

Regsvoorsieningsfonds


MC Botha SC, Pretoria Balie, trustee vir die Algemene Balieraad.

Die jaarlikse algemene vergadering van die raad van trustees van die Regsvoorsieningsfonds is op 10 Mei 1999 te Pretoria gehou. Daar word oor die volgende besprekingspunte en besluite gerapporteer:

- Die gewysigde reëls van die Regsvoorsieningsfonds is deur die Registrateur van Pensioene goedgekeur, maar moet nog by die Suid-Afrikaanse Inkomstediens ingehandig word.
- 'n Sub-komitee word aangewys om die moontlikhede te ondersoek waarop lede van die fonds toegelaat kan word om inspraak te hê in die portefeuljes waarin hul bydraes belê kan word.
- Die fonds se beleggings word steeds deur Liberty Life administreer en verteenwoordigers van Liberty Life het in 'n media-aanbieding hulle nuwe benadering tot administrasie en beleggings toegelig.
- In beginsel word besluit dat die fonds mettertyd self sy eie interne administrasie sal behartig en dat dit in werking sal tree op 'n datum wat later bekend gemaak sal word. Die fonds sal dan in terme van die Wet op Pensioenfondse 'n fonds wees wat deur homself administreer word.
- Uit die finansiële state en mededelings van die ouditeurs wat by die vergadering aan die woord was, blyk dit dat die fonds finansiële gesond is en oor die afgelope jaar verdere groei getoon het. Daar het 46 nuwe ledefirmas bygekom wat ook 'n aantal advokate insluit.

Die Regsvoorsieningsfonds se gelde is deur Liberty Life in 'n sogenaamde korporatiewe gebalanseerde bonus portefeulje belê. Vir die kalenderjaar in 1998 is 'n inkomste bonus van 0,75% bruto (0,50% netto) verklaar. Die lae bonuskoers was te wyte aan die ongekende ongunstige ekonomiese omstandighede gedurende 1998, gepaardgaande met die ineenstorting van die aandelebeurs. Dit blyk dat ander versekeringsmaatskappye en fondsadministrateurs met presies dieselfde probleme te kampe gehad het.

Daar is 'n toenemende behoefte by lede

van die fonds om inspraak te he op die wyse waarop hulle bydraes belê word. Terwyl sommige lede by die bestaande konserwatiewe beleggingsbenadering wil bly, is daar ander wat 'n meer aggressiewe hoë risiko beleggingstyl verkies. In beginsel sal dit moontlik wees om so 'n keuse vir lede mettertyd te bewerkstellig. 'n Probleem is egter dat bestaande fondse nie sonder penaliserings van ongeveer 8% herbelê kan word nie omdat dit die heersende dispariteit is tussen die markwaarde en die boekwaarde van die fonds se beleggings by Liberty Life. Hierdie dispariteit is egter steeds besig om te krimp. Na verwagting sal dit teen April in die jaar 2000 moontlik wees om die stelsel te implementeer waarvolgens lede kan aandui in watter portefeuljes hulle gelde belê moet word. 'n Subkomitee van die fonds sal in hierdie verband aanbevelings maak en ook met lede van die fonds hieroor kommunikeer. 

Arbitration Foundation

M D Kuper SC, chairman of AFSA.

Financial

AFSA's financial year ended March 1999. For the first time AFSA posted a profit. The results are not yet audited but it appears that the profit will be in the vicinity of R150 000. The profit was achieved on a gross income of R1 607 537.

There was a significant growth in administration fees which reflects a sharp rise in administered matters but which also indicates that AFSA's fee structure is still too low. The substantial increase attributable to training fees is largely the result of the introduction of the Diploma in Alternative Dispute Resolution, a course which will be repeated each year.

Notwithstanding the posting of a profit, AFSA is not yet financially self-standing and 40% of its gross revenue (R638 001) is attributable to founding member subscriptions. This percentage shows an annual reduction which is vital.

Caseload

AFSA continues to process some 150 *ad hoc* matters per year together with its caseload of administered matters (some 37 current matters).

These reflect a wide variety of disputes but with a high content of property and commercial matters. Construction cases, tender disputes, share value exercises and banking matters feature with regularity. Projections show that AFSA administers a caseload equivalent to about 15% of the Johannesburg High Court civil caseload.

Indications are that the flow of work is increasing substantially. This is reflected particularly in the figures relating to administered matters.

AFSA is anxious to include increased low-cost bulk work which will be suitable for juniors in particular. This has resulted in the planning of the Innes Chambers initiative directed toward "Magistrate court" arbitrations as well as projects to attract labour work.

Published rules

AFSA's Commercial Rules remain the principal body of Rules. Expedited Rules have now also been published which have proved to be popular across the board. Additional Rules have been published for specific use in the labour field.

Spread of work

The primary beneficiaries of the AFSA project are the advocates' profession who dominate as arbitrators, and who, in addition, most frequently appear as the legal representatives of the parties. The selection of advocates as preferred arbitrators generally reflects the choice of the parties. There is a growing call, in addition, for the use of former and retired judges whose ranks have been swelled in AFSA during the past year.

The regional spread of work largely reflects the reality that the vast bulk of the work is generated from Sandton. This, in turn, has meant that the major beneficiary is the Johannesburg Bar followed by the Pretoria Bar. Prominent Cape counsel have been involved in important arbitrations held at AFSA, Sandton and there is a discernible flow of work originating from the Cape. Steps are being taken to secure a more extensive distribution of work where possible.

