FSCA
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THE REGULATOR PERSPECTIVE

Thank you. Good evening ladies and gentlemen. We are in the graveyard session, and I have the challenging task to keep you awake and alive after a long day, and I am standing before your dinner.

Let me thank the PLA for inviting the Financial Sector Conduct Authority to engage with your members and the attendees again this year. The last time I spoke with you was in 2018.

I am aware that the theme of the session was meant to be an update from the Commissioner, but that would take the thunder from the important sessions tomorrow and repeat the earlier interesting sessions. Instead, what I would like to do is to give you the regulators perspective on some of these important issues, including life itself.

The Universe is Changing

As I was going through your programme, I was asking myself, what can I share with you today that will be exciting and interesting. It then dawned on me that you chose a very interesting and significant date to have and start your conference. I wonder if many of you are aware of the auspiciousness of today’s date?

Today is the 23rd of March. This date, is actually an extraordinary date and month, astrologically and for people of this planet. Today, one of the smallest but most influential and furthest planet or Star in our solar system, moved into or transitioned into the constellation of Aquarius. That planet or Star is Pluto. Pluto also happens to be one of the smallest and definitely slowest orbiting or moving planet in our solar system. Pluto takes between 12 to 30 years to move into a zodiac or star sign.

As you would know, well I hope you do for God's sake, there are 12 constellations in our solar system and all of us who were naturally born (we are controlling for virgin births in the bible and alien life), would have been born under a particular Star Sign, which is the sign the Sun rose in at the moment of our births.

The last time Pluto was in the constellation of Aquarius was in the 1700s, because it takes Pluto around 248 years to orbit our Sun.

Why am I telling you all these and what is the relevance of this to retirement funds?

It is because the Stars are a fascinating phenomenon used to predict the future and explain the past and the present. It is not sorcery or witchcraft. It is divine science.

For example, it is speculated by some astrologers that the mysterious Pyramids of Giza were mapped using the Stars, to be precise, the Orion Belt, in 10 000 BC. To this day, scientists and engineers are still trying to unlock how the Great Pyramid of Cheops was built.

To this day, even the largest and most sophisticated crane in the world cannot lift the heaviest blocks on the Great Pyramid. By the way, in case you are not aware, and again God help us if you are not aware, the Great Pyramid, being the only surviving structure of the ancient 7 wonders of the world, and the tallest right up until 1311, is in Africa.

The transition of Pluto into Aquarius has all the relevance to your conference, careers, lives and existence on this planet, whether you believe in astrology or not, in God or not.

Yesterday Pluto was in Capricorn, and Capricorn rules government and structure. In this period, we have seen governments and corporates grow in power, including also authoritarianism. In contrast, in contrast, Aquarius rules independence, innovation, humanitarianism, justice and community.

Pluto, although titled the Planet of Destruction, is actually the Planet of Transformation. When last it was in Aquarius, which is between 1789 to 1879, Uranus was discovered, the French Revolution took place in 1879, the US Bill of Rights was ratified in 1791, so too was the emergence of the first industrial revolution in Europe.

The global setup

The world is therefore changing and about to experience major changes. What does this mean for you as lawyers, trustees, funds, members of funds and for the regulator.

At an international level, you would have seen the rise of cryptocurrency and Sustainable Finance. As you would be aware, South Africa has adopted a cautious approach when it comes to crypto-assets by not allowing retirement funds to invest in them at this stage. Crypto-assets are highly volatile and extremely susceptible to fraud and speculation. They therefore do not lend themselves well to retirement funds at this stage. In certain instances, laws are there to protect us from ourselves.

An important and broader question does, however, arise on risk and how retirement funds should manage it. Risk will always be with us. As one actuary, David McCarthy, once told me, You can never completely remove risk from the financial system, instead, you must try to manage it, and that means at times getting the right people to manage it for you.

The risks in our industry are threefold; conduct, governance and prudential. One of the most common risks we see as regulators is fraud, and fraud is very hard to detect early because it relies on internal collusions and collaborations. Fraud is about integrity, ethics and ethical people. Rules and enforcement can only take us so far. My humble view is that we need to focus on raising children who are ethical and who appreciate what is wrong and right. Who appreciate that there are consequences for every action we take; this is the universal or cosmic law of Cause and Effect; for every action there is a commensurate reaction.

Linked with fraud is man’s inherent desire to accumulate more than what is enough; in blunt terms, greed. How do we reign in greed as humans? Greed manifests itself in the desire to make more money than necessary or gain more power at the expense of others’ wellbeing, at the expense of the planet – which by the way, remains the only inhabitable place we have.

Many of you here are lawyers and will appreciate the importance of your duty to the Courts and the clients you serve. You would have seen the FSCA’s finalised Arrear Contributions Standard and the duties it places on everyone. More so, as lawyers, you would be expected to assist the funds and trustees in pursuing the money owed to them by employers.

