

NATIONAL ASSEMBLY

QUESTION FOR ORAL REPLY

QUESTION NUMBER: 193 [NO1114E]

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★193. Mr A M Shaik Emam (NFP) to ask the Minister of Finance:

What measures will the National Treasury put in place to (a) prevent big banks from closing bank accounts of private businesses in a selective fashion leaving the companies and employees vulnerable to massive job losses and (b) ensure that State banks are created to protect businesses in the Republic from exploitation? NO1114E

REPLY

- (a) It is not clear on what basis the Honourable member alleges that big banks are closing banking accounts on a selective basis, which is a very serious allegation and I would invite the Honourable member to provide any evidence he has to the relevant regulators like the Financial Sector Conduct Authority (FSCA). Depending on the nature of such closure, financial customers have access to FSCA as the regulator, as well as the relevant ombud scheme, over and above their right to approach the courts, to challenge the closure of their accounts by any bank.

The banking sector is highly regulated, including to ensure that banks have robust anti-money laundering systems (and to counter financing of terrorism), and have in place very strict customer due diligence measures. As was the case with the closure of the Gupta-owned Oakbay Investments in 2016, the relationship between banks and their clients is governed by the law of contract, and such relationship is confidential, and neither the Treasury nor the Minister of Finance can legally access such information. This has been confirmed in case law, e.g. in the 2017 *Minister of Finance vs Oakbay Investments (Pty) Ltd* and 2010 *Bredenkamp and Others v Standard Bank of SA* cases. Banks are required to provide suspicious transaction records to the Financial Intelligence Centre, and may act to close accounts particularly where such client may pose reputational risks, or expose the banks to sanctions and penalties from financial sector regulators and prosecuting authorities, not only in South Africa, but also from overseas regulators and authorities.

The Honourable member should also note that a bank has the legal right to refuse to take on a customer, or terminate its services to a client, for many reasons, provided the reasons for such refusal or termination do not violate public policy or constitutional values. It is also important that financial institutions treat their customers fairly and consistently, while also supporting increased financial inclusion and market access, even when deciding to close accounts or terminate relationships. To help promote this, section 106 of the Financial Sector Regulation Act 9 of 2017 empowers the FSCA to issue conduct standards for financial institutions. In this respect, the FSCA issued *Conduct Standard 3 of 2020 (Banks)* which came into effect on 3 July 2020. This was

the first step towards rolling out a comprehensive framework for the banking sector to ensure the fair treatment of financial customers.

In terms of the Conduct Standard, banks must:

- conduct their business in a manner that prioritises the fair treatment of their customers;
- adopt and implement processes and procedures relating to the withdrawal or termination of a financial product or financial service, including closure of a bank account;
- provide reasonable notice of the intention to withdraw or terminate a financial product or financial service, including closure of a bank account;
- provide reasons for the proposed withdrawal, termination or closure, unless the following circumstances prevail:
 - the bank is compelled to do so by the law;
 - the bank has reasonable suspicion that the financial product or financial service is being used for any illegal purpose; and
 - the bank has made the necessary reports to the appropriate authority.

The Conduct Standard furthermore provides that contractual agreements with financial customers must make provisions for circumstances in which the contractual agreement may be terminated or withdrawn by the bank. This implies that the closure, termination or withdrawal of a financial product or service will not be done unilaterally, but as part of enforcing contractual obligations and remediating breaches. The circumstances in which termination may occur must be disclosed to the customer in the contract. The *Bredenkamp* case deals specifically with the issue of reputation as a reason to close an account and the judgment states that when it comes to contractual matters, fairness applies to both contracting parties.

Engagements have taken place between the FSCA and key stakeholders, including banks and the Financial Intelligence Centre, on potential improvements that may be needed to enhance the Conduct Standard and ensure that financial customers are suitably protected.

These improvements will be further supported through the Conduct of Financial Institutions Bill, which is expected to be introduced in Parliament later this year.

- (b) The Honourable member makes the unsubstantiated assumption that privately-owned banks exploit their customers, and that state banks will protect businesses from such exploitation. State banks are also expected to comply with all regulatory laws that apply to private banks, including the need to enforce anti-money laundering and prevention of corruption laws. The Honourable Member also appears to be unaware of the radical steps taken by Government to intensify the regulatory system over the financial sector, with the adoption of the Twin Peaks system, which aimed to enhance the protection of financial sector customers, and for them to be treated fairly by financial institutions. In this respect, in February 2011, Cabinet approved a national policy document entitled “A

Safer Financial Sector to Serve South Africa Better”, in which the conduct of financial institutions and how financial institutions treat their customers identified as a key policy objective. The policy document set the tone for far-reaching changes to the country’s financial regulatory architecture. This culminated in the establishment of the FSCA on 1 April 2018. Any unfair or exploitative conduct by financial institutions should thus be reported to the FSCA, or the Ombudsman for Banking Services where appropriate.