



THE FIDUCIARY INSTITUTE OF SOUTH AFRICA



FREE STATE REGION

MINUTES OF MEETING

held on

02-Nov-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)
Joey du Plessis	Standard Executors & Trustees	(JduP)
Schalk Gouws	Newtons	(SG)
Sandra Hattingh	Kqwebo Financial Services	(SH)
Rodney Mella	Symington De Kok	(EP)
Cleopatra Mukhari	Phatshoane Henney Attorneys	(CM)
Elna Pohl	Symington De Kok	(EP)
Natalie Steenkamp	Phatshoane Henney Attorneys	(NS)
Giselle Taylor-Maritz	Citadel Wealth Management	(GT)
Annelize van der Bank	Citadel Fiduciary	(AvdB)
Ernst Mpolokeng	Master of the High Court, Bloemfontein	(EM)
Ilke van Pletzen	MFI Trust (Pty) Ltd	(lvP)
Eric Mackenzie	PTC	(EM)
Cedric Peterson	Newtons	(CP)
John Anderson	Claude Reid / PTC	(JA)
Nici Macdonald	PSG	(NM)
FJ Jansen van Rensburg	PSG	(FJJvR)
Brunhilde Gerber	FinGlobal	(BG)
Maricha Venter	Wealth Associates Fiduciary Services	(MV)
Hennie du Plessis	RIG	(HduP)
Hanri Honiball	RIG	(HH)
Minette Weideman	Levevis	(MW)
Maryke Kriek	PSG	(MK)
Liesel Alsemgeest	Centre for Financial Planning & Law, UFS	(LA)
Henda Steyn	Centre for Financial Planning & Law, UFS	(HS)
Wessel Smith	Core Group	(WS)
Hannetjie Grobler	SARS	(HG)
Tafia Knoetze	SARS	(TK)
Bertus Nel	SARS	(BN)
Amanda Potgieter	SARS	(AP)
 <u>APOLOGIES</u>		
Craig Davids	Master's Office - Kimberley	(CD)
Jannie du Plessis	Master's Office - Bloemfontein	(JdP)
Cilliers Krause	MFI Trust (Pty) Ltd	(CK)
Jannie Fourie	MFI Trust (Pty) Ltd	(JF)
Willem Lategan	RIG	(WL)
Rynoe Smith	PSG	(RS)

NO.	ITEM	ACTION
1	OPENING	
1,1	Opening: The chairperson opened the meeting at 10h05.	CH
	Welcome and attendance: The chairperson welcomed all attendees, with a special word of welcome to the new members, Ethe van Wyk (EG Cooper Majiedt Inc) and Giselle Taylor-Maritz (Citadel Investment Services). Ms Van Wyk could unfortunately not be at the meeting. He specifically also welcomed the representative of Grindrod Bank, namely Sandra Jordaan, Ilke van Pletzen, the representatives from SARS, namely Hanneltjie Grobler, Tafia Knoetze, Bertus Nel and Amanda Potgieter and the guests, Dr Liezel Alsemgeest, Henda le Roux, Rika van Zyl, Brunhilde Gerber and Wessel Smith. He advised that Grindrod Bank had agreed to sponsor all the regional meetings and thanked them once again. Apologies were noted.	CH
2	Confirmation of minutes:	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	Matters arising from previous meeting: None	CH
3	UPDATES FROM THE OFFICES OF THE MASTER & SARS	
3,1	SARS: Amanda Potgieter reported that they are working on the "bank details" and that SARS did not put a timeline on the completion of the work. She will keep members updated. The other representatives had nothing to report.	AP
3,2	MASTER'S OFFICE: The representative of SARS had nothing to report.	EM
	Mr Hickling thanked the representatives from SARS the Master's Office for their attendance and contributions.	CH
4	PRESENTATION: WESSEL SMITH (DIRECTOR OF CORE TAX) - SECTION 7C OF THE INCOME TAX ACT	
	Mr Smith, Director of Core Tax, started his presentation by stating that it would be inter active.	WS
	Mr Smith started his presentation by stating that Sec 7C became effective on 01/03/2017. He added that one should take note of the tax point of view on trusts, since the tax rate on trusts, other than special trusts which are taxed at rates applicable to individuals, changed from 41% to 45%.	WS
	He added that the Davis Committee had an interim report in 2014 and a final report in 2016. In 2016 the budget proposal resulted in Section 7C being included in the Act. He explained that, in terms of Section 7C(3), trusts either incur interest at either a lower rate than the official interest rate or loans are interest free and said that interest free or low interest loans to trust will result in Donations Tax of 20%. He explained that it was part of the reform of the taxation of trusts to limit the use of trusts as vehicles to avoid Estate Duty and Capital Gains Tax.	WS
	Mr Smith added that Section 7C applies to any loan, advance or credit provided by South African resident individual to trusts on or after 01/03/2017 and worked through a few examples.	WS
	Mr Smith explained losses on loans in terms of Section 7C(2) and said that no deduction, loss, allowance or capital loss may be claimed in respect of a disposal, including by way of reduction or waiver, or the failure, wholly or partly, of a claim for the payment of any amount owing in respect of a loan, advance or credit referred to in subsection (3).	WS

