

INDEPENDENT TRUSTEE SERVICES

The vital role of independent trustees

Beefing up governance of retirement funds

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The law places a significant onus of accountability and responsibility on trustees who are held jointly and severally liable for any damage or loss suffered by the retirement fund they manage, including prison sentences of up to 15 years.

A daunting prospect for trustees who frequently lack specialised knowledge and expertise to cope adequately with the many demands placed upon them.

"The law provides for trustees and boards to acquire the external specialist skills and services they require," pointed out Henry Dul (Pictured right), founder and director of Independent Trustee Services.

"In most cases, consultants are appointed. However, trustees are still required to make their own decisions, based indeed on the advice consultants provide, but still responsible and liable for those decisions. Consultants are not liable. This is the Achilles heel of this provision."

Dul explained that there have been many instances where, for example, Boards have been penalised for such issues as late submission of financial statements. "But it was not the fund's fault - it could have been the auditor, the administrator or the consultant who was at fault - but none of those people are liable - only the trustees are!"

He believes that there is a strong case for organisations to consider appointing independent trustees who will share the same burden of liability and accountability in managing retirement funds.



"In all honesty, independence can be a very relative issue when considering both trustees appointed by the employer or employees and consultants. There is more than a little incentive for all parties to adopt partisan attitudes."

"And even when consultants are brought in, not all trustees have the breadth of knowledge or experience to truly understand the implications and ramifications of the information they offer."

An independent trustee, on the other hand, who has the necessary skills, could add immense value to running the fund's affairs. Such a trustee faces the same penalties as ordinary trustees and yet is totally independent from any of the other stakeholders. The independent trustee's sole concern is the Fund and its interests.

This has already been widely recognised by companies in South Africa, where a Deloitte & Touche survey on corporate governance in retirement funds has revealed that 25% of such funds employ independent trustees. It is of course common practice in countries such as the United Kingdom.

"Obviously, independent trustees should have profound experience in all aspects of the retirement fund market," continued Dul, "Not limited to certain fields, such as investment. They must have very well developed personal and communication skills as well, so that they can relate to all trustees and members of the fund."

"And experience in the trade union market would be a major advantage in the case of unionised funds." He also recommends a formal qualification related to retirement funds as an essential part of the package.

Independent trustees with such abilities and skills could add not only to the general expertise of the Board, but to governance, transparency, knowledge of the changing legal environment and general professionalism, as well as providing greater peace of mind for both fund members and trustees alike.

Profile of Henry Dul

Henry Dul, who acts as independent trustee for both large and small organisations, has in-depth background in both law and the retirement fund industry.

He successfully wrote the Life and Pensions examinations from the Institute of Life and Pensions Advisors (Now the prestigious Financial Planning Institute) and after a period as public prosecutor and magistrate joined Sanlam in the legal department of the broker services division. His career included a position as senior legal consultant in the group benefits departments and as senior manager, negotiated benefits.

In the late 1990s Dul became CEO of Swaziland Employee Benefits, an Alexander Forbes company, also serving on the Government's tax advisory committee and playing an active role in writing the new Pension Funds Act.

Returning to South Africa, he was appointed Head of Employee Wealth in Momentum Wealth, overseeing the establishment of one of the first and most successful investment choice umbrella retirement funds. He was also involved in Standard Bank Employee Benefits and in Tennant Benefit Consultants, acting as director and shareholder in the latter.

Dul has extensive experience in the financial services industry where he has consulted for some of the largest South African-based employers, including SA Breweries, Standard Bank, Nedbank, Sappi, Illovo and international conglomerates, Cadbury Schweppes, Commonwealth Development Corporation and Coca Cola.

He was one of the first to enter into negotiations with trade unions to set up retirement funds in the early 1990s, accumulating significant experience in working with unions and trade union negotiated provident funds

Dul is a member of the Pension Lawyers' Association, the Principal Officers' Association and past chairman of the Linden Community Police Forum and Usutu Parent Teachers' Association.

This impressive expertise has now been made available to the retirement funds industry where he operates both as independent trustee and independent principal officer.