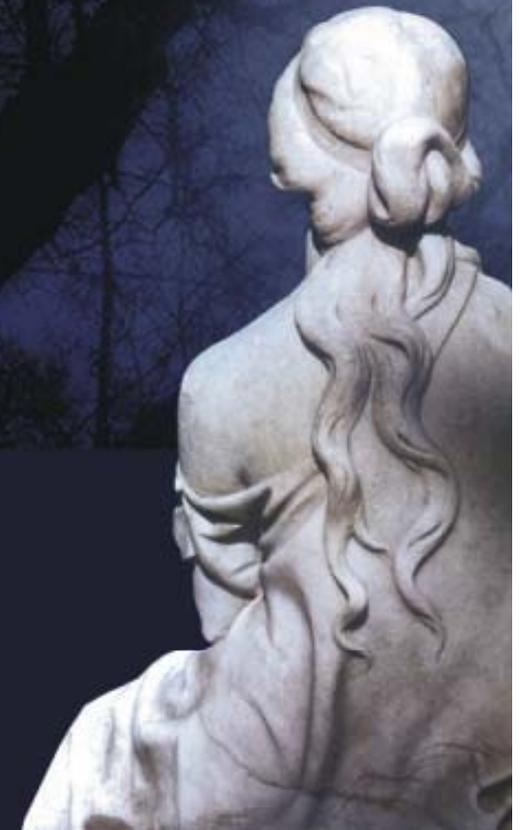


‘FSB must stop
Financial Service
Salami Slicing !’

The inadequacy of the law
and regulation in protecting
funds and their members
against abuse

Midnight
in the
garden of good and evil

Rosemary Hunter



‘FSB must stop financial-service salami-slicing’

August 2008 Cosatu Statement

COSATU welcomes the news that the Financial Services Board (FSB) has begun an investigation into the business practices of Alexander Forbes and NBC Holdings, and hopes that it will be a speedy process with an unequivocal conclusion.

COSATU will continue to insist that secret profits made at the expense of fiduciary beneficiaries, the rightful owners of the funds, amount to theft. Such profits must be paid back to these beneficiaries without any delay.



‘FSB must stop financial-service salami-slicing.’

COSATU is impatient with the fact that in spite of the exposure of these criminal scams, no-one in Alexander Forbes, NBC or any other malfeasing financial services company has yet been put behind bars as a result of the FSB’s work to date.

Is the FSB a toothless bulldog? Not only has it failed to touch the individual crooks in person, but in the case of NBC, which it found guilty of secret “bulking” three years ago, it has allowed this company to defy its order to repay the money, with impunity.

We urge the FSB to act with speed and ferocity in the peoples’ interest. For further comments please contact Jan Mahlangu’



Who is in charge of the shop ?

‘Section 7A(1) makes it clear that - by statute – it is the fund’s board, and not the union, which is entitled and required to “direct, control and oversee” the fund’s operations. The assertion in the resolution...that, on occasion, the union’s NEC and other constitutional structures” take decisions” on benefit funds which the trustees “are obliged to implement” is incompatible with the statutory injunction...’

PPWAWU National Provident Fund v Chemical Energy Paper Print Wood and Allied Workers Union 2008 (2) SA 531 (W).



Section 7A of the Pension Funds Act

- ‘(1) Notwithstanding the rules of a fund, every fund shall have a board consisting of at least four board members, at least 50% of whom the members of the fund shall have the right to elect.
- (2) Subject to subsection (1), the constitution of a board, the election procedure of the members mentioned in that subsection the appointment and terms of office of the members, the procedures at meetings the voting rights of members, the quorum for a meeting the breaking of deadlock and the powers of the board shall be set out in the rules of the fund: Provided that if a board consists of four members or less, all the members shall constitute a quorum at a meeting.’



GIWUSA v CINPF

‘When read in context with section 7A(2), it is clear that section 7A(1) is qualified by subsection. The subsection provides that the rules of the board may determine *inter alia* the constitution of the board, the election procedure and the voting rights of the members. This means that the rules may determine the qualification requirements for members of the board as well as the number of members of the board.’

Per Southwood J in an as yet unreported judgment.



It is the registrar's duty to protect funds and their members

'I think it would be correct to say that one of the reasons why the legislature has seen fit to grant extensive powers of supervision and control to the registrar is that the members of pension funds often do not have the knowledge, skills or resources to take adequate steps to protect themselves. The right to do so is, of course, not taken away by the PFA, but this does not detract from the conclusion which, in my view, can fairly be drawn from the provisions of the PFA and the FI Act, namely that the Registrar fulfills an important function as the guardian of the interests of members of pension funds.'

Per Rogers AJ in *Financial Services Board & another v De Wet NO & others* 2002 (3) SA 525C at 590.



Has Parliament improperly delegated its law-making powers ?

‘The competence of democratic Parliament to delegate its law-making function cannot be determined in the abstract. It depends inter alia on the constitutional instrument in question, the powers of the Legislature in terms of that instrument, the nature and ambit of the purported delegation, the subject matter to which it relates, the degree of delegation, the control and supervision retained or exercisable by the delegator over the delegate, the circumstances prevailing at the time when the delegation is made and when it is expected to be exercised, the identity of the delegatee and practical necessities generally.’

Per Mohamed DP, *Executive Council, Western Cape Legislature & others v President of the Republic of South Africa & others* 1995 (4) SA 877 (CC) at para 136.



‘The general public interest requires that pension funds be operated fairly, properly and successfully and that the pension fund industry be regulated to achieve these objects. That is the whole purpose which underlies the Act ...’

Per Cloete J Pepcor Retirement Fund and Another v Financial Services Board & another 2003 (6) SA 38 (SCA).

