



**A LEGAL ANALYSIS OF THE REGULATION OF PYRAMID/ PONZI SCHEMES IN SOUTH AFRICA WITH SPECIFIC FOCUS ON THE FOLLOWING; THE R699 CAR DEAL SCHEME AND THE TRAVEL SCHEME WORLD VENTURES**

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## Declaration

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## Abstract

*“In today's regulatory environment, it's virtually impossible to violate rules ... but it's impossible for a violation to go undetected, certainly not for a considerable period of time.” -Bernie Madoff<sup>1</sup>*

Pyramid and Ponzi schemes are classified as a white-collar crime due to their fraudulent nature and non-application of physical violence. The primary intention of these types of schemes is to extract considerable financial gain from their victims. The promoters behind these types of schemes are intelligent, confident and manipulative. They have a natural ability to allay fears or concerns to gain the trust of potential investors. The schemes which are the topic of this study offer an insight into the measures taken by promoters to ensure that the pyramid or Ponzi scheme appears as a legitimate investment opportunity.

The South African legislature has enacted several pieces of new consumer and financial legislation prohibiting the growth of these types of schemes. These pieces of newly enacted legislation have formed a comprehensive regulatory legislative framework which is aimed at strengthening existing rights, giving effect to new consumer rights and establishing alternative avenues for victims to seek recourse or redress.

The purpose of this study is to determine the effectiveness of the current South African regulatory legislative framework in addressing the dangers posed by pyramid and Ponzi schemes. In order to assess the effectiveness of the current regulatory legislative framework, this study analyses two prominent schemes which have affected many South African consumers. The two schemes which have been selected are the R699 car deal Ponzi scheme and the suspected pyramid scheme, World Ventures. These two schemes are estimated to have entrapped a combined total of over forty-thousand South Africans with their respective undertakings.

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<sup>1</sup> This quote is taken from Mr Madoff's speaking engagement at the Philoctetes Centre for the Multidisciplinary Study of the Imagination in New York City on 20 October 2007. Madoff was a part of a panel called "The Future of the Stock Market"- <http://www.telegraph.co.uk/finance/financetopics/bernard-madoff/5684329/Bernard-Madoff-quotes-down-the-years.html>. Accessed 22 January 2018.

The detailed discussions which are contained in this study highlight the strengths and weaknesses of the current regulatory legislative framework. In addition, the study explores the perspective of the victims and attempts to determine whether or not the established avenues of recourse are as effective as they are portrayed. The study concludes by offering an overall perspective of the current regulatory legislative framework and includes suggestions which may aid the current regulatory legislative framework to be more effective.

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## CHAPTER ONE

### 1.1 Introduction

White collar crime is a term reported to have originated in 1939, and it is applicable to a number of fraudulent activities including pyramid and Ponzi schemes.<sup>2</sup> Pyramid and Ponzi schemes are regarded as a type of white-collar crime because they are characterized by deceit, concealment, and a violation of trust.<sup>3</sup> These types of schemes are not dependent on the application or threat of physical force or violence.<sup>4</sup> The motivation behind these types of schemes is financial- which is to obtain or avoid losing money, property, or services or to secure a personal or business advantage.<sup>5</sup> These are not victimless crimes, and these types of schemes have the potential to cause irreparable harm and financial ruin to families, companies and a country's economy.<sup>6</sup> Tulip Mania,<sup>7</sup> the South Sea Bubble<sup>8</sup> and the Bernie Madoff scheme<sup>9</sup> provide examples of the devastation which occurs when these types of schemes ultimately fail.

Internationally<sup>10</sup> as well as nationally,<sup>11</sup> attempts have been made to regulate and raise awareness of these types of schemes. However, it is not a straightforward process of merely identifying and reporting the activities of pyramid and Ponzi schemes to regulatory authorities. The difficulty presented by these types of schemes lies in the

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<sup>2</sup>The Federal Bureau of Investigations (FBI: <https://www.fbi.gov/investigate/white-collar-crime>- accessed on 23 April 2017.