And we do expect the fund to be in the forefront of pursuing these missing contributions and if necessary, lay criminal charges. And yes, maybe at times this is easier said than done, since the reality is that it might not always be easy as a fund or worker to take your own employer to court when they are paying your salary.

But you have to do it if push comes to shove, and we are also exerting our supervisory pressure on the side and behind the scenes on both funds and employers to do the right thing.

The retirement funds industry can also be litigious, not as extreme as the US though. In many instances, as I have said before, issues can be resolved by proactively engaging with the regulators. And in certain instances where there is clear or deliberate breach of laws, there will and must be regulatory action. In certain instances you will have to litigate.

Another worrying area we see is on breaches of mandates. Trustees need to pay attention to what their service providers are doing. We have cases, even though relatively few but with major implications on member outcome, where asset managers and funds do not stick to their investment mandates and policies.

It is an area we are also starting to look into as the FSCA in terms of how best we can supervise the investment space, including fees and expenses, appreciating also that it is not for the FSCA to make those investment or procurement decisions.

The challenge is that trustees only meet quarterly, and therefore, technically speaking, the administrator and the principal officers run the fund on a daily basis. In fact, the engine of a fund is its administration or administrator; if you get administration wrong, you will have problems with data, with calculating benefits, with adhering to investment limits, and at worst, you will have fraud. We have now at the FSCA, as of this year, consolidated the supervision of administrators and retirement funds under the retirement funds supervision division.

The burden of compliance

Let me now turn to the issue of compliance burden. One of the feedback received at our conference two weeks ago related to the plethora of reporting requirements and returns, and whether these were being used or were useful for the FSCA.

I think this is a fair comment and question, especially given that no regulator in the world will have the number of staff they want. And even if they were to, there will always be better ways to utilise the staff.

The question of what information is necessary is a difficult one, and most of these reporting is triggered by legislation. In this regard, we will embark on a project to assess the type of information we need and how reporting can be streamlined. I suppose the primary question and starting point under a new regulatory regime, is to ask what risk are we worried about and why, especially noting that the world is dominated by Defined Contributions funds, especially in the private sector.

I do also think at times, as regulators, we might be too quick to legislate because either we are being criticized for being soft or for an entity failing, and therefore we might end up overcompensating. The regulation might also have unintended consequences. Getting public comments is therefore very important, but understanding also that we might differ in certain issues as long as we give reasons.

Regulations cannot (always) prevent the demise of a badly managed financial entity. And you can see this with the recent banking challenges in the US and now affecting one of the largest banks in Europe, Credit Suisse. Regulations can definitely be useful as they set the same rules of the game for everyone, but in my humble view, they cannot be a substitute for good, ethical and competent people running and managing a company. At times entities do fail due to external factors – Covid-19 lockdowns are an example.

And there is no point of having the best laws and policies if they cannot be policed and enforced. Hence I have enormous respect for our judges. They keep society in check. As a financial Regulator we do take our mandate to protect consumers and members seriously. Sometimes, and not deliberately, we do miss certain things.

As lawyers, you play an exceptionally important role in assisting funds to comply with the laws, regulations and principles encapsulated in our regulatory frameworks. Where the law might be ambiguous or silent, I would encourage you to think of best member outcomes and what would be fair to them, and not to take advantage of the gaps in the laws. Think about the 6 TCF principles when you render legal advice.

ESG

Coming to the planet and environment, and ESG issues. The world is forging ahead fast and furious on ESG disclosure standards. The International Sustainability Standards Board (ISSB), under the auspices of the International Financial Reporting Standards Board, is aiming to finalise its sustainability disclosure standard this year. The FSCA has been engaging with the ISSB, including also the EU, in recent months.

You would have also seen how we are also revising our reporting requirements to reflect some of these reporting developments in funds' annual financial statements. As the retirement funds industry, you are better prepared for these global changes, and actually are ahead of many countries out there.

You have been through this journey as early as 2011 when the ESG principle was introduced for the first time in Regulation 28, which was followed with an FSCA notice in 2019 on how to approach the principle.

These ESG issues and requirements are now coming to everyone, every corporate and every country. And there is nothing to fear here. You can see already the changes that are taking place in the universe and in the world as the Age of Aquarius gains momentum.

The youth and millennial are now demanding corporates and countries to take climate change seriously, to fight gender and racial prejudice. This will intensify as communities also demand to retire in socially and environmentally safe areas; as they demand that there is fair representation of their people in the companies they buy from and work for.

Climate issues are truly existential issues. Communities are demanding that corporates not prioritise only profits over their wellbeing. Profits, in moderation, are not bad. The companies you all invest in need to be profitable to earn you a return as funds. Profit also instills operational discipline and sustainability in an entity.

But profit should never be the start and end of everything. What good are profits in a wasteland. There is growing call for profit to have a conscience, especially in the humanitarian age of Aquarius. By the way, some of the best performing companies globally have been those which embrace ESG risk factoring and sustainable finance. And it makes sense from a reputation context.

