM CORPORATE: Expert Opinions: Edition: April / June 2019](#)

Currents: Editorials: Edition: April / June 2019

Sparks for King from Kingman

Revamp of codes initiated in UK. Radical changes foreseen to prevent 'boilerplate' compliance by fund managers on such matters as ESG in company engagements.

SA's pride and joy on corporate governance is the King code. From its original iteration 17 years ago, it's pretty much marched in lockstep for philosophy and intent with the UK stewardship code. If this happy parallel is to continue, King looks due for a jolt.

As with King, the UK code defines how fund managers hold to account the companies in which they invest. As in SA, fund managers frequently act on behalf of pension funds (and other indirect shareholders) under mandates. Unlike SA, at least for the present, the UK code may be scrapped if planned reforms aren't sufficiently radical.

The re-think has been provoked by a government-sanctioned report of Sir John Kingman, chairman of the Legal & General insurance group. It produced scathing criticisms of the Financial Reporting Council, the regulator of auditors and actuaries.

Kingman wrote: "The government should also consider whether further powers are needed to assess and promote compliance with the (stewardship) code. If the code remains simply a driver of boilerplate reporting, serious consideration should be given to its abolition."

Specifically on auditors, Kingman's view is that they no longer be proposed by the company's board and approved by shareholders. Instead, they should be appointed by an independent body (a new regulator) representing the public interest.

The FRC has begun an overhaul of the stewardship code. The head of responsible investment at the UK's largest private-sector retirement fund, the Universities Superannuation Scheme, believes that it should include a stronger emphasis on engagement over environmental and social issues, corporate ethics and reputational matters.

Andrew Ninian, director of stewardship and corporate governance at the Investment Association which represents managers overseeing £7,7tr, is also quoted in the *FT*: "It's an opportune time for the code to be fully refreshed and refocused on best practice and the activity that goes on between companies and investors day to day."

The FRC consultation is being held simultaneously with discussions on the European Union's shareholder rights directive II. Paul Lee, an advisor to the International Corporate Governance Network, says: "It's an opportunity for the stewardship code to set a higher hurdle that not everyone will be able to leap over."

R40m appeal

Lila . . . reasons on ice

SA actuaries will be waiting with bated breath – perhaps anxiety, more likely – for the outcome of the appeal by actuary Viv Cohen against the R40m in damages awarded against him by the Pension Funds Adjudicator for the Amplats Group Provident Fund (*TT* Nov '18-Jan '19).

The Financial Services Tribunal has set down the appeal for hearing on April 16. No actuaries can be more anxious than Cohen himself.

EPPF's big loss

Sitting down for coffee in Lonehill on a sunny Friday morning, the relaxed demeanour of Nopasika Lila contrasts starkly with the enthusiastic determination evident only a few months earlier on her widely-lauded promotion to principal officer and chief executive of the Eskom Pension & Provident Fund (*TT* Nov '18-Jan '19). Something serious must have happened, seemingly as a bolt from the blue, to have provoked her sudden resignation after less than a year in the hot seat.

One doesn't give up such a powerful position, at SA's second-largest retirement fund which she'd served for nine years, without good reasons. Lila won't pinpoint them. But perhaps there'll be clues in the EPPF annual report due for publication within the next few months.

In the previous annual report, the message from then chief executive was from Sbu Luthuli who'd signed it on March 29 2018. The next day, Lila took over. Watch for what she signs, if anything, at end-March this year. It might be difficult because, although it's formally her departure date, she'll be ice-racing in Finland.

Watch nonetheless for such items in the annual report under substantial or significant matters. There might be clues.

Lila feels that she's left the EPPF in good shape, right down to scenario planning for different levels of reductions in the size of the Eskom workforce. Yet she remains mystified by why the fund has almost R0,5bn in unpaid benefits – "there should be proper records" – and is concerned for sustainability by the propensity of younger members to take all their benefits in cash on withdrawal, leaving annuities for the older to be funded.

Whatever the problems at Eskom, even if the employer can no longer afford to pay contributions, she leaves on the note that all member benefits in the fund are fully protected.

