

NATIONAL ASSEMBLY
QUESTION FOR WRITTEN REPLY
QUESTION NUMBER: 1665 [NW2012E]
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1665. Mr P J Groenewald (FF Plus) to ask the Minister of Finance:

What measures are in place to ensure that the private information of high net worth individuals and investors in South Africa is not abused, exploited and distributed by banks and private bankers in South Africa?

NW2012E

REPLY:

The government takes measures to protect the private information of all individuals in South Africa, and does not favour or discriminate on the bases of wealth or activity. Hence there are generally no separate or different measures for high or low net worth individuals. Financial service providers, including banks, are under an obligation to keep the personal information of all their clients confidential.

The General Code of Conduct for Authorised Financial Service Providers (including banks) to the Financial Advisory and Intermediary Services Act 37 of 2002 (FAIS Act) states the following under Part II, General Provisions, section 3(3), Specific Duties of a provider: "A provider may not disclose any confidential information acquired or obtained from a client or, subject to subsection 4(1), a product supplier in regard to such client or supplier, unless the written consent of the client or product supplier, as the case may be, has been obtained beforehand or disclosure of the information is required in the public interest or under any law." There is also a general duty of care to the clients and financial industry in FAIS – General Code of Conduct for Authorised Financial Service Providers and Representatives, Part II, General Provisions, section 2, General Duties of a provider: "A provider must at all times render financial services honestly, fairly, with due skill, care and diligence, and in the interests of clients and the integrity of the financial industry".

Offences and Penalties within FAIS are dealt with in terms of section 36, "on conviction is liable to a fine not exceeding R 1 000 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment". Civil remedies are also covered in terms of section 33 (2) "The registrar may institute action in a Court against any person who has contravened or not complied with any provision of this Act, for payment of:

- (a) an amount determined by the Court as compensation for losses suffered by any other person in consequence of such contravention or non-compliance;
- (b) a penalty for punitive purposes in a sum determined in the discretion of the Court;
- (c) interest;

(d) costs of suit on such scale as may be determined by the Court”

Other general (non-financial) legislation falling under other Ministries, also applies, like the Consumer Protection Act and Regulations, Act 68 of 2008 (CPA), also has provisions and regulations on how an intermediary keeps records and documentation safe. Further, the coming Protection of Personal Information Bill (POPI), once enacted, will also cover data privacy in more detail.