As retirement funds, you are the asset owners, and powerful assets owners for that matter. You are, therefore, expected to be active and ask questions how and where workers money is invested and used, and whether it is earning a decent, sustainable and responsible return.

The regulatory framework enables and empowers you to ask these questions.

As an example, Principle 2(c)(iii) in Regulation 28 talks about empowered procurement. Are you supporting emerging entities who are doing the right thing, have competent and ethical people, follow due process, and have proper business plans. Or we are waiting for the mandatory Financial Sector Transformation Scorecard on Retirement Funds. Inclusivity and Diversity, both racial and gender, are so important, especially in South Africa. Boards with diversity make better decisions.

It reminds me of a colleague I met in Rwanda last year, when we were visiting the Genocide museum, and he said to me; Olano, given what happened in Rwanda, I don't see different people, but I see different shapes. That helps me not to be prejudiced and hate as a Rwandan. Rwanda, by the way, is a model African State and a demonstration that humans can overcome a difficult past and present if we want to.

If only as South Africans we can see each other as South Africans, despite our physical make-up, I think we can achieve and fix a lot. Yes, we do have a complicated past and it will always be with us, and that past is what makes us South Africans. But we must be mindful of the present and live in the present. Time is not linear, but circular. That is why history can repeat itself, although in different forms and guises.

The future of retirement

Let me start to conclude by sharing my view with you on the future of retirement funds. Our retirement world is changing and changing fast. Covid-19 exerted enormous pressure on retirement funds, with workers globally asking to be given access to their savings before retirement.

Some countries allowed it, like Chile and Australia, and others like South Africa took a more conservative approach. The worry in South Africa was, and is still, that individually we already have very low retirement savings because of lack of preservation.

So you have two extremes; the South African one which allows access when you resign, and the other extreme which imposes full preservation, like in Chile and the UK. The challenge with extremes, in life, is that they always buckle under pressure, as Chile showed during Covid.

Life is about balance, and not extremism. Hence even foremost researchers and policy advisers, like Fiona Stewart of the World Bank, now make a persuasive argument that the right design should consider allowing some limited access while preserving the rest.

South Africa is not alone in considering this approach, called the Two Pot system. The UK, under their Nest, and the US are also mulling similar approaches.The FSCA fully supports the National Treasury's Two Pot system because even research by actuaries shows that it will significantly increase members' outcome and get most of us to reach the promised land of the 75% replacement ratio. Something to also remember, is that Africa has a young population, and therefore we must design a retirement system which also appeals to the youth.

Coming now to auto-enrollment. Internationally auto-enrollment means you are automatically registered in an employer fund but can later opt out if you are not comfortable. The secret of this clever design, and why it has increased coverage in the UK to around 85%, is its behavioural economics analysis. Auto-enrollment relies on the power of human inertia to get the right results. We are loathe to make complex decisions as humans, and hence we should design systems and products, and make rules and laws, which encourage, instead of always forcing, people to do the right thing.

Of course, in South Africa there is a complexity in that there is already a quasi-mandatory system which requires you to be a member of the employer's fund if you join and cannot opt out. In this regard, one way of introducing auto-enrollment could be on new workers, so that we ease them into the system given the current challenges on salaries and inflation. This hybrid approach could, in the interim, protect the current strong features of the system, while allowing some flexibility and right to choose by opting out for new workers in the early period. As I indicated earlier, in the Age of Aquarius, people will not take lightly and will not be receptive to authoritarian governments, rules and coercion.

Another area that is occupying discussions globally, especially in Africa and other emerging economies, is micropensions, which are simply flexible pensions aimed at informal, seasonal workers, who by and large earn low salaries and not in full time employment. African is made up significantly of informal economies, up to 80% in some countries. Micropension systems have been rolled out in Kenya and Uganda, leveraging on mobile phones and flexibility. Can auto-enrollment be extended to this cohort of workers?

It is not clear and at the very least it would be difficult. Auto-enrollment does rely very much on formality and the presence of the employer. In this regard, this cohort might be better served by tax and other incentives, eg bundling products like funeral benefits and retirement savings.

The Gig economy is also another sector that is going to be more important in the future. The current generation is not going to work for one employer until their retirement. My sense is that the new world of pension will see a worker linked to a single retirement pot through a unique number, and not an employer.

Conclusion

In the next 20 years, Pluto will be with us and in Aquarius. It is a calling on all of us to transform ourselves and society into better and higher forms of consciousness and existence. And it will actually do that with us kicking and screaming if necessary. It is asking us to be more humanitarian and treat each other properly and fairly. It is asking us to embrace new but safe technologies and ways of doing things, including regulation, to better ourselves and society.

There is a debate on whether the stars dictate our destinies. As partly an economist (partly lawyer), the one issue that is always difficult for us to solve for in economics, is causality. Economists are good at establishing correlations, not causality. But it does not matter much whether the planets rule us or not. If you accept that humans are made of Matter, Soul and Spirit, then you will also appreciate the invisible power of cosmic energy and laws.

Thank you