Whatever prompted Lila's resignation, it can be safely assumed that the reasons were hers and hers alone. The best that can happen for the fund is that a successor of similar competence is found, and for the broader industry it's that her presence will continue.

Consensus? What consensus?

In his SONA address, President Cyril Ramaphosa made a statement so dramatic in its implications that it's all the more remarkable for having passed virtually unnoticed.

“We have made significant progress in devising a comprehensive social-security strategy though Nedlac,” he said. “The reforms focus on achieving comprehensive social security and retirement reform that is affordable, sustainable and appropriate for all South Africans.”

Then he added: “With the assistance of the National Planning Commission, we reached consensus on reforms that include the National Social Security Fund, institutional arrangements, regulatory reforms, improved unemployment benefits, improved social-assistance coverage….We will now incorporate this consensus into a policy framework to guide implementation.”

It’s fantastic that such consensus has been achieved. Unannounced is how it will be paid for by whom, and whether private-sector representatives at Nedlac are aware that they’re committed to this consensus.

In the absence of detail, Ramaphosa could have been jumping the gun. Elections have this sort of effect on politicians.

Or maybe it’s because nobody had told him about the 2019 Budget Review which appears to contradict him: “Government, business, labour and civil society have engaged extensively on the first draft of the comprehensive social-security paper through Nedlac. The process should come to a close in 2019, after which the paper will be revised and released for broader public consultation.”

There could be a way to go before consensus is achieved, let alone a guide to implementation.

Subsidised savers

Also revealed in the Budget Review is the increasing extent to which the fiscus is sacrificing revenue in the form of tax deductions for contributions to pension and provident funds and to retirement annuities (see table). What this means, Fasken partner Rosemary Hunter told the annual conference of the Pension Lawyers Association:

- While taxpayers may have funded social grants to approximately 17,6m people in the year to end-March 2018 at a cost of some R170bn (on average R9 659 per person),
- In 2016-17 at least 3,17m taxpayers also received the benefit of almost R73bn in tax revenue foregone by the deductibility of retirement-fund contributions (on average R21 470 per person).

"We should therefore not think of our retirement savings as our alone," Hunter urged. "We should recognise that the state is our co-investor."

So stop complaining. In a society of marked inequalities, it's worth comparing the costs to fiscus of social grants for people who couldn't otherwise afford to eat against tax deductions for those who can.

Mob justice

What social media say can be less important than what binding agreements say. This was discovered by Momentum at reputational cost in the furore over non-payment, then payment, of a death benefit to the widow of murdered policyholder Nathan Gamas.

Eventually the benefit was paid by Momentum, from shareholder funds rather than policy premiums, in response to the public outcry and not in terms of the contract. The emotion focused on the circumstances of Ganas' death, shot while protecting his wife.

Overshadowed has been the crisp issue of fraud. It would have arisen had Ganas been aware, on entering the contract, of serious health problems that he decided not to disclose. But in course of the outrage, details of his situation at time of signature have been withheld from the public discourse.

They could have put a different spin onto the debate that might otherwise have centred less on Ganas' heroism and the insurer's heartlessness than on whether a dishonest intent, if that's what it was, should be rewarded.

The industry had better face this new reality that contractual agreements are no match for social media.

About turn

Whereas previously the FSCA seemed not terribly happy about the cancelled registrations of 'dormant' funds being overturned on applications to court (see Cover Story), it's now switched in the opposite direction for the reinstatement of funds that the FSCA (actually, its FSB predecessor) had deregistered.

Makhubela . . . getting tough

Where a fund or administrator becomes aware that a cancellation was made in error – as the fund still has members, assets or liabilities – it must immediately:

- Inform the FSCA accordingly;
- Disclose particulars of the error and explain why it had occurred;
- Apply to court for the cancelled registration to be reviewed and set aside. The applications must be made "without delay" and served on the FSCA.

These instructions pertain to cancellations prior to April 1 2018. For cancellations of 'dormant' after this date, the FSCA must immediately be informed of those which have members, assets or liabilities.

