

FUNDAMENTAL FACTS, LEGISLATION AND REASONS FOR TRADING

- **ABSA vs. Poultney** - Mr. Justice Frank Kroon concluded, that advisers should inform their clients of the intrinsic value, i.e. the true cash value of the policy. Ignorance will be no excuse.
- If trading is taking place on an informal way, your company might have a loss of potential earnings, because the process is open to manipulation and uncontrolled.
- In terms of the **FAIS Act** (page 30)
“Principles of code of Conduct”
16. (1) A code of conduct must be drafted in such a manner as to ensure that the clients being rendered financial services to, will be able to make informed decisions, that their reasonable financial needs regarding financial products will be appropriately and suitably satisfied and that for those purposes authorised financial services providers, and their representatives, are obliged by the provisions of such code to -
 - (a) Act honestly and fairly, and with due skill, care and diligence, in the interests of clients and the integrity of the financial services industry;
 - (b) Have and employ effectively the resources, procedures and appropriate technological systems for the proper performance of professional activities...

In short if we look at any institutions “Ethical Code of Conduct” we are under obligation to do an in-depth divestment impact analysis report before advising clients to surrender, loan against, make paid-up or sell their policies. Polinvest offers this service and infrastructure to facilitate a fast, efficient and comprehensive divestment service division for all institutions, financial advisers and clients to make use of.

The introduction of the **Financial Advisory and Intermediary Services Act (FAIS)**, which requires advisers to disclose their commissions and fees on insurance policies, has made financial planning transparency much clearer. Should any policy be tradable, the total profit (difference between selling price and surrender value) must be disclosed to the policyholder. Because there is no fixed commission structure, all fees will have to be negotiated in every transaction. Fees will always fluctuate, because of the difference in total profit on each transaction as well as negotiations regarding fees between financial adviser and client.

- In terms of **“Best Advice”** it is also your duty to provide clients with proper advice and analysis before the surrender of any policy. The duty of care is also very time consuming and can be costly. The adviser is also offering an additional service to the client and creating value where there was no value previously - value for the company and the client.
- The use of this service will also enhance the reputation of your company in terms of **compliance** and foster good relationship with regulators and clients alike.
- LOA “Code of Conduct” - 1998 “PPR” **Policyholder Protection Rules** in terms of the Long-term Insurance Act. It is important to explore the trading option before surrendering a client’s policy.
- LOA Code of Conduct - Chapter 7: **Code on Replacement**
“1.1.3 The Code does not limit the right of a policyholder -
 - i. to terminate any policy; or
 - ii. to effect a new policybut it affirms the essential requirement that they should be enabled to do so only on a fully informed basis after proper counselling, so that they may make, and be accountable for, their own decisions accordingly in full knowledge of the effects and costs of doing so.”...

In the event of any conflict between the provisions of this Code on the one hand and the provisions of PPR or FAIS on the other, the provisions of PPR or FAIS (as the case may be) will prevail.