

NATIONAL ASSEMBLY

QUESTION FOR WRITTEN REPLY

QUESTION NUMBER: 1533 [NW1903E]

DATE OF PUBLICATION: 12 SEPTEMBER 2014

1533. Mr D T George (DA) to ask the Minister of Finance:

Does any contingency fee arrangements exist between the Financial Services Board and a certain person (name furnished); if so, what are the relevant details?

NW1903E

REPLY:

1. The Honourable member is referred to the answers provided by the Minister of Finance to his questions 1296 of 21 April 2011 and 1061 of 4 September 2010.
2. The fee arrangement between the Financial Services Board and the curators of the Datakor Funds was contingent on the recovery of the surplus assets which had been unlawfully stripped out of these funds, i.e. no recoveries, no fee.
3. As indicated in the previous answers provided to the Honourable member the fee arrangement on the Datakor curatorship was sanctioned by the High Court during September 2005. The percentage sanctioned was 25% which applied to the remuneration of two curators and the fees of their respective law firms. It appeared from the court papers that, at the time, the Datakor Funds were thought to have lost R70 million of surplus assets.
4. In relation to the Datakor Funds as well as other funds of which surplus assets had been unlawfully removed during the 1990s and that had been placed into curatorship/liquidation, the FSB subsequently entered into an agreement with the curator/liquidator during October 2008 within the norms of the attorneys' profession and the provisions of section 28A of the Pension Funds Act, 1956 read with Board Notice 74 of 2001. The latter Board Notice stipulates that the statutory fee payable to liquidators on all "other income", i.e. recoveries made, of a fund in liquidation is 10%.
5. The Registrar of Pension Funds is, in terms of the provisions of section 28A of the Pension Funds Act 1956, given the discretion to reduce or increase the liquidator's remuneration. In these liquidations, due to their complexity, the Registrar increased the percentage to 16.6% for some of the funds dealt with in the 2008 agreement. The percentage remuneration for two funds (Mitchell Cotts Pension Fund and Picbel Groepvoorsorgfonds) remained at the statutory rate of 10%.
6. Although the court order relating to the Datakor curatorship has never been challenged, the 2008 agreement capped the remuneration of the curators' law firms at a fixed amount per annum and reduced the remuneration of the curators, as a percentage of recoveries, from 25% to 16.6% on all amounts recovered above R140 million, i.e. the amount which had been recovered up until that point in time.

7. The Sable Industries Pension Fund was placed under curatorship during 2006. During June 2006 and in anticipation that this fund would be placed into liquidation the court, when issuing a final curatorship order, authorised the Registrar of Pension Funds to appoint the curator as liquidator of the fund.

8. During 2007 an informal contingency fee arrangement was concluded between the Deputy Registrar of Pension Funds and the curator in terms of which the curator and his law firm would jointly be entitled to 33% of recoveries made (i.e. 16.6% each). This informal agreement was, however, never given effect to and was replaced by the 2008 agreement referred to above. The validity of this agreement is presently the subject of litigation between the FSB and other parties under case number 43195/2013 in the North Gauteng High Court, Pretoria.