He also explained exclusions in terms of Section 7C(5), namely affected transactions as defined in Section 31(1), Sharia Compliant Financing, loans subject to the provisions of Section 64E(4)(deemed dividend for dividend's tax), Public Benefit Organisations (PBO's), Loans provided by reason or in return for a vested interest, Special trusts as defined and where trusts are used for the purposes of funding a "primary residence". He again worked through a few examples. WS

Mr Smith discussed the exclusion of Employee Share Trusts from Section 7C and said that its anti-avoidance measure may have a negative impact on some employee shares schemes that often make use of trust to hold shares in the employer company (or its associate) that will be allocated to qualifying employees. He added that these types of trusts are established to facilitate incentive programmes for employees and cannot be treated in the same manner as trusts that are established to transfer wealth. WS

He added that a specific exclusion for employee incentive schemes were provided for if the requirement are met when the trust should be a trust that is created solely for the purposes of giving effect to an employee share incentive scheme in terms of which that loan, advance or credit was provided by a company to that trust for purposes of funding the acquisition, by that trust, of shares in that company or in any other company forming part of the same group of companies as that company. WS

He mentioned that shares may only be offered by that trust to persons with full-time employment and also that connected persons may not participate in the scheme. He once again worked through a few examples. WS

He referred to loans to companies and said that it seems from the wording that, an interest free or low interest loan to a company, even if a trust owns all the shares, will not fall foul of these provision and added that, as legislation stands at the moment, this seems to create an opportunity to circumvent the provisions of Section 7C. WS

He explained the refinement of measures to prevent tax avoidance through the use of trusts. He added that since the introduction of the Section 7C anti-avoidance measure, taxpayers have discovered ways to avoid the deemed annual donation triggered by the anti-avoidance measure by ways of interest free loans, advances or credit, low interest loans, advances or credit made to trust owned companies and the transfer of loan claims to current or future beneficiaries of trusts. WS

He added that, in order to curb the said avoidance, interest free or low interest loans, advances or credit that are made by a natural person or a company to a company should also fall under the anti-avoidance measure. A few examples were discussed and it was agreed that loans, not paid back, would be seen as donations and liable for donations tax. He explained that the alternatives for the treatment of existing Section 7C loans would be to charge interest, if the trust can get the deduction, pay the Donations Tax, to write of the loan and to repay the loan, which would probably be the best option. WS

Mr Smith concluded by advising attendees that new interest free loans should rather be avoided. WS

Mr Hickling thanked Mr Smith for his very interesting presentation and confirmed that his presentation would be distributed to members. CH

5 **PRESENTATION: BRUNHILDE GERBER (FINGLOBAL) - TRANSFER OF INHERITANCES OF FOREIGN BENEFICIARIES**

The Chairperson welcomed and introduced Ms Gerber, previously from the Bloemfontein Master's Office. CH

Ms Gerber started her presentation by giving a brief summary of Fin Global, referring to their history and their services, which include the surrendering of retirement annuities, financial emigration, tax services, forex (including the opening of bank accounts), financial planning and fiduciary services. BG

She explained the financial emigration process and confirmed that the emigration should be placed on record with the SARB and SARS. She added that the main challenges are beneficiaries of trusts and estates who live abroad, who has no SA Bank account. BG

She stated that financial emigration is not always necessary and that funds can be accessed without Financial emigration, subject thereto that the standard discretionary allowance of R1 000 000, the foreign investment allowance of R10 000 000 and the special application are not exceeded. She also mentioned that trusts cannot emigrate but can do foreign investments. BG

Ms Gerber concluded by saying that SARS will audit any involved parties and said that the good news is that there will not be any issues, if your affairs are in order. BG

Mr Hickling thanked Ms Gerber for her attendance and very interesting presentation. CH

6 **PRESENTATION: HENDA STEYN (CFPL AT UFS) - PERCEPTION AND THE SPEED OF TRUSTS**

Ms Steyn started her presentation by stating that she was busy with research on the perceptions of trusts, specifically the financial advisor's perception on issues, such as the relationship of trusts. HS