<sup>3</sup> Ibid. An in-depth analysis of pyramid and Ponzi schemes will be discussed in Chapter two of this study.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Beattie.Andrew. *Market Crashes: The Tulip and Bulb Craze*- <http://www.investopedia.com/features/crashes/crashes2.asp>. Accessed on 30 July 2017.

<sup>8</sup> Colombo. Jesse. *The South Sea Bubble*. May (2012)- <http://www.thebubblebubble.com/south-sea-bubble/>. Accessed 30 July 2017.

<sup>9</sup> Kadlec.Dan. *Millennials Have No Idea Who Bernie Madoff Was*. May (2014)- <http://time.com/105321/bernie-madoff/>. Accessed 30 July 2017.

<sup>10</sup> U.S Security and Exchange Commission Press release. *SEC Shuts Down \$600 Million Online Pyramid and Ponzi Scheme*. August (2012)- <https://www.sec.gov/news/press-release/2012-2012-160htm>. Accessed on 30 July 2017.

<sup>11</sup> Omarjee. Lameez. *SARB warns South Africans of scams*. September 2016.<http://www.fin24.com/Money/Home/sarb-warns-south-africans-of-scams-20160906>- accessed on 30 July 2017.



process of identifying whether an activity constitutes a pyramid or Ponzi scheme. Due to the highly complex nature of such schemes and the great lengths taken by promoters to ensure that these types of schemes appear as a valid investment or business venture, an illusion of legitimacy is created.<sup>12</sup> These types of schemes create the illusion of legitimacy through the use of reputable individuals who offer the impression that they have vested financial interests with the scheme;<sup>13</sup> the offices of those responsible for administering these schemes are lavish in nature;<sup>14</sup> and the founders of the schemes are socially adept at allaying the concerns or fears of potential investors.<sup>15</sup> As a result, the public and regulatory authorities are unable to instantly identify whether the investment or business opportunity presented by a promoter constitutes a pyramid or Ponzi scheme.

Therefore, these types of schemes are only brought to the attention of regulatory authorities when red flags begin to appear,<sup>16</sup> such as complaints by the public who have not received their promised returns, or when auditing practices reveal anomalies within the financial statements. When the relevant regulatory authorities launch investigations into such schemes and act upon the findings of the investigations, it is often too late to recover the monetary contributions made by people, institutions and organizations.

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<sup>12</sup> The R699 Car Deal Scam promoted by the Satinsky Group is an example of a complex Ponzi scheme which utilized the reputability of registered financial services providers to endorse its activities. This is discussed in detail in Chapter four of this study. In addition, refer to footnote 14 for the case study of a former Old Mutual Advisor who lured his community to participate in his Ponzi scheme.

<sup>13</sup> Lewis.K.Mervyn. *Understanding Ponzi Schemes, can better financial regulation prevent investors from being defrauded?* p42. Edward Elgar Publishing. 2016.Celebrities such as Larry King, Steven Spielberg and Kevin Bacon were investors and now subsequent victims in the Bernie Madoff scheme. Some schemes pay certain celebrities an endorsement fee to promote the scheme and encourage the public to invest. World Ventures, which will be discussed in Chapter four of this study, employs the technique of paid celebrity endorsements.

<sup>14</sup> Beattie.Andrew. *Market Crashes: The South Sea Bubble*.

<http://www.investopedia.com/features/crashes/crashes3.asp>- The South Sea Company directors had their headquarters located within a highly affluent area in Britain. Investors took the opulent office furnishings and location as an indicator of wealth and authenticity. Accessed on 30 July 2017.

