



THE FIDUCIARY INSTITUTE OF SOUTH AFRICA



# FREE STATE REGION

## MINUTES OF MEETING

held on

09-Feb-17

### PRESENT

Colin Hickling	The Public Trustee & Trust Co.	(CH)
Barbara Hickling	The Public Trustee & Trust Co.	(BH)
Marié Janse van Vuuren	MFI Trust (Pty) Ltd	(MJvV)
Barry Cloete	Matsepes Inc Attorneys	(BC)
Tsholo Mokgobo	Master's Office - Bloemfontein	(TM)
Jannie du Plessis	Master's Office - Bloemfontein	(JdP)
Lizette du Plessis	Globalwealth Investments (Pty) Ltd	(LduP)
Cedrick Peterson	Newtons Chartered Accountants	(CP)
Kobus Nel	Nel & Partners	(KN)
Anida Marnewick	Nedgroup Trust	(AM)
Schalk Gouws	Newtons Chartered Accountants	(SG)
Elna Pohl	Symington De Kok	(EP)
John Anderson	Claude Reid Attorneys	(JA)
Piet Vorster	Absa Trust	(PV)
Anzel Jacobs	Globalgrowth Trustdienste	(AJ)
Willem Lategan	RIG Advise Services	(WL)
Nici Macdonald	PSG	(NM)
Rodney Mella	Skunjalo Legal Consultants	(RM)
John Anderson	Claude Reid	(JA)
Joey du Plessis	Standard Executors & Trustees	(JdP)
Dewald Pretorius	Nedgroup Trust	(DP)
Piet Swanepoel	Symington De Kok	(PS)
Rynoe Smith	PSG	(RS)
FJ Jansen van Rensburg	PSG	(FJjvR)
Faan du Toit	Absa Trust	(FduT)
Marlene Niemand	Nedgroup Trust	(MN)
Dolf Schutte	Citadel	(DS)
Annelize van der Bank	Citadel	(AvdB)
Giselle Taylor-Maritz	Citadel	(GTM)
Mmutle Modibela	Master's Office - Mafikeng	(MM)
<b><u>APOLOGIES</u></b>		
Craig Davids	Master's Office - Kimberley	(CD)
Sandra Hattingh	Kqwebo Financial Advisors	(SH)
Shirley Hyland	UFS	(SH)
Jan du Plooy	Jan Plan Financial Services	(JduP)

Shirley Hyland	UFS	(SH)
Maryke Kriek	PSG	(MK)
Hendra le Roux	UFS	(HS)
Francois Potgieter	FNB	(FP)
Jannie Fourie	MFI Trust (Pty) Ltd	(JF)
Cilliers Krause	MFI Trust (Pty) Ltd	(CK)
Johan Jordaan	JL Jordaan Attorneys	(JJ)

NO.	ITEM	ACTION
1	<b>OPENING</b>	
1.1	<b>Opening:</b> The chairperson opened the meeting at 10h05.	CH
	<b>Welcome and attendance:</b> The chairperson welcomed all attendees, with a special word of welcome to the Master of Bloemfontein, Jannie du Plessis and his colleague, Tsholo Mokgobo, the Master of Mafikeng, Mmutle Modibela and the representatives of Grindrod Bank, namely Bennie van der Berg and Annelize Labuschagne. He also welcomed Rodney Mella, a newcomer from Kimberley. The chairman conveyed a special apology on behalf of SARS as none of their representatives could attend and had requested that any issues should be communicated with them. He advised that Grindrod Bank had agreed to sponsor all the regional meetings and that they would make a short video presentation. Mr Bennie van der Berg advised that Grindrod Bank were committed to FISA country wide and detailed their offerings, particularly in relation to estates and trusts. The video presentation was screened and Grindrod Bank were thanked for their support. The chairman advised that Prof Bradley Smith, who was due to make a presentation on trusts, has been hospitalised and that Dolf Schutte had kindly agreed to prepare a series of questions dealing with various estate issues. Apologies were noted.	CH
2	<b>Confirmation of minutes:</b>	CH
2.1	The minutes of the previous meeting had been circulated to everyone and there were no objections to the content or accuracy and it was proposed, seconded and adopted.	CH
2.2	<b>Matters arising from previous meeting:</b> The Chairman brought members' attention to the comment that Louis van Vuren had made about FISA membership certificates issued between 2001 and 2011 lapsing on 1 January 2018. It was pointed out that it did NOT refer to FPSA certificates, but certificates in respect of "Senior Estates and Financial Planning Consultant" and "Senior Wills Drafter". No other issues were discussed.	CH
3	<b>UPDATES FROM THE OFFICES OF THE MASTER &amp; SARS</b>	
3.1	<b>SARS:</b> The chairperson once again confirmed that SARS could unfortunately not attend and that any issues should be communicated with them.	CH
3.2	<b>MASTER'S OFFICE:</b> Mr Jannie du Plessis detailed the procedure that is followed at the Master's Office, now that SARS is dealing with the Estate Duty assessment. This has been taking place since 1 April 2016 and there is a good working relationship between SARS and the Master, enabling SARS to access the files each Friday.	JdP

