

NATIONAL ASSEMBLY

QUESTION FOR WRITTEN REPLY

QUESTION NUMBER 1274

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

- (1) Whether any agreements have been reached between the Financial Services Board or any other financial service provider and/or the curator and/or the Board of Trustees on the disputes over the manner in which the surplus of various pension funds is distributed; if not, why not; if so, what are the (a) details of the (i) funds and (ii) agreements reached in each case, (b) details of each service provider involved in this matter and (c) further relevant details;
- (2) whether members of the pension fund have been informed of any of these arrangements; if not, why not; if so, what are the relevant details?

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REPLY:

- (1) The Financial Services Board has indicated to the National Treasury that they have reached agreements in two cases on disputes over the way in which surplus of various pension funds is distributed. In none of the two cases was the fund under curatorship.
 - (a)(i) The funds are the Dorbyl and Unilever Pension Funds.
 - (ii) The agreements in both cases were confined to specific valuation assumptions used in their valuation reports - these were matters that served before the FSB Appeal Board, and the views taken by the Appeal Board panel and experts involved on both sides informed the agreements, which were then made determinations of the Appeal Board. The outcome was that more surplus was available for distribution than what the funds originally reported.
 - (b) The administrator involved in the case of the Dorbyl Pension Fund was Alexander Forbes Financial Services. An employee of the same company acted as the valuator. In the case of the Unilever Pension Fund, the administration was

conducted by the fund itself, and an employee of Alexander Forbes Financial Services acted as the valuator.

- (c) Whilst the Registrar of Pension Funds ('the Registrar') is prepared to give guidance (particularly through information and pension fund circulars), the Registrar does not enter into agreements with any party in respect of disputes over the manner in which surplus must be distributed. What will be considered to be reasonable and equitable has to be determined with reference to the financial history of each fund and by taking into account Board Notice 37 of 2003. Each case, once submitted, is considered on its own merits with the same degree of diligence, irrespective of whether or not the Board had discussed some issues with the Registrar in the past.

Apart from providing administrative and consulting services, financial service providers have no say in how the surplus is to be apportioned. In order to give proper guidance to funds administered by them, service providers may discuss issues with the Registrar from time to time. Again, no agreements with regard to surplus disputes have been entered into with any service provider.

If a fund fails to submit a scheme, or upon request, a Specialist Tribunal can be appointed in terms of the Act. In such cases, the Tribunal takes on the duties of the Board in respect of the surplus apportionment scheme. Unless there is evidence that the Tribunal has not applied its mind, the Registrar must accept the scheme submitted by the Tribunal as being reasonable and equitable.

The Registrar follows a consistent approach in the consideration of surplus apportionment schemes submitted to his Office for his consideration and approval.

Briefly, the following process must be followed by the Board of a fund:

- Arrange for the fund to be actuarially valued in order to determine the surplus available for apportionment;
- Investigate whether there was an improper use of surplus by the employer, as prescribed in the Pension Funds Act ('the Act'). If so, the value of improper uses must be added to the surplus to be apportioned;
- Appoint a former member representative to assist the Board in identifying and communicating with former members;

- Determine who may participate in the surplus, following guidelines and prescriptions as set out in the Act and subordinate legislation;
- Take all reasonable steps necessary to find former members;
- Determine the method and basis of how stakeholders share in the surplus, on condition that it must be equitable and reasonable;
- Communicate the scheme to stakeholders (members, former members, pensioners, and employer) in sufficient detail so that stakeholders can reasonably make a call as to the reasonableness and fairness of the scheme;
- Consider and deal with all complaints and objections lodged by stakeholders; and
- Submit the scheme to the Registrar for approval.

The Registrar considers the submission and will only approve the scheme once he is satisfied that the requirements of the Act had been met and that the scheme is reasonable and equitable. It is, however, accepted that a wide range of outcomes could be acceptable and the Registrar will generally not second-guess the Board's decisions, especially in cases where stakeholders had not lodged any objections.

Once satisfied, the Registrar issues the necessary certificate of approval.

- (2) No, not by the FSB, as it is the responsibility of the Fund to communicate with the members. Whilst it is unlikely that the exact terms of the agreements concluded in the Dorbyl and Unilever appeal matters were communicated with members, the resultant effect on surplus would have been communicated as part of the normal communication with members regarding the surplus apportionment scheme.