

NATIONAL ASSEMBLY
QUESTION FOR WRITTEN REPLY
QUESTION NUMBER: 1699 [NW1945E]
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1699. Mr D J Maynier (DA) to ask the Minister of Finance:

- (1) Whether the SA Reserve Bank provided persons mentioned in the final report of the investigation conducted by Advocate John Myburgh into the collapse of African Bank, entitled *African Bank Limited: Investigation in terms of s69A of the Banks Act, 94 of 1990*, with an opportunity to review the specified report prior to the report (a) ceasing to be confidential and (b) being referred to the National Prosecuting Authority; if not, in each specified case, why not; if so, in each specified case, why;
- (2) whether any person made representations and/or comments on the specified report in this regard; if not, why not; if so, what are the names of each such person;
- (3) whether a firm of attorneys was instructed to manage the specified process of receiving representations and/or comments on the specified report; if not, why not; if so, what (a) is the name of the firm of attorneys employed and (b) was the (i) total cost and (ii) breakdown of such costs of employing the specified attorneys?

NW1945E

REPLY:

The Registrar of Banks at the South African Reserve Bank is responsible for bank supervision, and has provided the following response to my office:

- (1) In February 2016, the deputy governor responsible for bank supervision appeared before the Standing Committee on Finance where these questions were addressed. In terms of section 69A(13) of the Banks Act, the Myburgh Report was private and confidential unless the Registrar, after consultation with the Minister of Finance, either generally or in respect of any part of such report, directed otherwise. In his consideration of the matter, the Registrar was in law required to follow due process, which entailed affording persons referred to in the report insight into the report and the right to make representations, for consideration by the Registrar prior to taking a decision about its confidentiality. Accordingly, the process and procedures set out hereunder were followed, and the relevant representations duly considered by the Registrar before his decision (involving the Minister) was taken to terminate the confidentiality of the Myburgh Report. A copy of the Myburgh report was subsequently forwarded to the National Prosecuting Authority for its consideration.

- a. In order to ensure a procedurally fair process, prior to the Registrar taking the decision contemplated in section 69A(13) of the Banks Act, it was decided –
 - i. to communicate with those persons referred to in the Myburgh Report in order to provide them with the opportunity to review the report and to call for comments or representations by them with regard to why the Registrar should not direct, after consultation with the Minister, that the Myburgh Report should no longer be private and confidential;
 - ii. that comments and/or representations received would be considered by the Registrar; this consideration was only with respect to removing the confidentiality of the report and not with respect to any change of the report itself; and
 - iii. that the Registrar would then decide, after consultation with the Minister, whether the Myburgh Report generally or in respect of any part thereof, should no longer be private and confidential.
- b. To this end, Werksmans Attorneys ("Werksmans") were instructed by the South African Reserve Bank ("SARB") and the Registrar to write to each person referred to in the Myburgh Report and invite them to –
 - i. review the Myburgh Report; and
 - ii. make written representations, should they so elect, regarding the status of the Myburgh Report and more particularly why the Registrar should not direct, after consultation with the Minister, that the Myburgh Report should no longer be private and confidential.

(2) Werksmans wrote to the 37 individuals and entities (including the insurers who provided the directors and officers insurance cover in respect of African Bank Limited ("ABL")) who were specifically referred to in the Myburgh Report, during the second and third weeks of September 2015. Most of the individuals and entities were addressed through their legal representatives who had represented them before the

Commissioner during the latter part of 2014 and early 2015. They were afforded the opportunity, against the signing of appropriate confidentiality undertakings, to review the Myburgh Report, and to make written representations up and until 20 November 2015.

Of the 37 individuals or entities invited to review the Myburgh Report and make written representations, 35 of them took up the invitation and reviewed the Myburgh Report during the aforementioned period. Of those who reviewed the Myburgh Report, 32 of them were represented by legal representatives. In total more than 60 individuals, including legal representatives and representatives of companies and organisations, reviewed the Myburgh Report, during the review period. Of the 35 individuals or entities who reviewed the Myburgh Report, 22 of them submitted written representations (or at least submitted a letter of no objection) by 20 November 2015.

Of the written representations received, a significant majority objected to any decision taken which could result in the Myburgh Report or any part thereof no longer being private and confidential.

- (3) As indicated above, (a) Werksmans Attorneys of Sandton were used to conduct the process on behalf of the Registrar. (b) (i) The total costs amounted to some R11,8 million, which included the fees of Commissioner Myburgh and his two assistants.