

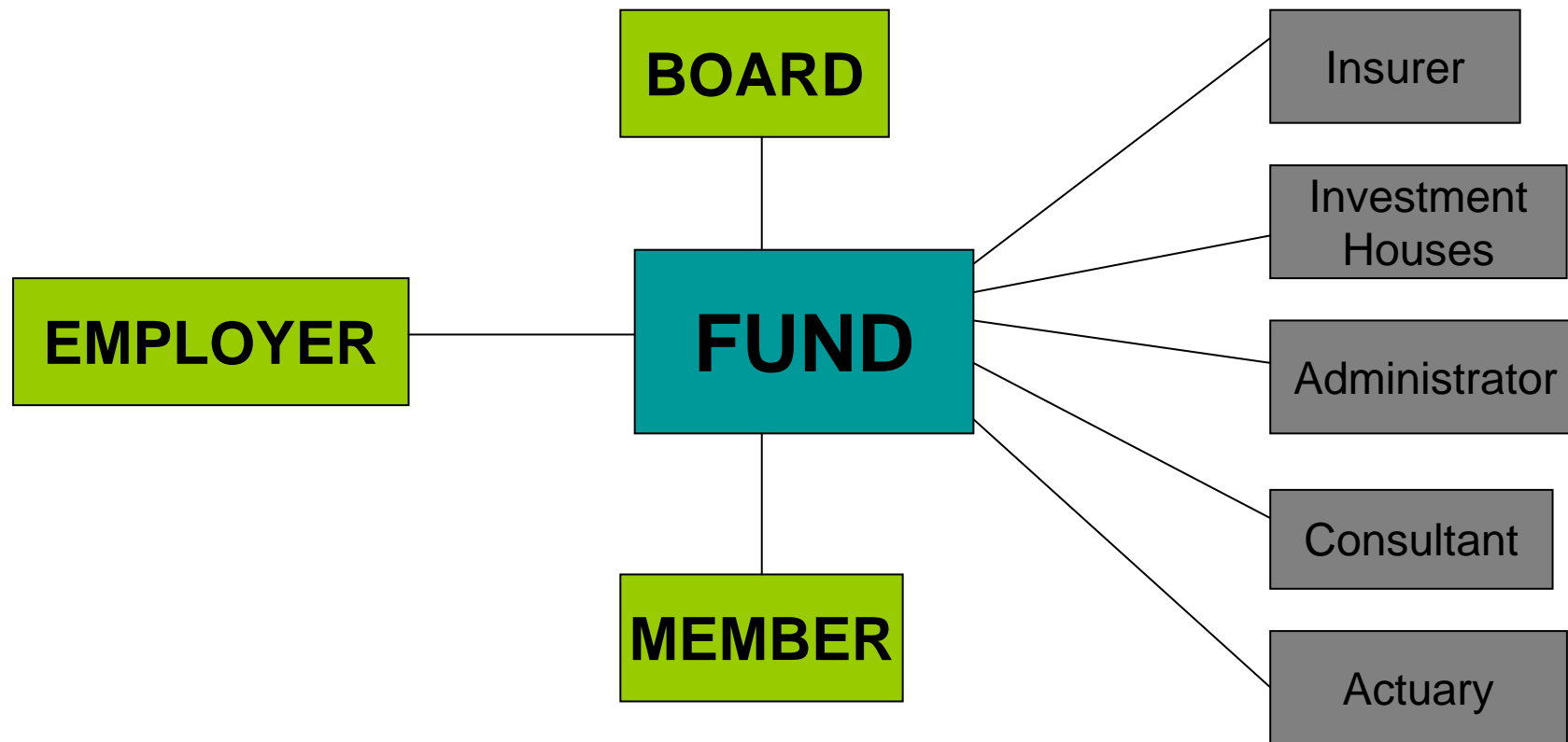
PENSION LAWYERS
ASSOCIATION

The logo features the word "revolution" in a lowercase, sans-serif font, with the letter "o" replaced by a white circle that has a small gap at the top. To the right of this graphic, the word "OLUTION" is written in a bold, uppercase, sans-serif font. Below the word "OLUTION", the phrase "for RETIREMENT FUNDS" is written in a smaller, lowercase, sans-serif font. The entire logo is centered within a large, light-orange circular graphic that overlaps the background.

revolution
for RETIREMENT FUNDS

THE LEGAL NATURE OF A PENSION FUND

PRESENTED BY GRAHAM DAMANT



- **LIABILITY FOR THE WRONGDOING OF THE BOARD**

Claims are broadly of two kinds

- Rules based claim
- Delictual claim

In most cases the claim is against the Fund

- Complaints
- Section 7(2) of the PFA jurisdiction
- The Fund's monies used to conduct the litigation
- Fund's monies to sort out the claim

- **WHERE DOES THAT MONEY COME FROM?**
 - Defined Contribution Fund
 - Defined Benefit Fund
 - Steps to recover
 - Limitation of liability clause
 - Fund's monies are being depleted
 - Paying for the mistakes of others

- **TYPICAL RULE**

Each member of the committee and each officer of the Fund shall be indemnified by the Fund against all proceedings, costs and expenses incurred by reason of any claim in connection with the Fund, not arising from his dishonesty, fraud or gross negligence

- **CRIMINAL CONDUCT**

- Section 332 of the Criminal Procedure Act**

- Any act performed by or on instructions or with permission, express or implied, given by a director or servant of that corporate body ... in the performance of his duties as such director or servant or in furthering or endeavouring to further the interests of that corporate body, shall be deemed to have been performed by that corporate body

- **Powers given to the Registrar**
 - Section 37 power to impose administrative penalties
 - R5 million for every day for non-compliance with the Act against a Pension Fund

- **CORPORATE PERSONALITY**

- **A Pension Fund is defined as**

- Any association of persons established with the object of providing annuities
- Any business carried on under a scheme or arrangement established with the objects of providing annuities

- **Section 5(1)(b) of the Act**

- On registration of a scheme all the assets, rights, liabilities and obligations pertaining to the business of the fund shall be deemed to be assets, rights, liabilities and obligations of the fund

- Compare with Section 5(1)(a)

- On registration of an association of persons it shall become a body corporate capable of suing and being sued in it's corporate name

- ***Mostert NO v Old Mutual Life Assurance Company (SA) Limited 2001 (4) SA159 (SCA)***
 - A scheme once registered “has the essential attributes of a universitas at common law with concomitant legal personality ... the result is that, if Section 5(1)(b) does not in terms confer legal personality, on a proper interpretation it must be taken to do so”

- **Directing mind and will doctrine**

- *Mostert NO v Old Mutual Life Assurance Company (SA) Limited 2001 (5) BPLR 1952 (PFA)*

- Such persons do not act or think on behalf of, or for, the company that is as representatives, agents or delegates or servants. Rather within their appropriate sphere they are an embodiment of the company – they act and know and form intentions through the persona of the company. Their minds are its mind; their knowledge its knowledge, their intentions its intentions

- **Limits to the directing mind and will doctrine**

“When the criminal act is totally in fraud of the corporate employer and where the act is intended to and does result in benefit exclusively to the employee manager, the employee directing mind, from the outset of the design and execution of the criminal plan, ceases to be a directing mind of the corporation”

- **Action taken by the directing mind**
 - Was within the field of operation assigned to him
 - Was not totally in fraud of the corporation
 - Was by design or default partly for the benefit of the company

