



*Lecturer in private law at the University of the Western Cape, Dr Latiefa Albertus, spoke about research she conducted on law reform in relation to trusts.*

loans and the foregoing of interest that can be challenged in court.

- Constitutional issues such as the application of Sharia Law and the imposition of interest are recognised and will be considered.
- National Treasury is willing to work with industry representatives, hears the concerns being raised and is not dismissive of the importance of trusts in our law.
- However, the view remains within National Treasury that the proposed legislation is required. To this end the normal legislative process will be followed and s 7C, in a workable form with due recognition being given to the representations and input received from interested parties, will be adopted.

Ms Howard added that on promulgation, the section will come into operation on 1 March 2017 and will be applicable to years of assessment commencing on or after that date.

Ms Howard concluded by saying that clients should not overreact and rush to terminate their trusts. 'Trusts that were set up purely for tax purposes will have to be reconsidered as the reason for their existence will probably fall away, but in all instances the cost and other benefits



*FISA Gauteng Regional Head, Cheryl Howard, discussed s 7C of the 2016 Draft Taxation Laws Amendment Bill.*

of having a trust need to be considered before a decision can be made to terminate the trust.'

## Report from the Master of the High Court

Master of the High Court, advocate Lester Basson, discussed regulatory developments and statistics from his department.

Mr Basson said statistics show that there is a discrepancy between the number of deaths in South Africa and the number of deceased estates registered and noted that it was a concern that an approximate amount of 33% of deaths reported went through the master's office or the magistrate's office. Mr Basson said 66% bypassed the administration process and a possible explanation could be traditional arrangements, however, he could not say for sure, but added that traditional arrangements did not take care of bank accounts or any other item that needs to be registered in the government office.

Mr Basson said there was a lot more work that could be done in the deceased estate industry if a broader look is taken as there is a lot of potential in deceased estates.

Mr Basson said he was most excited about the degree of progress in the utilisation of the electronic systems, data and the way that deceased estates are processed. In 2012, 1,4% users utilised the Paperless Estate Administration System and that figure now stands at 78,5% for the January to June 2016 period. Mr Basson said the department is working hard to upgrade the processes and to make it better. The department was going to start addressing waste and get into a situation where a better service is delivered.

Mr Basson also advised of the number of estates registered with wills. In the period of January to June 2016, 74 693 estates were registered and only 17 273 were registered with wills, which amounts to 23%. Mr Basson said that this was an area that needed to be focussed on. 'People die without wills. In 2015, 23% died with wills,' he said. Mr Basson added that many estates could be sorted out quicker if there was a will in place and that the profession could use this as an opportunity for business.

Mr Basson also referred to reg 910 and said that work was being done to make certain legal changes that will allow the Minister of Justice to make regulation in terms of the Administration of Estates Act 66 of 1995 (Estates Act).

In reg 910, Mr Basson said that only certain institutions are allowed to administer deceased estates. From a governance point of view, it is too narrowly defined as it is confined to practising attorneys and auditors. 'Chartered account-



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ants are not auditors and do not qualify under the regulation,' he said.

According to Mr Basson, the current General Laws Amendment Bill that is serving in its final phase before being passed in Parliament is 'enabling a provision in terms of s 103 of the Estates Act that allows the Minister of Justice to make regulations regarding the Estates Act. Where currently the origin of reg 910 is in the Attorneys Act [53 of 1979], which has then since been repealed and replaced by the Legal Practice Act [28 of 2014], which has no provision for a regulation around deceased estates administration. We want to amend the statutory provision to provide for a regulation in the Estates Act. We can just about tick that box, because that whole process has just about gone through Parliament. ... The Minister of Justice will be in a position to make a regulation similar to regulation 910 as to govern who can administer estates. The criteria that we say should be used when the Minister accredits or allows people to administer estates to broaden the base, not excluding, but broader than attorneys. Where such a person or entity should have a tertiary qualification, must belong to a professional body and that this professional body must require continuous professional development from its members and where there is an indemnity and a backup in the event of wrong doing so that we can minimise the risk so that we can entrust the administration of estates to people who are competent, capable and guaranteed to be governed,' Mr Basson said.