

NATIONAL COUNCIL OF PROVINCES
QUESTION FOR WRITTEN REPLY
QUESTION NUMBER: 131 [CW139E]
DATE OF PUBLICATION: 26 APRIL 2024

131. Mr G Michalakis (Free State: DA) to ask the Minister of Finance:

- (1) Whether (a) certain companies (details furnished) and/or (b) all other companies that are associated with a certain person (name furnished) have been (i) blacklisted and/or (ii) placed on the list of restricted suppliers; if not, why not; if so, why has it taken the National Treasury several months to do so;
- (2) (a) what mechanisms are in place to ensure that companies which have been implicated in state capture by the Zondo Commission are blacklisted immediately and (b) why was such actions not applied to the said companies;
- (3) whether any (a) civil and/or (b) criminal steps are being taken to recover monies that have been paid to the said companies without any work being done; if not, why not; if so, what are the relevant details? CW139E

REPLY:

- (1) All companies and individuals as mentioned have not been blacklisted or placed in the list of restricted suppliers. The role of National Treasury is to upload companies or individuals on the list after assessing and ensuring that proper processes have been followed by the organ of state as prescribed, in this case by MFMA Circular 43.

According to the individuals and companies named on the question, National Treasury assessed information as supplied by the organ of state and found out that proper processes and steps were not followed. The National Treasury thereafter informed the City of Tshwane through a letter, dated 27 March 2024, of the outcome of the assessment and processes and were advised about the correct restriction process. To date, the National Treasury has not received any response from the City of Tshwane on the way forward.

- (2) (a) National Treasury cannot include the names of service providers and individuals implicated on the state capture related crimes on the list of restricted suppliers' database due to the following reasons:
 - In terms of the Prevention and Combating of Corrupt Activities Act 12, of 2004 (PRECCA), the Court may sanction that the names of supplier/s, its directors or members be endorsed in the Register for Tender Defaulters for fraud and corruption, and abuse of the procurement system, that may have been committed by the supplier/s, its directors or members for a period not exceeding

10 years. However, the Court can only sanction endorsement in the Register provided the relevant organ of state, in its court papers, requests the Court to order that over and above the guilty verdict, the names of implicated supplier/s, directors or members be also endorsed in the Register. You are referred to paragraph/section 28 of this Act.

- MFMA Circular 43 states that should an organ of state discover that any supplier has committed any fraud, corruption, or made fraudulent claims in preferences, failure to perform on a contract and failure to remedy such failure to perform despite requests to do so or any other abuse of the procurement system, an organ of state must apply the natural rules of justice (*audi alteram partem*) and afford the relevant supplier/s, directors or members, in writing, of its intention to restrict them from doing business with the state and asking them to make representations prior to the decision to restrict. The supplier/s, directors or members must be given reasonable time within which to respond. Thereafter, the organ of state must submit its request to the National Treasury with all supporting documentary evidence that due process has indeed been followed. Based on the proof that due process was followed, National Treasury would then assess the submission and include those suppliers in the List of Restricted Suppliers database.

(b) Refer to response above on (a).

(3) It is the responsibility of the individual organ of state to take appropriate legal steps and / or to recover such monies.