<sup>15</sup> Dannhauser.Phyllis, & Geldenhuys.Kotie.*Solving it Pyramid of trust betrayed*. November (2016) Servamus Page 34. The small Afrikaans community in the town of Ladybrand in the Free State, were defrauded of millions of Rands by a trusted and well-known individual. Wilhelm Heckroodt was the man responsible for defrauding friends and family, when he encouraged them to invest in his pyramid scheme. Heckroodt was previously a financial advisor at Old Mutual for more than 30 years and many relied on him for financial advice. He had a friendly and charming disposition which allowed him to persuade his former Old Mutual Clients, friends and family to invest in his new “high yield” investment venture.

<sup>16</sup> Lewis.K Mervyn. Edward Elgar Publishing. (2016). p46. (see note 13)

In South Africa, there have been attempts by certain regulatory authorities to curtail the activities of these schemes and protect the public from investing in such schemes.<sup>17</sup> The South African Reserve Bank which is tasked with the supervision of banking institutions, embarked on a national campaign in September of 2016 called “Easy Come, Easy Go” to fight against these types of schemes.<sup>18</sup> The South African Reserve Bank recognized that these types of schemes often target vulnerable members of society. Thus, the campaign sought to inform such members of the public about these types of schemes by providing guidelines which would help the public to identify and avoid a potential scheme.<sup>19</sup>

However, recent online media reports have indicated that pyramid and Ponzi scheme activities are becoming rampant throughout South Africa.<sup>20</sup> The Business Day online newspaper reported that pyramid and Ponzi schemes in South Africa amass millions of Rands in revenue.<sup>21</sup> The R699 car deal<sup>22</sup> and the travel company World Ventures<sup>23</sup> are prominent examples of pyramid, and Ponzi schemes amassing astronomical revenue for their respective promoters.

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<sup>17</sup> Omarjee. Lameez. *SARB warns South Africans of scams*. September 2016. <http://www.fin24.com/Money/Home/sarb-warns-south-africans-of-scams-20160906>- accessed on 30 July 2017.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Arde. Angelique. *Pyramid scams thriving in SA*. February (2016) - <http://www.iol.co.za/personal-finance/pyramid-scams-thriving-in-sa-1980769>. Accessed 30 July 2017.

Preez du. Eugenie. *Ponzi scheme alert as 9 businesses under scrutiny*. September (2015)- <http://www.fin24.com/companies/financial-services/ponzi-scheme-alert-as-9-businesses-under-scrutiny-20150917>.

Maswanganyi. Ntsakisi. *How much are Ponzi and pyramid schemes raking in in SA?*. September (2016)- <https://www.businesslive.co.za/bd/business-and-economy/2016-09-06-how-much-are-ponzi-and-pyramid-schemes-raking-in-in-sa/>. Accessed on 30 July 2017.

<sup>21</sup> Maswanganyi. Ntsakisi. *How much are Ponzi and pyramid schemes raking in in SA?*. September (2016)- <https://www.businesslive.co.za/bd/business-and-economy/2016-09-06-how-much-are-ponzi-and-pyramid-schemes-raking-in-in-sa/>. Accessed on 30 July 2017.

<sup>22</sup> Eybers. Johan. *High life of the R699 kingpin*. 13 July 2014- <https://www.fin24.com/Companies/Advertising/High-life-of-the-R699-kingpin-20140713>. Accessed 28 October 2017. Promoter of the R699 Car deal, Albert Venter used the funds amassed from the scheme to fund his lavish lifestyle. His personal car collection included a Ferrari FF, Porsche Cayenne Turbo S, Maserati Spyder and a Nissan Infiniti SUV.

<sup>23</sup> Duncan. Gareth. *WorldVentures to be declared an illegal pyramid scheme*. 28 January 2016- <http://www.capetownlately.co.za/worldventures-to-be-declared-an-illegal-pyramid-scheme/>. Accessed 20 October 2017. The travel company amassed an estimated R130 million in sign up fees alone.

It is evident that despite the enactment of stringent financial and consumer protection legislation, campaign awareness measures and regulatory authorities actively attempting to curtail the activities of these types of schemes, these schemes continue to progress rapidly.<sup>24</sup> Therefore, it is important to consider the possibility of additional factors which perpetuate the continuation of pyramid and Ponzi schemes in South Africa. A greater understanding of the way in which these types of schemes conduct their activities may lead to an improved approach by regulatory authorities when addressing these types of schemes.