The FSCA may undertake supervisory on-site inspections to invoke any legal measures to verify whether funds or administrators are implementing the appropriate process. They must also be “doing the necessary reporting and approaches to the courts where the information justifies such action”, warns FSCA divisional executive Olano Makhubela.

Spirit of the TCF

Lukhaimane . . . duty to disclose

National Treasury has pushed the ‘Treating Customers Fairly’ principles. They apply to pension funds whose members must be kept appropriately informed before, during and after entering contracts.

The point is emphasised in a determination, following a complaint against the Municipal Employees Pension Fund, by Pension Funds Adjudicator Muvhango Lukhaimane: “TCF requires entities to measure themselves as to whether or not in doing business they are dealing fairly with the consumer by…providing them with sufficient and clear information that will enable them to make informed choices when acquiring financial products.”

The complainant, C J Modiba, had disputed the computation of his withdrawal benefit. The critical issue, said the Adjudicator, was that the MEPF had failed to inform Modiba that the transfer value had been used to purchase additional pensionable service from the Government Employees Pension Fund.

This issue should have been disclosed to the member when he joined the MEPF so that he’d understand at the point of exit that the amount wouldn’t simply be added to his withdrawal benefit. That the information hadn’t been disclosed to him, Lukhaimane believed, “has been ruinous to say the least”.

On receiving details of the computation from the MEPF, she dismissed the complaint but nonetheless noted that the fund had contravened TCF principles by its disclosure failure.

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Picked out

Bank kills attempt by the PIC to avert the GEPF.
Vital issues for the Mpati commission to investigate.

To date an attempt by the Public Investment Corporation to play fast and loose with monies of the Government Employees Pension Fund, its major client, is under the radar.

The particular matter, which concerns unlisted company SA Home Loans, begs inquiry by the PIC commission led by retired judge Lex Mpati. The experience at SAHL invites examination into whether there were similarly-curious elements in transactions that might have been avoided had the PIC been required to seek approval from the GEPF trustees.

It further raises broader questions of how the PIC selects black economic empowerment partners to co-invest with the GEPF; and, in this instance, the real motive for a PIC instruction to an investee company that it pay R45m to a third party who’d added zero value to a BEE transaction.

That the R45m claim for payment was eventually negated redounds to the credit of Standard Bank, not to the PIC. The intended beneficiary of the R45m was one Kholofelo Maponya.

For background, the Durban-based SAHL was founded 20 years ago. A specialist provider of mortgages, it’s considered a highly competent competitor in the SA home-loans market with national reach and a strong management team.

Until 2015, SAHL was jointly owned by banks JP Morgan Chase and Standard. The former then agreed to sell its 50% stake to the PIC, representing the GEPF, for R300m.

Prior to closure of the sale, the PIC introduced a consortium assembled and controlled by Maponya for half of the PIC’s stake to be acquired; in other words, for 25% of SAHL. The PIC lent the Maponya consortium the money for its share of the purchase price.

At the insistence of Standard, which continues to own 50% of SAHL, the GEPF was bound to guarantee the discharge all obligations assumed by the indebted Maponya consortium as a SAHL shareholder. Maponya, it’s understood, had told the bank that he and his consortium were selected as the BEE partner because of his personal relationship with then PIC chief executive Dan Matjila.

On the transaction being concluded, the PIC nominated two directors to the SAHL board. Maponya nominated himself to represent his consortium.

The PIC’s stated investment purpose was use of SAHL as a vehicle for the channelling of home loans to GEPF members. Consequently, in 2016, the PIC agreed that the GEPF would make available to SAHL up to R9bn for onward lending that provided GEPF members with mortgages.

But before the ink had dried on this contract, Maponya demanded a R45m payment from SAHL ostensibly on the contention that it was his relationship with the PIC that had brought about the loan agreement.

SAHL rejected Maponya’s demand on grounds that he had no mandate to represent SAHL. Moreover, he had not been promised any such reward. Neither had he played any role in the initiation, negotiation and conclusion of the loan agreement.