When one lodges the L&D, the Master's Office goes through the file and if there are any queries, a query sheet is sent to the Executor. Once the query are resolved and the Master is satisfied that the estate can be advertised, then at weat, the L&D goes to SARS. If the file is completed before Wednesday, SARS receives the L&D on that Friday. If on a Thursday or Friday, SARS gets the file the following Friday. SARS then has 10 days to approve the Estate Duty addendum, but in that time, the executor can still advertise. SARS will communicate any further requirements with the Executor. Objections are lodged in the normal manner, within 10 days.

JduP

Once the estate is advertised, the Master will issue a letter, indicating that the estate has lain for inspection free from objections, and thereafter the Executor may proceed with payments, but ONLY once SARS has issued the Estate Duty assessment. It is important to note that SARS inspects all estate files, not only those who are due to pay Estate Duty.

JduP

Mr Du Plessis indicated that the process was working quite well and that objections from SARS appeared to be the exception, rather than the rule. He was asked whether the executor could forward a copy of the L&D directly to SARS and he indicated that he didn't think this should happen as SARS scan in the L&D for the Master's file, thus ensuring that they are working with the correct L&D account. A general discussion took place regarding what deductions and tax exemptions are permitted in respect of post death income and it was agreed that all normal S11 charges are allowed.

JduP

It was pointed out that the income earned by the estate, post the period from date of death to date of the Liquidation and Distribution Account, would be dealt with as in the past and that it was incumbent on executors to inform residual beneficiaries that they should declare the income in their tax return.

JduP

The Master further advised that they had 14 days to issue Letters of Executorship and that where members experience long delays, they could contact him to follow up with the relevant department. Mr Modibela of Mafikeng advised that because they handled fewer estates, a specific arrangement was made with SARS to come to their offices on a specific date. He also advised that if problems were being experienced, to contact him directly on his email address, namely mastermafikeng@justice.gov.za.

JduP

During the above discussion, a point was raised regarding incorrect death certificates from the Department of Home Affairs. This had arisen when handling the estate of the surviving spouse, in that the death certificate still noted that the surviving spouse was married. It appears that the death of the first dying was never registered at Home Affairs and it then takes about 6 months to get this resolved. The Bloemfontein Master indicated that this did not seem to be a general problem, but that if the death certificate was incorrect, then it was up to the Executor to prove the contrary, either by completing a next-of-kin affidavit or another affidavit. It was also suggested that the affidavit be addressed in the covering letter, in which one could state that the death certificate was incorrect and that, as a result, affidavits had been submitted and for the Master to please accept that the deceased was a widow/widower. One could also submit the predeceased's death certificate. In the case of a divorce, if this had not been noted by Home Affairs, a copy of the Divorce order should be submitted. It was suggested that Home Affairs should be invited to a future FISA meeting.

JduP

Mr Hickling thanked the Masters of Bloemfontein and Mafikeng for their contributions.

CH

4 **PRESENTATION: PROF BRADLEY SMITH, ASSOCIATE PROFESSOR, PRIVATE LAW (UFS)**

As indicated previously during the meeting, Prof Smith was hospitalised and could unfortunately not attend the meeting.

CH

5 **PRESENTATION: PIETER BRITS, CENTRE OF FINANCIAL PLANNING AND LAW (UFS)**

The Chairperson welcomed and introduced Pieter Brits and read his CV.

CH

Mr Brits started his presentation on Equality within diversity, stating that his presentation was built on his research for his doctorate. He worked through the "dilemma" by referring to the South African constitution and different ways, - customs, -practices, -results, briefly standing on VAT, transfer duty and the income tax act.

