

W E A L T H • I N V E S T M E N T • P R O S P E R I T Y

- To promote the fiduciary profession;
- To promote the interests of clients of fiduciary professionals through the setting and enforcement of professional standards of conduct for fiduciary professionals;
- To provide a framework within which members can achieve the qualifications and competence to practise as fiduciary professionals;
- To ensure that members maintain the highest professional and ethical standards in the pursuance of their profession; and
- To promote the interests of members in fulfilling their professional aspirations.

Van Vuren says FISA believes that the standards of fiduciary practice in South Africa need to be raised and the best way to achieve this is by professionalising the industry.

"Just to take one example, think of the countless incidents of lay-person executors causing loss to innocent heirs. If a professional executor who is a FISA member is appointed to work together with a family member, this can be avoided. We cannot say FISA members will never do wrong things, but we can say that we have a disciplinary structure to deal with that."

As part of its efforts to professionalise the industry, in 2011 FISA registered the designation of Fiduciary Practitioner of South Africa (FPSA). From this year, anyone who wants to apply for the FPSA designation must first complete the Advanced Diploma in Estate and Trust Administration offered by the School of Financial Law at the University of the Free State.

By using someone with the FPSA designation, you will know that you are dealing with a person who has demonstrated:

- Academic knowledge by obtaining a formal qualification and the required level of appropriate experience;
- The ability to apply that knowledge;
- A willingness to be bound by the ethical standards of a profession; and
- A commitment to maintain levels of technical knowledge through a CPD programme.

The aim is for the FPSA designation to

achieve the same status among fiduciary practitioners as the Certified Financial Planner designation does among financial advisers.

"It will take some years for this to happen, but, from what we are seeing, the FPSA designation is fast becoming a recognised mark of excellent professional knowledge and standards among practitioners and the public alike," Van Vuren says.

However, he says, FISA does not believe that more regulation is the way to raise standards among fiduciary practitioners.

"More regulation will be counter-productive, and the compliance cost could force many practitioners out of the

industry. The industry is already highly regulated in that the administration processes involved in deceased estates and trusts are controlled by legislation, and common and case law. The Master of the High Court appoints and regulates the activities of executors under the Administration of Estates Act and authorises trustees to act under the Trust Property Control Act. The Master also has far-reaching regulatory functions to remove and replace executors and hold trustees to account. Executors and trustees are also required to comply with Sars requirements with respect to tax, and trustees are subject to Fica."

Go to page 60 for FISA's contact details.

TRUST COMPANIES ORIGINATED IN SOUTH AFRICA

Few people know that trust companies originated in the Cape about 180 years ago, says David Knott, an expert in estates and wills at Private Client Trust, a division of Private Client Holdings, and a FISA member and FPSA.

After the Cape was settled by the Dutch in 1652, there was a relatively high death rate among the settlers as a result of the treacherous sea journey between Europe and the East, skirmishes with the indigenous people, attacks from wild animals, and the harsh living conditions. "It soon became evident that someone needed to look after the affairs of the children of the deceased settlers – those minors inheriting from deceased parents, or where heirs were unknown or absent from the Cape. The Board of Orphan Masters (the Orphan Chamber) was established in about 1673 to fulfil this need and operated under Dutch law.

"When the Cape fell to the British, the laws tended to follow English practice as opposed to Dutch. The Dutch marital regime was that of in community of property, with all control vesting in the husband, while the wife's power was limited to that of a minor. English law was the opposite, with each spouse retaining their separate property and full contractual power. The new government therefore saw little reason for the existence of the Orphan Chamber, and King William IV proclaimed on March 4, 1832 that the Orphan Chamber be abolished. Minors, prodigals and absent beneficiaries did not disappear with the demise of the Orphan Chamber, and so, on April 22, 1834, during the governorship of Lord Charles Somerset, the first trust company in the world was established.

"Named the South African Association for the Administration and Settlement of Estates, its functions almost mirrored that of the old Orphan Chamber. The company drafted wills, administered estates and looked after trusts for those unable to attend to their own affairs," says Knott.

Gradually, the concept of a corporate entity attending to fiduciary matters spread across the Cape Colony before migrating to Australia, New Zealand, Canada and the United States.