Matjila . . . curious transaction

To the surprise of SAHL, Maponya then delivered a letter from the PIC that had been signed by Matjila. The letter informed SAHL that the GEPF had ceded to a private Maponya-owned company a claim that the GEPF had to receive R45m from SAHL under the loan agreement. Therefore, said the PIC letter, SAHL should pay the R45m to Maponya’s company and not to the GEPF.

The letter was referred by SAHL to Standard in its capacity as a 50% SAHL shareholder. The response of senior bank executives was to inform Matjila that, in all the circumstances, Standard regarded the transfer of a pension fund’s assets by cession to a third party – who had provided no value – as possibly irregular if not suspicious.

Accordingly, the bank would oppose any payment in terms of the cession unless and until the PIC had demonstrated that the cession had been approved by the GEPF board.

Shortly thereafter, SAHL received a response from the PIC. In this letter (also signed by Matjila), it was stated that the GEPF owed nothing to Maponya’s company. It further stated that the deed of cession should not have been signed (by Matjila). The deed of cession had thus been unilaterally cancelled and in future SAHL should ignore it.

In turn, Maponya informed SAHL that he challenged the lawfulness of the unilateral cancellation. However, he would not push SAHL for payment.

It’s believed that the PIC-nominated directors on the SAHL board were fully engaged in this sequence of events but have offered no explanations beyond the contents of the letters.

- *This article, by TT editor Allan Greenblo, was first published by FM/BusinessLive on Jan 28.*

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Truckers’ trailblazer

Fund making inroads for its members. An ‘alternative’ asset-allocation strategy is put to good use.

When rushing along the Johannesburg-Durban motorway, pause briefly outside Harrismith to take a look at the Highway Junction Truck Stop. It’s a fine example of “responsible investment” by a retirement fund – in this case the Transport Sector Retirement Fund – directly to serve the occupational needs of its workforce members.

The project is large and impressive. It’s also unique.

“Four years ago we determined that good-quality truck stops are sorely lacking along SA’s major routes,” says TSRF principal officer Joe Letswalo. “Recognising that the vast majority of our members are truck drivers, and that a major cause of accidents is driver fatigue, we launched a strategy to ensure that our members and the broader transport community would have facilities to park and sleep safely.

“At the same time we wanted them to have access for refuelling and auxiliary services such as restaurants, primary healthcare clinics, recreational and warehouse space.”

A multi-brand facility, it is probably one of the busiest truck stops in Africa. Three different petroleum brands – Engen, BP and Total – have their own forecourts. Trucks can park overnight on a reinforced concrete surface with no chance of being stuck in mud. It’s purported to be the preferred stopover for about 70% of truck drivers passing through the N3 corridor.

A joint venture with the Deysel family’s Highway Group (whose chief executive is Ben Deysel), three years ago the TSRF bought its 50% share of the Harrismith project for R55m. Since then, says Letswalo, a 26% internal rate of return has consistently been achieved. With introduction of the multi-brand expansion strategy, he expects that it will be revised to 30%.

Now the TSRF Truck Stop Fund is raising around R3bn for development of similar hubs on major routes throughout SA. Sites have already been earmarked near Cape Town, East London, Colesberg and Musina for project completion during 2020-21.

The fund wants a national brand strongly recognisable for safety and cleanliness standards that qualitatively support the transport and logistics industry. The TSRF, says Letswalo, is continually looking for ways to improve members' livelihoods while they are still actively employed.

A non-aligned standalone umbrella fund, TSRF currently has around 3 000 employers which bring its total membership count to about 70 000 individuals. Assets under management are approximately R7,1bn.

The Truck Stop Fund forms part of the TSRF's "alternatives" asset allocation in terms of the Pension Fund Act's Regulation 28. The TSRF has allocated R250m, representing 2,5% of its assets under management, to the Truck Stop project.

- *Formerly the Road Freight & Logistics Industry Provident Fund, in 2017 its name changed to the Transport Sector Retirement Fund when it was opened to the wider transport sector.*

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