

NATIONAL ASSEMBLY
QUESTION FOR WRITTEN REPLY
QUESTION NUMBER: 2788 [NW3257E]
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2788. Mr M G P Lekota (Cope) to ask the Minister of Finance:

Whether the Government has (a) successfully prosecuted and shut down any pyramid or Ponzi scheme in the period 1 June 2014 to 30 June 2015, (b) ensured that an inspectorate was checking that all popular advertisements attracting investors had a legitimate financial service provider (FSP) number on it and acting at once against those who were advertising without an FSP number and (c) has substantially or totally reduced the proliferation of Ponzi and pyramid scams in the past year through all the means at its disposal; if not, why not; if so, what are the relevant details?

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REPLY:

- (a) Yes. The Bank Supervision Department of South African Reserve Bank (BSD) has successfully shut down many Ponzi schemes both in the period 1 June 2014 to 30 June 2015 and before this period. Altogether, the BSD has investigated 40 from 1 January 2014 to 30 June 2015, of which the investigations for 30 schemes were finalised and 10 schemes are still current. It should be noted that all schemes where the investigation is finalised and that have contravened the Banks Act are referred to the South African Police Services for criminal investigations. The decision to prosecute any of operators of these schemes resides with the National Prosecuting Authority.

- (b) Current financial sector laws address Ponzi and pyramid schemes in different ways, depending on which Act may be transgressed. The Reserve Bank can act against such activities if there is illegal deposit taking involved, through enforcement in terms of the Banks Act. The Financial Services Board (FSB) investigates instances of possible unregistered financial services business that might be conducted as an ancillary activity to a Ponzi scheme, or under the guise of a legitimate provider of financial services, and will take action against such contraventions in terms of the various Acts (eg Financial Advisory and Intermediary Services Act, 2002) enforced by the FSB. Where there are gaps in the current law, queries and complaints about Ponzi schemes made to the FSB are generally referred through to the Bank Supervision Department of the SARB and the South African Police Services: (Commercial Branch). Outside financial sector legislation, the National Consumer Commissioner (NCC) investigates certain Ponzi or pyramid schemes in terms of the Consumer Protection Act, and such queries and complaints can therefore also be referred to the NCC.

This illustrates the importance of the Twin Peaks reform currently underway (through the Financial Sector Regulation Bill), which will establish a market conduct regulator with flexible, system-wide powers that will, amongst other things, close the net on Ponzi schemes. Under this law, Ponzi schemes may be directly “prohibited” which means that the activity itself can lead to investigation and prosecution by the new Financial Sector Conduct Authority, rather than the current situation where a combination of other laws are required to indirectly reach alleged Ponzi operations.

With specific reference to advertising, the FSB is, as part of its Treating Customers Fairly approach, focusing on advertising across the financial sector, to ensure that advertising is not misleading and does not promote unfair customer treatment. This increased focus on fair advertising in the financial sector will help identify instances where advertising may be promoting illegal activities. Under current legislation, action may then be taken as described above if Ponzi or pyramid schemes, are identified in this manner. Currently, the Financial Advisory and Intermediary Services Act (FAIS Act) requires that an entity licensed by the FSB, must contain a reference to the fact that a licence is held in advertisements and promotional material, but it is not a requirement that an advertisement should reflect an FSP number. This again highlights the need for the Twin Peaks reform, to ensure that activities cannot fall outside of regulation. Currently, supervising advertising standards generally, rather than for FSP numbers specifically would better identify Ponzi schemes.

- (c) Yes, action has been taken to counter instances of Ponzi and pyramid schemes. At this stage, the regulators in the financial sector are only able to take reactive action once such activities have been operating, and in some cases action are taken on ancillary aspects of Ponzi and pyramid schemes, such as, unregistered financial services or illegal deposit taking, rather than on the activity itself being illegal.

The proposed Twin Peaks reform of financial sector legislation aims to significantly strengthen financial sector regulation, so regulators may be more proactive and prevent such activities from occurring in the first place, and ensure better customer protection. The law will be more comprehensive, and will minimise instances of financial products or services falling outside of the legislative framework. It will allow for tougher action to be taken, including banning activities like Ponzi and pyramid schemes outright, and taking direct swift and harsh enforcement action against those who contravene the banning.