

2020 JOINT CONFERENCE

Governance and pension funds: new approaches to new issues

Thursday 19th and Friday 20th March 2020
CAPE TOWN INTERNATIONAL CONFERENCE CENTRE

PENSION LAWYERS
ASSOCIATION

**The International Pension and
Employee Benefits Lawyers
Association**



CONFERENCE PROGRAMME

DAY 1 – Thursday, 19 March 2020		Facilitator	Speaker
08.30 - 08.50	Welcome by Joint Conference Chair and IPEBLA Chair		1. Jonathan Mort 2. Carolyn Trenda
08.50 - 09.35	Challenges of Retirement Reform		Ismail Momoniat
09.35 - 10.45	Around the pensions world in 70 minutes: foundational principles of 4 jurisdictions		1. Karen Quinlan (SA) 2. Carolyn Trenda* (USA) 3. Deirdre Cummins (Ireland) 4. Peter Wehner* (Germany)
10.45 - 11.15	Tea break		

11.15 - 12.15	WORKSHOPS		
	<p>1. (Joint IPEBLA/PLA) In various jurisdictions: are trustees bound by fiduciary law or administrative law principles, or both, when making decisions?</p> <p>An international consideration of administrative law and fiduciary requirements when trustees make decisions. When do such requirements apply, do they both apply and is it relevant what type of decision is being made?</p>		<p>1. Mark Firman (Canada)</p> <p>2. David Powell (USA)</p> <p>3. David Geral (SA)</p>
	<p>2. (PLA) Managing the dysfunctional trustee: What are the legal options?</p> <p>When is a trustee more difficult than independent, and when does such a trustee begin to compromise the board's effectiveness? What tools does the board have to deal with this? When should the regulator be asked to intervene?</p>		<p>1. Stephen Gillick (Ireland)</p> <p>2. Liz Gamble (SA)</p> <p>3. Corlia Buitendag (SA)</p>
	<p>3. (PLA) Policyholder Protection Rules – latest changes in SA insurance legislation and the impact on retirement funds.</p>		<p>1. Zelda (Webbers)</p>
	<p>4. (Joint IPEBLA/PLA) Unclaimed benefits: a comparative discussion about the problems and solutions</p> <p>Unclaimed benefits is a global problem. A discussion about how different jurisdictions manage the problem, and what the latest thinking is about what the solutions should be</p>		<p>1. Deirdre Phillips (SA)</p> <p>2. Bethune Whiston (Canada)</p> <p>3. Michael Beatty (Australia)</p>
12.15 - 13.00	WORKSHOPS		
	<p>5. (Joint IPEBLA/PLA) Managing the legal risk when transferring pension liabilities to an insurer</p> <p>Questions to be included, for example: what are the risks when transferring a fund owned policy to the pensioner? Is it better just to buy the policy in the name of the pensioner? What are the reasonable benefit expectations of pensioners?</p>		<p>1. Arabella Bennett (SA)</p> <p>2. Oliver Reece (UK)</p>
	<p>6. (PLA) Board conflicts and FSCA Directive 8 – the law and are we still going wrong?</p> <p>What conflicts of interest must a board member and principal officer avoid? Does Directive 8 deal adequately with the such conflicts or does it create other problems? Are there better ways of resolving these issues?</p>		<p>1. Michelle Davids</p> <p>2. Naheem Essop</p>
	<p>7. (IPEBLA) Executive Compensation as a Tool for Trade Secret Protection.</p> <p>The latest international thinking on how the use of equity and forms of deferred remuneration, as well as specific employment provisions, can be used to enforce non competition agreements and other agreements to protect the business of a company. Enforcement and litigation issues will also be highlighted.</p>		<p>1. William Wright (USA)</p> <p>2. Michael Avila (USA)</p>

	<p>8. (Joint IPEBLA/PLA) A comparative discussion of death benefit distribution issues</p> <p>What are the different approaches internationally to distributing death benefits, and what are the problems with those approaches? Does it make a difference if the fund is in a developed or a developing economy? How can disputes be minimised? How are minor beneficiaries best protected?</p>		<p>1. Auriane Damez (France)</p> <p>2. Marco Maurer (Germany)</p> <p>3. Naleen Jeram (SA)</p>
13.00 - 14.00	Lunch		
14.00 - 15.00	WORKSHOPS		
	<p>9. (Joint IPEBLA/PLA) Avoiding and managing surplus apportionment disputes – approaches to minimise legal risk.</p> <p>Apportioning surplus is highly contentious because one stakeholder group usually thinks another is getting too much. What is the most defensible approach by trustees to use as a basis for surplus distributions? How important is communication? When there is a dispute how can it best be managed</p>		<p>1. Samantha Davidson (SA)</p> <p>2. Roland Greeff (Netherlands)</p> <p>3. Clive Pugh (UK)</p>
	<p>10. (PLA) Protection of Personal Information – latest developments</p>		<p>1. Ahmore Burger-Smidt (SA)</p>
	<p>11. (PLA) Death Benefits: Help! It's just getting more complicated</p> <p>The legal issues related to distributing death benefits under section 37C are becoming more complex, not less, especially given certain recent cases. We look at some of the trickier interpretations of section 37C.</p>		<p>1. Tashia Jithoo</p> <p>2. Leanne van Wyk</p>
	<p>12. (Joint IPEBLA/PLA) Fund/Plan costs are critically important to member's retirement goals.</p> <p>When are fund costs unreasonable and what remedies do members have? How can we control costs and what role do pension lawyers play in this? We look at this problem across various jurisdictions.</p>		<p>1. Muitheri Wahome (SA)</p> <p>2. Catherine Millet-Ursin (France)</p>
15.00 - 15.30	<p>Tea break</p> <p>PLA Annual General Meeting (members to meet in plenary room)</p>		
15.30 - 16.45	<p>Noteworthy South African and international case law developments</p>		<p>1. Sandile Khumalo (SA)</p> <p>2. Mark Grant (UK)</p>