SACOB

The activities of AFSA are influenced by programmes and initiatives introduced by founder members. The appointment of a new director-general in SACOB has led to a new emphasis by that body on the importance of AFSA work.

In consequence, various important SACOB members (Middelburg, Pietersburg, Richards Bay, and elsewhere) have sought to create local AFSA facilities tailored for their particular needs. This follows the breakdown of effective magistrate court structures for the resolution of civil disputes. There is also a strong wish expressed that disputes be resolved locally without the need to refer to distant high courts. AFSA is in the course of developing programmes to meet these needs which, if successful, will give a further fresh direction to much of its activities.

Corporate pledge

Following USA and UK precedent, AFSA, with the active support of SACOB, is introducing a corporate pledge in which companies will be encouraged to commit publicly to the principle of ADR by signing such pledge and thereafter acting accordingly. There is discernible enthusiasm for such a commitment and it will prove a very useful tool in the marketing of AFSA as an element of good corporate governance.

Education and training

AFSA offers a variety of training courses and, in particular, the Diploma in Alternative Dispute Resolution which is presented in partnership with the University of Pretoria which latter accredits the Diploma. Twenty-five graduates completed the 1999 course and we have little doubt that numbers will increase significantly as the quality of the course becomes generally known.

Regional activity within South Africa

Pretoria has established its own AFSA facility at Momentum Chambers and local arbitrations will be administered by the Pretoria Bar. The facility is well-appointed and should prove popular.

The lack of activity in the Western Cape has been disappointing. Ambitious plans are under discussion to effect a revitalisation of AFSA in the region under the leadership of SF Burger SC. Final arrangements have yet to be made.

Activities in Natal have also been limited and it is intended, as soon as resources permit, to seek ways of expanding in Natal. Pietermaritzburg, in particular, is entitled to assistance from national AFSA and that need will be addressed.

Although AFSA administers isolated cases (some very large) originating elsewhere in the

country, it is yet to establish a formal presence elsewhere. Expansion nationally is still inhibited by lack of finance and personnel.

Regional activity outside South Africa


AFSA has sought from the start to establish a regional network in Southern Africa. At the moment the most active association which we have is with Zambia which is seeking to establish an arbitration movement on the AFSA pattern. Dali Mpofo of the Johannesburg Bar will be attending a conference in Zambia as an AFSA delegate. The purpose of the conference is to explore ways of furthering the arbitration initiative in Zambia. We regard our association with this initiative as a model for more extensive relationships in Southern Africa.

BAC initiative

AFSA was asked to manage and administer a project to provide the attorney-general with the services of private practitioners in complex commercial prosecutions. The project was delayed by funding difficulties but a recent resurgence of interest makes it likely that the project will soon be on stream.

General prospects


The AFSA clauses are now incorporated in a huge variety of contracts both standard and tailor-made. Frequency of incorporation is exponential.

A variety of approaches have been made to AFSA which, if carried through, will have a considerable impact on the AFSA turnover of work. These opportunities are actively investigated and exploited. 

Prescription of Costs Orders, 22 Junie 1998.
Commencement of the *Contingency Fees Act 1997*, 5 Augustus 1998.

Implementation of sections 6-9 and 11-15 of the *Judicial Matters Second Amendment Act 1998*, 26 Februarie 1999.


Section 63 of the *Magistrates' Court Act 32 of 1944*, 1 Maart 1999.

- Aan die Suid-Afrikaanse Regskommissie: *Discussion Paper 75: Project 111: Constitutional Jurisdiction of Magistrates' Courts*, 22 Junie 1998.
Discussion Paper 80: Project 85: Aspects of the Law relating to Aids: The need for a statutory offence aimed at harmful HIV-related behaviour, 1 Maart 1999.
- Aan die registrateur van versekering: Amendments to the *Insurance Act 27 of 1943*, 22 Junie 1998.
- Aan die voorsitter van die Algemene Balieraad van Suid-Afrika: *The State Attorney and the Admission of Advocates Act*, 25 Junie 1998.
- Aan die Kantoor van die Nasionale direkteur van vervolging: (a) *The Prosecution Policy and (b) the Code of Conduct for Members of the National Prosecution Authority*, 10 Desember 1998. 

Parliamentary Committee

LA Rose-Innes SC, Cape Bar, chairperson.

Between 1 June 1998 and 31 May 1999, some 143 Bills were received for consideration. The approach adopted has been as before: as a general principle, the interest of the GCB in parliamentary legislation focuses on its potential impact on the administration of justice generally, and on the interests of the profession in particular.

Of the Bills received, 103 were considered appropriate for closer scrutiny by members of the Parliament Committee, or other members (generally members of the Cape Bar). In some 23 instances it was considered appropriate to submit memoranda to Parliament, commenting on aspects which appeared to warrant mention or which gave rise to particular concern. 

Wette- en Administrasiekomitee

AJ Louw, Pretoriase Balie, sameroeper van die Wette- en Administrasiekomitee.

Verslag is gelewer oor die volgende aangeleenthede:

- Aan die direkteur-generaal, Justisie: *The Domestic Violence Act 116 of 1998: Commencement and Regulations*, 1 April 1998.
Commencement of the Contingency Fees Act 1997, 19 Junie 1998.