

NATIONAL ASSEMBLY

QUESTION FOR WRITTEN REPLY

QUESTION NUMBER: 2504 [NW2918E]

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2504. Mr N L Kwankwa (UDM) to ask the Minister of Finance:

- (1) Whether the staff of the National Treasury and the SA Reserve Bank are involved in the management of the Financial Services Board (FSB); if not, what is the position in this regard; if so, what are the reasons for their involvement;
- (2) what is the total number of persons who have valid Financial Service Providers' (FSP) licenses who have been driven out of the insurance industry by the FSB since 2004;
- (3) (a) what is the total number of persons who (i) have had their licences declined, revoked or retracted and (ii) voluntary gave up their FSP licences and (b) of these persons, what is the total number of black, coloured and Indian persons;
- (4) what is the total number of persons who have or will be adversely affected by the Board Notice 113 of 2015, which enables the National Treasury to account for persons who are expected to be declined the FSB Authority for significant ownership, directorship, managing executive, public officer, auditor or statutory actuary in the insurance industry;
- (5) whether the FSB has the power to (a) make regulations or subordinate legislation that is considered to be binding on the insurance industry and its practitioners and (b) impose penalties to entities that it considers to have breached legislation; if so, (i) who has the mandate to authorise in each case and (ii) could he furnish Mr N L Kwankwa with the specified legislation promulgated since 1994?

NW2918E

REPLY:

The replies below are based on relevant information provided by the Financial Services Board (FSB). Much of the information requested is also available in the annual reports of the FSB, and available on its website. :

- (1) No staff member of the National Treasury or the South African Reserve Bank is involved in the management of the Financial Services Board (FSB). I am surprised that the Honourable Member is posing this question, but perhaps the Honourable Member is confusing the role of the Board of the FSB and its Executive Committee. The Board of the FSB is responsible for governance, whilst its Executive Committee is responsible for management and operational issues, in line with the Financial Service

Board Act No 97 of 1990. The Board is comprised of 11 non-executive members, including two National Treasury officials and one South African Reserve Bank official – none of whom is involved in the management of the FSB. The Executive Committee includes as its members, the Registrar and Deputy Registrars, who are directly responsible for supervising various supervisory activities like long- and short-term insurance, retirement funds, collective investment schemes, financial advice and intermediary services providers and financial market infrastructure.

- (2) It is not clear what the Honourable Member is requesting, but the FSB does not believe it has driven any person with a valid Financial Service Provider (FSP) licence out of the insurance industry, as long as they comply with the regulatory requirements.
- (3) The Financial Advisory and Intermediary Services Act, 2002 (“the FAIS Act”), came into operation on 01 September 2004 amid uncertainty amongst providers of financial services about;
 - (a) the need to be an authorised FSP, and
 - (b) the appropriate structuring of individual financial services business operations in order to meet the requirements of the Act.

At the time, some of the larger entities opted for multiple licences and thus ring-fenced different divisions of their businesses, according to various factors including line of business, province or district. After the implementation of the legislation, many authorised FSPs, opted to lapse their multiple FSP authorisations and consolidated the various financial services businesses into a single FSP.

Certain FSPs voluntarily cancelled their licences and operated as juristic representatives of other authorised FSPs. Others realised that their business did not fall within FAIS regulated activities, which led to the lapsing of their licences and some FSPs whose licences were withdrawn because of non-compliance (other than non-compliance with honesty and integrity requirements), with the FAIS Act, re-entered the industry as representatives of authorised FSPs. The FSPs whose licenses were withdrawn for contraventions due to lack of the character qualities of honesty and integrity, were barred from entering the financial services industry for a stipulated period and also referred to the prosecuting authorities.

Various exemptions have been granted to FSPs and representatives to allow for the progressive realisation of compliance by them with all the requirements of the FAIS Act. In addition, many exemptions have been granted on the basis of the principle that regulatory requirements must be proportionate to the risks the requirements are meant to mitigate, the nature, scale and complexity of the business of the FSP and the cost it imposes on the FSPs whilst at the same time ensuring that the exemptions do not diminish the protection afforded to clients under the FAIS Act.

The number of authorised FSP’s has grown from 5 033 in 2005 to 10 774 as at 11 November 2016.

The requested numbers since September 2004, are as follows

- Declined licences: 2224
- Withdrawn licences: 4451

- Voluntary lapses: 6923

Since the Act came into operation, the number of juristic persons as representatives of FSPs has increased significantly from 173 in 2005 to 3 755 in 2015, thus a significant number of the aforementioned licences that had been withdrawn or lapsed, subsequently became juristic representatives of other FSPs and were not lost to the market.

It should also be noted that certain individuals who were authorised as sole proprietors but whose authorisation was subsequently withdrawn for non-compliance or they have voluntarily lapsed their licenses, re-entered the industry as representatives of other authorised FSPs.

