

Pension Lawyers Association Conference 2005

Challenges to Services Providers

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Introduction

“It is ... deeply disturbing that only about 10% of South Africa’s workforce is covered by pension and provident funds, and principally those that are unionized. This happens in a country with about 40% unemployment and with more than half of its population living in poverty. The surplus generated through these funds are literally plundered by retirement fund administrators who charge exorbitant fees for their services. These administrators live like parasites on these funds, thus reducing the pay-outs of those retired, and robbing these funds of further monies for investments into infrastructure and job creation.”

Umsebenzi On-Line SA Communist Party 17 November 2004



Introduction

“Service providers have played a major role over the years by doing the outsourced function of the administration of funds. With time, unfortunately, they have become administrators of trustees. What is needed is a clear regulatory regime to regulate the relationships between trustees and administrators and not to rely only on the service agreement between the two parties . . . Many service providers have everything in-house –administration services, investment managers, actuarial services, insurance etc. Therefore, service providers could influence trustees to keep all business in the same house”.

Registrar of Pension Funds in *FSB Bulletin* Fourth Quarter 2004



Introduction

- **Costs of retirement funding.**
- **The Spitzer investigation, commission payments and secret profits.**
- **Bundling.**
- **Ways to ensure that funds are better and more cost-effectively managed.**



Costs of Retirement Funding

Research by Rob Rusconi:

- We do not have uniform ways of disclosing costs.
- Costs in SA are relatively high.
- Smaller funds incur relatively higher costs.



Costs of Retirement Funding (cont)

- **Trustees must gather info to determine whether their costs are reasonable.**
- **Regulator should consider cost-capping regulation.**
- **New classes of products should be considered.**



Spitzer Investigation

- **Alleges –**
 - **Override commissions which were not disclosed to clients;**
 - **Bid-rigging**



Spitzer Investigation (cont)

- In SA, service providers may take “secret profits” by –
 - Undisclosed commissions on transactions;
 - Including “rebates” for bulk assets referred for management;
 - Creaming off interest paid in respect of fund assets deposited in provider’s bank account;



Spitzer Investigation (cont)

- In SA, service providers may take “secret profits” by –
(continued)
 - Taking a cut on interest payable to home loan provider through joint venture agreements.



Bundling

- ***Myners Review***: conditions for evidence of an uncompetitive market.
- Tied arrangements in SA. Rules may provide that –
 - Fund administered by sponsor;
 - Fund insurance provided by sponsor or sponsor-related company;



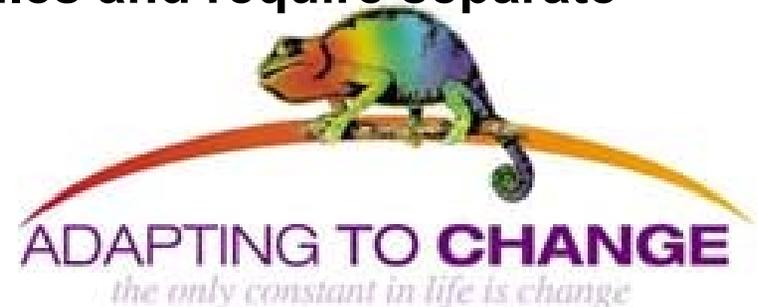
Bundling (cont)

- **Tied arrangements in SA. Rules may provide that (continued)-**
 - **Sponsor has right to appoint chairperson, valuator etc;**
 - **Retirement annuities may only be purchased from sponsor or sponsor-related company.**
- **Fact that employer may withdraw its employees from fund not enough protection.**



Ways to ensure costs are more appropriate

- Legislation to –
 - clarify legal duties of service and product providers and legal effect of agreements concluded in contravention of those duties;
 - require full disclosure of costs on standard basis or bases;
 - disallow lock-in provisions in rules and require separate appointment exercises;



Ways to ensure costs are more appropriate (cont)

- **Legislation to (continued) –**
 - **provide whistle-blower protection;**
- **Independent trustee training to ensure greater diligence and bargaining power;**
- **Creation of more competitive products;**
- **Use of professional independent trustees**

