

**NATIONAL COUNCIL OF PROVINCES
QUESTION FOR WRITTEN REPLY
QUESTION NUMBER: 74 [CW86E]
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74. Mr D R Ryder (Gauteng: DA) to ask the Minister of Finance:

- (1) Whether forex trading by individuals is permissible in terms of the current Exchange Control Regulations since it is advertised on many platforms; if not, what is the position in this regard; if so, what are the relevant details;
- (2) whether there is a limit in each case; if not, why not; if so, what are the relevant details;
- (3) whether institutions that are offering the platforms are registered; if not, why not; if so, (a) what measures are in place in this regard and (b) which institutions are authorised regarding this matter;
- (4) whether any plans are in place to change this in the near future; if not, why not; if so, (a) what plans and (b) what are the further relevant details;
- (5) whether any actions are being taken against the advertisers of the services; if not, why not; if so, what action have been taken to date?

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REPLY:

- (1) No, forex trading by individuals is not allowed in terms of the Currency and Exchanges Act, 1933 and the Exchange Control Regulations (the Exchange Control Laws). In terms of the Exchange Control Laws only Authorised Dealers (ADs) and Authorised Dealers with Limited Authority (ADLAs), appointed by the South African Reserve Bank (SARB), are permitted to buy, sell, borrow or lend foreign currency. ADs and ADLAs may trade in foreign exchange for their own account as well as on behalf of their clients.

Individuals may use their foreign capital allowance (R10 million per annum) and the single discretionary allowance (R1 million per annum), to send funds abroad through the ADs. South African residents are not permitted to speculate against the Rand. South African residents are bound by South African exchange control laws, even when exported funds are exported.

Aside from the exchange control regulations, the Honourable Member should note the following two laws may also apply:

- a) The Financial Advisory and Intermediary Services Act, 2002 defines a 'foreign currency denominated investment instrument' as a financial product. This means that any person providing financial services with regard to these types of instruments must be licensed as a financial services provider. The FSPs must naturally also comply with Exchange Control laws.

- b) The Financial Sector Regulation Act, 2017 defines 'a service related to the buying and selling of foreign exchange' as a financial service. The requirement for providers of this category of financial services to obtain a licence from the Financial Services Conduct Authority is however not effective yet. Proposals for their effective regulation and supervision have been included in the Conduct of Financial Institutions Bill.
- (2) These activities are illegal and hence the limit is zero.
- (3) Online platforms advertising forex trading are not allowed and therefore not registered in South Africa with any of the financial sector regulators, and therefore operate illegally, similar to online gambling platforms. Such platforms are likely to not have a presence or a bank account in South Africa. This is a challenge for regulators as they are beyond South African jurisdiction, making enforcement difficult. The Financial Services Conduct Authority is responsible for market conduct.

The above online platforms should not be confused with authorised brokers who use trading platforms to manage and execute market positions. The brokers do not trade in actual foreign currency but offer products with exposure to underlying referenced assets, which may include foreign currency. Products include Contracts for Difference (CFDs) and forex derivatives on the JSE, which offer exposure to movements in the currency. Neither the online broker nor the investor takes a position on the movement in the exchange rate of currency pairs. No actual forex is purchased, settlement is in Rands and transactions do not result in any flow or potential flow of funds into or out of South Africa.

- (4) No. In the light of modern financial technology developments, there is a greater need to protect individuals from online trading. Although individuals are not permitted to trade in forex, some do and place their funds at risk. They may become victims of fraud as they deal with unregulated offshore brokers, who may not honour settlements. Often, victims do not disclose such dealings for fear of embarrassment and prosecution. The regulators often issue media announcements to caution the public.
- (5) No, as most of these operators tend to be based outside South Africa and requires co-ordinated action with the relevant authorities in those countries. It is a matter that the regulators are considering, on how best to act in such instances, even with all the complexities that apply.

Domestic credit and debit cards may not be used to fund such trading activity. These cards may be only be used for the purposes as set out in the exchange control regulations. The SARB has acted against individuals who used their South African credit cards to trade on foreign trading platforms.

Action has been taken by the FSCA and SARB against a broker who acted as an OTC derivatives provider without being licensed to do so, and to have breached the FAIS Act. The SARB also blocked their bank as they also entered into a Contracts for Difference arrangements via a non-resident platform operator without obtaining the prior approval from the SARB to hedge their exposure abroad. This matter is still in progress, so I am unable to provide further details until the two regulators publish their final actions taken in this regard.