It has been noted that after the self-correction and stabilisation of the market over time, continuous growth in the number of FSP's has taken place. This trend is also reflected in the number of natural persons registered.

Statistics in terms of race or colour are not recorded by the FSB.

- (4) The National Treasury is not involved in the licensing or supervision of financial institutions, and this is done by the FSB itself. Board Notice 113 of 2015 called for comments on the proposed fit and proper requirements to be prescribed under the Long-term Insurance Act No. 52 of 1998 and the Short-term Insurance Act No. 53 of 1998 ("the Acts") pursuant to the definition of "fit and proper" in sections 1 of the Acts. The final fit and proper requirements were prescribed in Board Notice 158 of 2015. The board notices and other legislation administered by the Financial Services Board are available on the website of the Financial Services Board (www.fsb.co.za).

Due to the nature of insurance business, it is important that significant owners, directors, managing executives, public officers, auditors and statutory actuaries are fit and proper. The fit and proper requirements are intended to reduce the risk of insurer failure as a result of incompetent, reckless or improper risk management by responsible persons. In addition, these requirements are consistent and compatible with international standards and promote confidence in insurers amongst policyholders, and the public generally. Recent South African and international experience has emphasised the importance of closer supervisory scrutiny of the conduct of individuals in positions of responsibility. In the case of insurers, this additional scrutiny is necessary for the Registrar of Long-term/Short-term Insurance to ensure the on-going safety and stability of insurers and to reduce the risk of loss to policyholders due to mismanagement or misconduct in insurance companies.

The requirements set out in Board Notice 158 of 2015 will affect all persons to whom any of the criteria apply. The Registrar, in assessing whether a person is fit and proper must have due regard to, in respect of directors, managing executives, public officers, auditors and statutory actuaries –

- (a) the seriousness of, and surrounding circumstances resulting in, a person not meeting the requirements;
- (b) the relevance of the failure by a person to meet the specific criteria to the duties that are or are to be performed and the responsibilities that are or are to be assumed by that person; and
- (c) the passage of time since the failure by a person to meet the specific criteria.

In respect of significant owners the Registrar, in addition to (a) to (c) above, must have due regard to –

- (a) the nature and scope of the significant owner's business; and
- (b) the structure of any group that the insurer is part of, if applicable.

The board of directors of an insurer may also express the view that a person is fit and proper despite the fact that one of the criteria specified in BN 158 of 2015 is not met. The insurer must then, when notifying the Registrar of the appointment of such a person, declare that one of the criteria is not met and motivate why the board, despite this, is of the opinion that the person is fit and proper. The motivation should address the matters that the Registrar will have regard to in assessing the fit and properness of a person (i.e. seriousness, relevance and passage of time). The Registrar, when considering the information provided, must then apply his mind and inform the board of the applicant if he objects to the appointment or not.

Given the foregoing it is not possible to estimate the total number of persons who have been or will be adversely affected by the Board Notice as insurers in appointing directors, managing executives, public officers, auditors and statutory actuaries are expected to consider whether any of the disqualifications apply to such persons. Also, potential significant owners will likely consider these requirements when deciding to become a significant owner of an insurer.

- (5) (a): Yes, the various Registrars of the FSB may make subordinate legislation that is binding on regulated entities. This includes codes of conduct mandated in the primary legislation. Such subordinate legislation prescribes a variety of prudential and other requirements regarding the conduct and operational ability of financial institutions and services providers, and is a legitimate executive instrument to effectively implement the principles and policies contained in the principal legislation enacted by Parliament.

(b) (i): Yes, penalties may be imposed. The Enforcement Committee of the Financial Services Board established under the Financial Services Board Act which consists of external persons with the necessary expertise imposes all monetary penalties with regard to material contraventions.

This Committee is chaired by a retired judge. The particular enabling legislation makes provision for the proper protection of the rights of respondents, including the right of a reply (*audi alterim partem*), and the right to legal representation. The onus is on the FSB (the relevant Registrar) to prove that the legislation has been contravened.

In addition a respondent may take the Committee on appeal to the High Court of South Africa. The proceeds of the penalties imposed may not be utilised for operational expenses, but are reserved for projects relating to consumer education or protection of the public.

(b) (ii): The Financial Services Board Act, is also available on the website of the Financial Services Board.

The FSB ensures compliance with the legislation administered by it, which is aimed primarily at protecting the investments, savings and retirement funds of the public and may include monetary penalties.

In addition to the Enforcement Committee, the Registrar has the authority to impose penalties for minor non-compliances, e.g. late submissions of prescribed returns. Such penalties are provided for in the legislation relevant to the different industries.

When the “Twin Peaks” legislation is passed by Parliament and signed into law by the President, the “market conduct authority” will be constituted and citizens can be assured of even better regulation of market conduct.