DAY 2– Friday, 20 March 2020		Facilitator	Speaker
08.30 - 08.45	Opening		
08.45 - 09.30	How are the investment responsibilities of trustees informed by King IV?		Mervyn King SC
09.30 - 10.30	Panel discussion: what should trustees be doing differently to comply with their obligation to invest taking into account ESG factors? International perspective.		<ol style="list-style-type: none"> 1. Nicole Martens (SA) 2. Randy Bauslaugh (Canada) 3. David Powell (USA)
10.30 - 11.00	Tea break		
11.00 - 12.00	WORKSHOPS		
	<p>13. (Joint IPEBLA/PLA) How, internationally, do sustainable investments feature within the board's risk management?</p> <p>This subject is relatively new and dynamically evolving. ESG factors represent both potential risks and opportunities to pension funds. How should this be included in the board's risk management process?</p>		<ol style="list-style-type: none"> 1. Mabatho Seeiso (SA) 2. Mitch Fraser (Canada) 3. Dana Muir (USA)
	<p>14. (PLA) What legal risks should be included when doing a due diligence of an umbrella fund?</p> <p>What is the legal obligation of the employer when moving to an umbrella fund? What are the key aspects to look at when doing a due diligence? Should the employer obtain advice from different experts? How often should the employer do this exercise and is a review different from the due diligence of a new fund?</p>		<ol style="list-style-type: none"> 1. Erika Nieuwoudt 2. Hazel Hopkins
	<p>15. (PLA) The latest on the Conduct of Financial Institutions Bill</p> <p>What has changed since the last draft of the Bill? How do the changes affect retirement funds? What do we need to plan for</p>		<ol style="list-style-type: none"> 1. Chantal Manson Amina 2. Amin Yuda (Norton Rose)
	<p>16. (PLA) A complaints masterclass held by the Pension Funds Adjudicator and a pension lawyer: how can we do things better?</p> <p>When dealing with complaints to the Adjudicator's office what are the ways the fund, industry and the Adjudicator's office can improve the process and outcomes?</p>		<ol style="list-style-type: none"> 1. Muvhango Lukhaimane 2. Kobus Hanekom

12.00 - 13.00	WORKSHOPS		
	<p>17. (Joint IPEBLA/PLA) Different global approaches to managing the legal issues in a defined benefit to defined contribution conversion.</p> <p>Is there less legal risk to convert in fund or on transfer to a DC fund? Can there be a default? How can converting members be compensated for future DB benefit without encouraging early withdrawal? Is it possible to be fair to both the members and the employer?</p>		<ol style="list-style-type: none"> 1. Peter Wehner (Germany) 2. Bas Dielman (Netherlands) 3. Michael Hayes (UK)
	<p>18. (Joint IPEBLA/PLA) The 10 top legal tips on service provider agreements from different jurisdictions</p> <p>This will cover topics such as: how can boards ensure that the contracted services are properly given? What reporting is necessary? Can there ever be full right of recourse? How do the trustees best provide for terminating their services</p>		<ol style="list-style-type: none"> 1. Mary Picard (Canada) 2. Michael Ndlovu (SA) 3. David Main (Ireland)
	<p>19. (PLA) Does the Employer have the right to decide in which Fund its employees must become Members?</p> <p>What are the issues that arise if members resist a transfer? What happens if the board becomes dysfunctional in dealing with the Employers decision?</p>		<ol style="list-style-type: none"> 1. Johan Esterhuysen (SA) 2. Hanine Drake (SA)
	<p>20. (PLA) Default Regulations: it's been a year - what have we learnt?</p> <p>The default regulations affect and require some form of action from every type of retirement fund. While most funds have implemented the required actions and procedures, there are still outstanding issues: hybrid annuities, the draft Smooth Bonus Products Conduct Standard and the draft Living Annuities Conduct Standards. What is the latest thinking on these?</p>		<ol style="list-style-type: none"> 1. Nondumiso Ntshangase (AF) 2. Mpho Kgomongoe (Sanlam)
13.00 - 14.00	<p>Regulatory Authorities talk to us about future developments in pensions law in their country</p>		<ol style="list-style-type: none"> 1. Olano Makhubela (SA) 2. Praxidis Saisi (Kenya) 3. TBA
14.00- 14.15	Closing		
14.15	Lunch		