PB

He explained that South Africa has a diverse society and that the country strives towards equality. He added that the tax dilemma is seen in the fact that tax is handled differently when it comes to religion, custom, age and ethnicity. He also mentioned the Sharia law and the highest value of Sharia assets of non-Muslim Countries, quickly looking at different ethnicities and cultures throughout the world, specifically Australia, the UK, France, Luxemburg and the Netherlands.

PB

Mr Brits explained the problems towards tax legislation and the insufficient incorporation of Islamic finance and other faiths and the limitations. He concluded his presentation by saying that there could not be a "one size fits all" solution to the problem and that there is legal diversity in the tax law.

PB

Following a few general questions on the Sharia law, Mr John Anderson thanked Mr Brits for his very interesting presentation on a totally new facet. He also thanked the Law Faculty and the Centre for Financial Planning and Law for their contributions towards the regional meetings.

JA

6	<p><b>PRESENTATION: DOLF SCHUTTE: QUESTIONS DEALING WITH VARIOUS ESTATE ISSUES (CITADEL)</b></p> <p>Mr Dolf Schutte handed out pages with several "questions without answers". He added that these "questions" were practical problems and that he would value the view/opinion of the attendees.</p> <p><b>Worldwide wills:</b> Where a client has assets in SA and in other jurisdictions and if there is a general rule to advise on having only one will for world wide assets or alternatively more than one will, it was agreed that clients should be made aware of more than one jurisdiction being triggered and also that Afrikaans wills would have to be translated. Attendees were advised to use wills as an estate planning tool and it was suggested that this specific topic should have a session on its own, since there are a lot of elements that have to be clarified, e.g. offshore investments and which companies are domiciled in South Africa, revocation clauses, legal validity, tax implications, etc. It was agreed that a presenter of such a session needs to be very knowledgeable and that the session would also be quite lengthy.</p> <p><b>Exempted life cover:</b> When life cover on the death of an insured life is exempted from estate duty where the owner of a policy is a trust - Attendees discussed key-man policies and buy-and-sell agreements and the stipulations of Section 3(3)(d) of the estate duty act.</p> <p><b>Ownership and L&amp;D account:</b> Attendees discussed when to lodge specific accounts and what the name of such an account should be. Mr Modibela added that Supplementary Accounts address issues not addressed in a First and Final Account and advised that all L&amp;D's should be read together.</p> <p><b>Trust beneficiaries:</b> Income- and Capital beneficiaries were discussed, with reference to whom would be seen as beneficiaries when related by affinity and law. Attendees also discussed the fiduciary obligations and discretion of the trustees identified income beneficiaries, the wording of the trust deed and agreed that classes should be defined clearly.</p> <p>A short discussion took place on factual vs. actual relatives in the event of family arrangements where there were no supporting documents and on the new Sec 7C and its planning implications and possible solutions.</p> <p>Mr Hickling thanked Mr Schutte for his input and his meaningful presentation.</p>	<p>DS</p> <p>DS</p> <p>DS, All</p> <p>DS, All</p> <p>DS, All</p> <p>DS, All</p> <p>CH</p>
7	<p><b>ESTATE AND TRUST PROBLEMS</b></p> <p>Attendees discussed Section 34 Estates and the refusal to transfer timeshare when there are outstanding levies.</p> <p>Attendees had a discussion on National Deceased Estate and Deceased Estate Recoveries Sections and on the problems being experienced with some of the Banks. Rynoe Smith had provided all members with new correspondence from ABSA with contact details.</p> <p>Mr Hickling thanked all attendees for their input.</p>	<p>All</p> <p>All</p> <p>CH</p>

8 **GENERAL AND CLOSURE**

CH

Mr Hickling concluded by thanking the speakers for their interesting, informative and valuable presentations and all attendees and representatives the Master's Offices for their input and contributions and the representatives of Grindrod Bank for their attendance and sponsoring of the lunch, immediately after the meeting. He once again invited all to furnish him with possible topics for future presentations.

The quarterly meeting adjourned at 12h35 and was followed with the **Bi-Annual Election Meeting**.

Signed as a true record of proceedings, on this \_\_\_\_ day of \_\_\_\_\_ 2017.

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**CK HICKLING - CHAIRMAN**