

NATIONAL ASSEMBLY

QUESTION FOR WRITTEN REPLY

QUESTION NUMBER 1273 [NW1432E]

DATE OF PUBLICATION: 26 APRIL 2010

Dr D T George (DA) to ask the Minister of Finance:

- (1) Whether a public tender process has been followed by the Financial Service Board to appoint curators for pension funds; if not, why not; if so, what are the relevant details;
- (2) whether fees charged by curators have been capped; if not, why not; if so, what are the relevant details?

NW1432E

REPLY:

- (1) No, the Financial Services Board (FSB) has indicated to the National Treasury that a public tender process is generally not followed as such appointments are made by a Court in terms of section 5 of the Financial Institutions (Protection of Funds) Act, No 28 of 2001. Appointments are made on application by the Registrar, the Executive Officer of the FSB, who usually nominates candidates for consideration. The court may, on good cause shown, cancel the appointment of the curator at any time.

The provisions of the Financial Institutions Act do not specify any requirement for the identification of curators. According to the Financial Services Board, the Registrar usually identifies and nominates possible curators after taking into account the relevant inspection report or information that informed the decision to apply for the appointment of a curator. Such curatorship applications are generally brought on an urgent basis, and the exigencies in almost all cases would simply not allow for a “tender process” and may unduly delay urgent regulatory action. In making application for the appointment of curators, the Registrar attaches the proposed individuals’ CV’s to the Court papers and the Court has to be satisfied that they are suitable candidates. Curatorship orders are provisional at the outset and are published (widely) in the media before they are confirmed as final orders. In terms of the provisional orders, interested parties are invited to show cause *inter alia* as to why the appointment of the proposed curators should not be confirmed.

(2) Yes, the Financial Services Board has informed me that it does limit the fees and total costs charged by curators.

The remuneration of curators is dealt with in section 5(5) (c) of the Financial Institutions (Protection of Funds) Act, No. 28 of 2001. This section provides that *“the court may make an order with regard to the remuneration of a curator appointed provisionally under subsection (2) (a) or finally under subsection (4)”*.

The practice has been for the Financial Services Board (the FSB) to submit a draft order to the court stating that the curator will be remunerated in accordance with the norms of his or her profession “as agreed with the Registrar”. In practice this means that the curator agrees on an hourly tariff with the Registrar or, where the curator is an auditor, a fee equal to the Auditor General’s tariff for outsourced work. In addition, since 2007, the FSB also caps the figure per month to ensure that the remuneration of curators is contained within reasonable limits.

According to the FSB, the curatorship of the Datakor Pension Fund, Datakor Retirement Fund and Cortech Pension Fund were exceptions from the above procedure. The Registrar applied to court to sanction the remuneration of the curators on a contingency basis as there were no assets in the funds from which to pay the curators. This is the only curatorship recently where the remuneration of a curator was established on a contingency basis, as sanctioned by the court.

In addition to the above response, I wish to state for the record that more needs to be done to open up the process for choosing possible curators and to limit the fees and total charges paid to them. I will be requesting the National Treasury to convene a meeting of relevant stakeholders (e.g. FSB, SA Reserve Bank, Department of Justice) to examine means of improving the current arrangements, and ensuring implementation of a more transparent framework in future.