## **1.2 Purpose of study:**

The purpose of this study is to examine whether the current legislation is effective in the regulation and prohibition of the growth of pyramid and Ponzi schemes in South Africa, as well as examining how effective are the victims' rights of recourse and redress by making use of the following illustrative examples: The Satinsky Group (R699 car deal) scheme and the suspected pyramid scheme perpetrated by World Ventures. In addition, this study will examine why the South African public is continually attracted to these types of schemes despite the necessary warning information which is freely available.

## **1.3 Research Questions:**

To achieve the purpose of this study, the following research questions have been identified and will be answered in their respective chapters of this dissertation.

1.3.1 Is the existing legislative framework succeeding or failing in curbing/prohibiting the growth of pyramid and Ponzi schemes within South Africa?

1.3.2 Does the existing legislative framework allow for an effective right of recourse or suitable financial redress for victims of the schemes?

1.3.3 How can the existing legislative framework be improved overall?

1.3.4 What factors influence the ordinary South African to willingly participate in a pyramid or Ponzi scheme despite the availability of financial and consumer protection information?

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<sup>24</sup> Arde, Angelique. *Don't fall for complex scams*. 21 January (2017)- <https://www.iol.co.za/personal-finance/my-money/dont-fall-for-complex-scams-7462528>. Accessed 19 October 2017

#### **1.4 Methodology:**

To address the abovementioned issues a documentary research process will be used. The documentary research process identifies applicable legislation<sup>25</sup>, case law<sup>26</sup>, newspaper articles<sup>27</sup> and legal journal articles which are then discussed and analyzed. This study makes use of a number of newspaper reports which provide a succinct analysis of the schemes mentioned in this study. I am aware that newspaper reports can be sensationalized in order to garner attention, however, it must be remembered that these reports are often the first source of breaking news. Great caution will be exercised when referring to newspaper reports in this study.

#### **1.5 Overview of chapters:**

Chapter two offers a literature review which discusses the views of leading academics and their suggestions regarding the regulation of pyramid and Ponzi schemes. In addition, Chapter two contains an in-depth discussion which details the history, structure and operation of pyramid and Ponzi schemes.

Chapter three contains a detailed analysis of the previous legislative framework as well as the current legislative framework. This chapter provides an insight into whether the repealing of previous legislation was necessary, which pieces of financial and consumer legislation are being utilized effectively or ineffectively, and if the current legislative framework is in need of further reforms.

In Chapter four the victim's perspective, redress and recourse are analysed and discussed. The current legislation will be given a practical perspective as Chapter four details the effects, and consequences of the R699 Car deal scam. Chapter four

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<sup>25</sup> The National Credit Act 34 of 2005; The Financial Intelligence Act 31 of 2001 and the Consumer Protection Act 68 of 2008.

<sup>26</sup> *Bartosch v Standard Bank of South Africa Ltd and Others* [2014] ZAECPEHC 52.

<sup>27</sup> Barry. Hanna. *FSB warns Rise of Pyramid Schemes*. Moneyweb's Personal Finance. June 2015. Page 9. Accessed on 23 April 2017; *R699pm car business falls apart: report*. Business Tech. 3 July 2014. Accessed via <https://businesstech.co.za/news/general/61895/r699pm-car-business-falls-apart-report/>. 23 April 2017; Bronkhorst. Quinton. *R699 cars a Ponzi Scheme: Wesbank*. Business Tech. 8 July 2014. Accessed via <https://businesstech.co.za/news/general/62271/r699-cars-a-ponzi-scheme/>. 23 April 2014.

includes an analysis of the suspected pyramid scheme World Ventures which is currently under investigation. The analysis discusses the possible effects and consequences which may occur, should the company be declared a pyramid scheme.

