**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**QUESTION NUMBER:** **1211 [NW1403E]**

**1211. Mr EM Buthelezi (IFP) to ask the Minister of Finance:**

Whether, in light of the recent developments about the refusal of some banks to provide banking facilities to certain black entities, the National Treasury has a strategy to ensure that banks contribute without discrimination to the (a) transformation agenda and (b) economic inclusiveness; if not, why not; if so, what are the relevant details? NW1403E

**REPLY**:

I am not aware of any registered bank in South Africa refusing to provide its services to clients on the basis of being black, or being black-owned. As the Honourable Member may be aware, the relationship between banks and their account holders is governed by the law of contract and hence confidential to any third party. The termination of any banking account is therefore not disclosed to the Minister of Finance or National Treasury, and we are not legally empowered to intervene in a bank-client relationship, as confirmed in case law, for e.g. in the 2017 *Minister of Finance vs Oakbay Investments (Pty) Ltd* and 2010 *Bredenkamp and Others vs Standard Bank of SA*. The only time National Treasury or I become aware of any specific closure of any bank account is when an affected customer contacts us (as was the case with Oakbay) or when it is reported in the media.

National Treasury does not have any evidence that implicates any bank in refusing to provide its services to any person or entity because of their race, gender or sexual orientation. Needless to say, any company or person discriminating on such a basis is breaking the laws of our country, and will have to face the Human Rights Commission, and also face criminal and regulatory sanctions in terms of the laws of our country. If the Honourable Member does have credible evidence on such discrimination by any bank, I invite him to provide such evidence to the Financial Sector Conduct Authority, the criminal prosecution authorities and Human Rights Commission. I do want to caution about certain individuals who make it their business to make such (and similar) allegations for personal financial gain, as they then market their services to “help” customers on their interest rates or charges etc – I would warn the public not to fall for such scams.

A bank may 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. Such reasons also include the obligation on banks to reduce risks related to criminal or money laundering - banks face steep sanctions from both domestic and overseas regulators if they do not have effective customer due-diligence measures in place.

In order to ensure that banks do not abuse their power and treat their retail customers fairly at all stages, even when closing their accounts, the Financial Sector Conduct Authority (FSCA) has put in place conduct standards which came into effect on 3 July 2020 in terms of section 57 of the Financial Sector Regulation Act 9 of 2017. Section 9 of *Conduct Standard 3 of 2020 (Banks*) requires banks to provide reasons to an affected customer when a bank refuses, withdraws or closes any financial product or financial service to any customer, and also has to provide reasonable prior notice. Section 9 (4) of the standard, allows a bank to refuse, withdraw or close a financial product or financial service without providing prior notice or reasons if:

1. compelled to do so by the law;
2. it has reasonable suspicion that the financial product or service is being used for any illegal purpose; and
3. it has made the necessary reports to the appropriate authority.

Treasury is aware that there are also more structural forms of exclusion due to the history of our country, forms of inequality and access to financial services. For such reasons, National Treasury has adopted a multi-pronged approach to transformation that seeks to enhance market conduct, market development and financial inclusion (deepening financial inclusion for individuals and small businesses).

 (a) Transformation in the financial sector (including the banking sector) is set out in terms of the BBBEE Act and more specifically, the Financial Sector Code. It is led by the Financial Sector Transformation Council, and governed by the Financial Sector Code that was issued in terms of section 9 (1) of the Broad-based Black Economic Empowerment (BBBEE) Act 53 of 2003.The Financial Sector Code commits all participants to actively promote a transformed, vibrant and globally competitive financial sector that reflects the demographics of South Africa, and which contributes to the establishment of an equitable society by providing accessible financial services to poor and marginalized people and by directing investment into targeted sectors of the economy. Working together with the Financial Sector Transformation Council and its other members, National Treasury will continue working on the strengthening and implementation of the Financial Sector Code so as to enhance the transformation of the financial sector.

National Treasury is also developing legislation that will further seek to enhance the transformation imperatives of the South African financial services sector, with the publication of drafts of the Conduct of Financial Institutions (COFI) Bill for public comment in December 2018 and a second draft in September 2020 as the first steps. The current version of the Bill contains provisions (if enacted) that require financial institutions to develop transformation plans to guide them in meeting their commitments in terms of promoting transformation of the financial sector as envisaged in the BBBEE Act and the Financial Sector Code.

(b) Economic inclusiveness is also embedded in the financial inclusion leg of the multi-pronged approach. Treasury recently published a draft policy document on financial inclusion, titled “*An Inclusive Financial Sector for All”* for public comment, which is available on the National Treasury website. The link is as follows:

<http://www.treasury.gov.za/comm_media/press/2020/Financial%20Inclusion%20Policy%20-%20An%20Inclusive%20Financial%20Sector%20For%20All.pdf>