

# Are you fit for the challenges?



Synopsis of presentations  
at the 4th Annual FISA  
Conference at the Wanderers  
Club, Illovo, Johannesburg, on  
18 September 2014.

**Ms Anne Klein, Head of the Maitland Private Client Team in Johannesburg,** spoke about the Foreign Account Tax Compliance Act. This new piece of legislation in the USA will have far reaching implications for any entity managing funds on behalf of anyone with American citizenship or permanent residence.

Although the international application and the impact on South Africa is still negotiated, it could lead to even trustees of South African trusts with American beneficiaries being placed under the obligation to report income and capital distributions to such beneficiaries to American tax authorities.

**Ms Ronel Williams, a Fiduciary Specialist at Nedbank Private Wealth in Cape Town,** referred to the huge compliance burden already placed on fiduciary practitioners, and focussed on this burden in the case of deceased estates and trusts. She dealt with some of the provisions of ten pieces of legislation placing this burden on practitioners, including the Administration of Estates Act, the Trust Property Control Act, the Attorneys Act, the Promotion of Administrative Justice Act and the Promotion of Access to Information Act.

**Mr Rowan Stafford, an Associate at Eversheds Attorneys in Johannesburg,** shared some of his insights on so-called "sham" trusts, alter ego trusts, and generally "looking behind" the trust form. Mr Stafford holds a master's degree in law (LL M) and wrote his thesis on this topic, which was referred to in a recent Western Cape High Court judgement. He reiterated that for a trust to be declared a sham, none of the trustees

nor the founder must have had an honest intention to create a trust. He also proposed that the question should be answered with reference to the essential elements of a trust in South African law.

**Messrs Anton Maskowitz of Sanlam Private Investments, Harry Joffe of Discovery Life, and Chris Murphy of Legacy Fiduciary Services,** took part in a panel discussion on the challenges of dealing with lay persons as co-executors and co-trustees. Due to the highly technical nature of fiduciary practice it can be very challenging to deal with persons without any knowledge or experience in these roles. It is also common for such lay persons not to comprehend fully their fiduciary duty and potential liability. All three participants agreed that these persons can play a useful role, but that the fiduciary professional should take control and manage the situation with sensitivity and professionalism.