She explained that the financial planning industry was a relative young industry, that financial planners historically had some "reputational issues" and that regulatory legislation and professional bodies developed over the last 2 decades and helped to restore the reputation of the industry. HS

She added that the demand for professional financial advise is increasing and that the best practice to approach to financial planning would be 6 steps, namely to establish and define the professional relationship; to Collect the client's information; To analyse and assess the client's financial status; To develop the financial planning recommendations; To implement the client's financial planning recommendations and to review the client's situation. HS

Ms Steyn explained that the first two steps are of paramount importance and that the financial advisor must establish a solid relationship of trust to ensure that the client is comfortable enough and trust him enough to provide the required information to develop an accurate financial plan for the client. She added that incorrect information leads to inaccurate results and explained that a relationship of trust must be formed quickly as it is fundamental to the success and accuracy of the 6 step financial planning process. HS

She also explained that the speed at which this relationship of trust must be established is also in essence fast-tracked and a little artificial compared to normal trust relationships. HS

Ms Steyn explained the problem statement by saying that there was limited research on the perceptions of financial advisors and that these issues should be investigated in detail, as it could influence the relationship between the financial advisor and the client and influence the success of the financial planning. HS

Ms Steyn briefly explained the methodology and said that the study is exploratory and empirical. She added that the study was not in contravention of the POPI Act and that their main research focus would be on interpersonal trust, due to the unique fiduciary relationship between the financial advisor and the client. HS

Ms Steyn said that the aim and objectives of their research are to determine financial advisors' perceptions on factor that could influence the relationship of trust with a client. She said they also needed to determine the financial advisors' perceptions on their client's truthfulness in divulging sensitive information, their perceptions on their client's comfort level and the topics/issues they start feeling uncomfortable to ask for information. HS

Ms Steyn briefly explained "perception" and added that it is formed on past experiences, cultural and social demographic, individual propensities and reputation. She mentioned that part of the study would be to determine if the factors that financial advisors perceive to increase their levels of trust with a client, are indeed the main reasons. HS

She also explained "swift trust" by saying it is a perfect description of the relationship of trust that must form between a financial advisor and a client and for trust to develop further, the parties should act trustworthy by complying with agreements and expectations. HS

Ms Steyn briefly explained the antecedents to trust and the building blocks of a relationship of trust. She added that trust is an antecedent of commitment in any relationship and proved to be an essential element to an individual's willingness to disclose sensitive information. HS

Ms Steyn concluded her presentation by stating the significance of the research, since it could be used to find methods to increase the relationship of trust. HS

Mr Hickling thanked Ms Steyn for her input and her meaningful presentation. He added that it is a privilege to have her support and thanked her for always being available to assist with presentations. CH

7 **PRESENTATION: LIEZEL ALSEMGEEST (CFPL AT UFS) - STIPULATIO ALTERI (TRUSTS AND INSURANCE)**

Dr Alsemgeest started her presentation by giving a brief reference to the Roman Dutch Law, the South African Case Law and the current law. She added that care must be exercised not to force a legal instrument of great potential, efficiency and usefulness into a mould not shaped for it. LA

Dr Alsemgeest explained a stipulatio alteri, a contract in favour of a third party and referred to Crookes v Watson in 1956. LA

She explained that "acceptance" is a "right" and referred to "Crewe, Crookes, Hofer & Potgieter" and advised attendees that the trust deed should be checked. She said that every benefit should be accepted anew (not one acceptance for all future benefits) and is then seen as a vested right. She added that, before then, the beneficiary does not have a contingent right, neither has something to accept and it does not mean consent is needed to amend. The only consent to amendments would affect the benefits and concluded that the trustee has a right to proper administration. LA

She concluded that currently, at any time a beneficiary accepted a benefit, he/she would be a party to the trust, but revised correctly it would be that after a beneficiary accepted a benefit at a certain time, he/she gets a vested right to the benefit. LA

Mr Hickling thanked Dr Alsemgeest for her enlightening presentation. CH

8 GENERAL AND CLOSURE

Mr Hickling concluded by saying that in future, meetings would be re-arranged, since the representatives of SARS would join the meetings later than usual. He thanked the speakers for their interesting, informative and valuable presentations, all present members for their attendance, the representative of Grindrod Bank for her attendance and sponsoring of the lunch, immediately after the meeting. He once again invited all to furnish him with possible topics for future presentations. CH

The quarterly meeting adjourned at 12h40.

Signed as a true record of proceedings, on this ____ day of _____ 2018.

CK HICKLING - CHAIRMAN