

NATIONAL ASSEMBLY

QUESTION FOR WRITTEN REPLY

QUESTION NUMBER 372

DATE OF PUBLICATION: 3 JULY 2009

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

- (1) How many financial advisors have been sanctioned through the (a) imposition of a fine, (b) the suspension of a licence or (c) referral for criminal prosecution in terms of the Financial Advisory and Intermediary Service Act, Act 37 of 2002 ;
- (2) how many sanctions were subsequently overturned in each category;
- (3) whether an assessment of the impact of the legislation on the financial advisory services industry has been conducted (a) with regard to the phenomenon of disintermediation, (b) to determine the impact the legislation has had on the protection of consumers and (c) with regard to the cost of compliance; if not, why no if so, what are the relevant details?

NW432E

Reply:

The Financial Services Board (FSB) is the regulator responsible for reporting on unlawful investment schemes, and has provided the relevant information to enable a response to these questions.

- (1)
 - (a) Penalties were imposed on 43 financial services providers during the 2008/2009 financial year for the late submission of annual statutory returns.
 - (b) As at 15 July 2009, 35 licenses are suspended. Of the 35 suspensions one was effected in the 2006/2007 financial year, 24 were effected in the 2008/2009 financial year and the balance of 10 during the current financial year. Of the 43 financial services providers on whom penalties were imposed (refer to paragraph (a) above) the authorisation of 2 were suspended and 2 were withdrawn.
 - (c) There were 65 cases which were referred to the prosecuting authorities since the FAIS Act took effect on 30 September 2004. These cases include 20 cases resulting from formal inspections
- (2) No fines have been overturned. In a number of cases the quantum of the fine imposed has been reduced after evaluation of submissions by the licencees involved. Twelve (12) suspensions have been lifted as a result of having met the conditions.
- (3)
 - (a) No assessment of the impact of this Act on disintermediation in the financial advisory industry has been conducted since the Act took effect, given that the objective of this Act is to regulate financial service providers when rendering financial advise and intermediary services to consumers. Those persons that fail to obtain authorisation under the Act or who do not comply with the fit and proper requirements set by this Act are not allowed to provide such services.
 - (b) The Financial Services Board and National Treasury do monitor on an on-going basis to what extent this Act has improved the quality of consumer protection. To the extent that we have identified risks or weaknesses, we have amended the Act in 2008 to address those risks and/or weaknesses. Media and stakeholder feedback received during the last year indicate that

the FAIS regulatory framework have indeed improved consumer protection.

- (c) No, we have not made any cost assessment on the impact of this Act, as it is not clear what the benefits of such a complex exercise would be. The direct cost of compliance consists of a once-off application fee (dependent on the nature of the application) and an annual levy which currently amounts to a minimum of R2 345 for the smallest financial services provider. Such a levy assists in funding the operational costs of implementing the Act including the Office of the FAIS Ombud.

NOTES TO MINISTER: BACKGROUND INFORMATION: PARLIAMENTARY QUESTION 372 POSED BY MR DT GEORGE (DA)

Ad point 1(a)

8631 letters indicating the intention to impose a fine were issued to financial services providers who had failed to submit their annual prescribed financial statements and/or compliance reports for the periods 2005 to 2008. 43 fines have been imposed for late submission of annual returns.

Ad point 1(b)

12 licenses that had been suspended were reinstated after having met the conditions for lifting of suspensions.

In addition, 231 licences have been withdrawn. 2 cases of withdrawals have been reversed after an appeal process.

Suspensions of licences relate to rectifiable contraventions whilst withdrawals relate to material or unrectified contraventions.

A further 808 individuals have been placed on the register for debarred representatives of which 13 cases of debarments have been reversed. These persons have been debarred from providing financial services for a period of between 2 and 5 years.

An important statistic is the fact that up to 15 July 2009, 1 710 of the 19 236 applications received for authorisation as financial providers (from sole proprietors as well as juristic entities) have been declined as the applicants failed to meet the minimum fit and proper requirements.

Ad point 2

In a number of cases the quantum of the fine imposed has been reduced after evaluation of submission by the licensees involved. The Registrar is empowered to impose fines of up to R1 000 per day. In all cases, a fine of R10 per day was imposed.

13 previously debarred representatives were re-appointed.

Ad point 3

The FSB is not funded by the fiscus and is mainly dependent on levies for the funding of its operational costs.

MINISTER OF FINANCE

NATIONAL ASSEMBLY

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DATE OF PUBLICATION: 3 JULY 2009

REPLY RECOMMENDED BY MR L KGANYAGO: DIRECTOR-GENERAL:

PARLIAMENTARY SERVICES

DATE: 28 JULY 2009

NATIONAL ASSEMBLY

QUESTION FOR WRITTEN REPLY

QUESTION NUMBER 372

DATE OF PUBLICATION 3 JULY 2009

Recommended / ~~Not Recommended~~



ISMAIL MOMONIAT

DEPUTY DIRECTOR-GENERAL: TAX AND FINANCIAL SECTOR POLICY

Date: 24/7/09

RECOMMENDED / ~~NOT RECOMMENDED~~



Mr L Kganyago

DIRECTOR-GENERAL: NATIONAL TREASURY

Date 27/07/2009

APPROVED / NOT APPROVED

Mr P J Gordhan

MINISTER OF FINANCE

Date