



Your ref: **T KAMIONSKY**

Our ref: **RD/CR/DYN1-0001**

Date: **14 JANUARY 2011**

**DYNAM-IQUE CONSULTANTS AND ACTUARIES (PTY) LTD**

ATTENTION: TONY KAMIONSKY  
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11 St Andrew's Road,  
Johannesburg

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Dear Sirs,

**DISPUTE RESOLUTION REQUIRED IN TERMS OF CLAUSE 13.1 OF THE AGREEMENT BETWEEN DYNAM-IQUE CONSULTANTS AND ACTUARIES (PTY) LTD AND IF UMBRELLA PENSION FUND**

1. We act for the Dynam-ique SA Umbrella Pension Fund, the Dynam-ique SA Umbrella Provident Fund, the IF Umbrella Pension Fund and the IF Umbrella Provident Fund ("the Funds").
2. Please be advised that the trustees of the Funds hereby formally notify Dynam-ique Consultants and Actuaries (Pty) Ltd ("Dynam-ique") that it is necessary to resolve a dispute in terms of clause 13.1 of the administration agreements entered into between the Funds and Dynam-ique.
3. The dispute revolves around Dynam-ique's breaches of clauses 5.1, 5.2.1, 5.2.3 and 5.2.4 of the above agreements, as well as applicable legislation, from the inception of the agreements. Such breaches were constituted *inter alia* by the following:
  - 3.1. Failure to maintain adequate internal record keeping mechanisms and conduct annual audits;

- 3.2. Failure to maintain adequate computer systems and controls given the size and complexity of the monies under administration;
- 3.3. Failure to maintain accounting and member records;
- 3.4. Failure to ensure that adequate fidelity guarantee insurance and professional indemnity insurance was taken out and maintained;
- 3.5. Failure to ensure that the administration business was conducted in accordance with the provisions of the Pension Funds Act, 1956 (“the Pension Funds Act”), and the Financial Advisory and Intermediary Services Act 37 of 2002 (“the FAIS Act”), in particular in that:
  - 3.5.1. A conflict of interest was caused by the sale of Dynam-ique’s fund administration business to AON, lock, stock and barrel, which sale was not adequately disclosed or otherwise dealt with in terms of section 13B(5)(a) of the Pension Funds Act;
  - 3.5.2. Dynam-ique failed to administer the fund in a responsible manner, keep proper records, employ adequately trained staff, or have well-defined compliance procedures as required by sections 13B(5)(b),(c),(d) and (e) of the Pension Funds Act;
  - 3.5.3. The administration business of Dynam-ique was sold to AON in terms of a sale of business agreement effective as at 1 February 2008, where Dynam-ique remained liable for administration errors since inception of the agreement, but ceased trading and failed to maintain adequate financial resources or insurance to cover this liability thereafter, in contravention of sections 13B(5)(c) and (f) of the Pension Funds Act.
  - 3.5.4. Dynam-ique failed to advise of the termination of its administration agreement in terms of section 4 of Board Notice 24 (GG23153 of 1 March 2002) (“Board Notice 24”) either properly or at all;
  - 3.5.5. Dynam-ique failed to comply with section 5 of Board Notice 24 in that no auditor conducted the relevant investigations and reviews set out in that section;
  - 3.5.6. Dynam-ique failed to maintain current assets and liquidity in terms of section 7 of Board Notice 24, in particular after the sale of the administration business to AON, in order to cover liability for past administrative errors;

- 3.5.7. Dynam-ique failed to ensure that all investments were made in terms of the Pension Funds Act and that deposits of pension fund monies were made no later than a business day following the date of receipt thereof in terms of s 8 of Board Notice 24;
  - 3.5.8. Dynam-ique failed to comply with the audit requirements in terms of s 19 of the FAIS Act;
4. As a result of the above breaches of the agreement as well as the applicable legislation, the Funds have suffered damages in the sum of R17,670,000.00 including VAT, being the fair and reasonable costs of the rebuilding of the funds' records at member level from the inception of the agreements.
5. Such rebuild was necessary given that the records of members'/employers' investments were inaccurate arising from the breaches enumerated above.
6. Specifically, this inaccuracy arose because, *inter alia*, it commonly occurred that:
  - 6.1. reinvestments (i.e. interest and dividends) were not credited to members' accounts;
  - 6.2. redemptions were paid from monies owing to other members;
  - 6.3. switches between investments were not correctly recorded in members' accounts;
  - 6.4. monies destined for a particular fund were deposited into the bank account of a different fund;
  - 6.5. monies which ought to have come from a certain fund's bank account were withdrawn from another fund's bank account;
  - 6.6. monies were invested in, or disinvested from, the incorrect portfolios; and
  - 6.7. the lack of monthly and annual audits prevented identification and/or rectification of the above errors, thus compounding the problem.
7. We hereby advise that in the event that the above dispute is not resolved by payment to the Funds of the above sum (or otherwise) by 20 January 2010, the further dispute resolution procedures in clause 13.1 of the administration agreements will be invoked.

8. For the purposes of resolving the dispute you are hereby advised that the Funds' attorneys are prepared to enter into any correspondence or attend any meetings as may have a reasonable prospect of resolving the dispute prior to 20 January 2010.

Yours faithfully  
**DUNSTER & ASSOCIATES**

Not signed, sent electronically

REN DUNSTER