In the fifth and concluding chapter, the overall successes and failures of the current legislative framework are discussed. What reforms (if any) can be implemented to prevent schemes like the R699 car deal from recurring and the key aspects which contribute to the perpetuation of these types of schemes will be suggested, and my general conclusions regarding the research topic will be presented.

## **2 CHAPTER TWO**

### **Literature Review and historical background**

#### **2.1 Introduction**

Ponzi and pyramid schemes share many similar characteristics: both schemes have the intention of luring unsuspecting members of the public to part with their hard-earned money by promising extraordinary returns on investments.<sup>28</sup> These schemes are self-sustaining provided that the cash outflow can be matched by the monetary inflow.<sup>29</sup>

The in-depth discussion contained below provides a literature review of the topic by leading academics, a brief history of pyramid and Ponzi schemes including illustrations which details the difference, the structure and functioning of these types of schemes.

#### **2.2 Literature Review:**

South Africa is not the only country to experience difficulty in regulating pyramid and Ponzi schemes. Pyramid and Ponzi schemes can permeate any geographical area,

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<sup>28</sup> Investopedia- <http://www.investopedia.com/ask/answers/09/ponzi-vs-pyramid.asp> – accessed on 4 April 2017.

<sup>29</sup> Ibid.

and this results in various regulatory authorities across the world, facing a myriad of problems when addressing these types of schemes. Consequently, there are various literary works by leading academics<sup>30</sup> which offer detailed insight into the functioning of pyramid and Ponzi schemes. The insight offered by such academics includes an overview of infamous pyramid and Ponzi schemes which have been perpetrated; the difficulties experienced by various regulatory authorities when addressing these types of schemes as well as the behavioural, psychological and social factors which have contributed to the growth of pyramid and Ponzi schemes.

Due to the time and word constraints of this study, it is necessary to limit the discussion of the literature. The literary material selected for this study are by Professor Mervyn Lewis<sup>31</sup> who is an international academic, and South African academic Professor Tanya Woker.<sup>32</sup> The review begins with an analysis of Professor Lewis's<sup>33</sup> recent publication and thereafter, Professor Woker's perspective of the regulation of pyramid and Ponzi schemes in South Africa is examined.

Professor Mervyn Lewis is an accomplished academic who has published a variety of books which concern global economic and monetary matters.<sup>34</sup> His most recent publication is a comprehensive analysis focused solely on Ponzi schemes.<sup>35</sup> He

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<sup>30</sup> These include both international and national academics. The works of Tamar Frankel, Mervyn Lewis and Tanya Woker are central to the discussion on pyramid and Ponzi schemes.

<sup>31</sup> University of South Australia: <https://people.unisa.edu.au/Mervyn.Lewis>. Accessed 28 October 2017. Professor Mervyn Lewis is Adjunct Professor at the University of South Australia Business School and was a Professor of Banking and Finance in the School of Commerce. Throughout his long and distinguished career, he has been an active researcher, publishing 24 Tier 1 books, 72 journal articles and 90 book chapters. He has twice been the winner of the Business Division's Senior Research Excellence Award and Professor Lewis's research has embraced a wide range of topics in monetary economics and global finance. He is also recognized as an expert in Islamic finance.

<sup>32</sup> University of KwaZulu-Natal: Law Faculty: <http://law.ukzn.ac.za/School-Staff/Academicstaff/law-staff.aspx>. Accessed 28 October 2017. Professor Tanya Woker is a lecturer in the fields of Consumer Law and Sale, Lease and Credit Agreements at the School of Law. She holds a Bachelor of Arts (BA) degree, Bachelor of Laws (LLB) degree and a Master of Laws (LLM) degree from the University of Natal and a Doctor of Philosophy (PhD) from Rhodes University. Woker is an Advocate of the High Court, South Africa. Woker served as Vice-Chairperson and then Chairperson of the Consumer Affairs Committee (DTI) from 2000 – 2011. She presently serves as Chairperson of the Financial Services Ombud Schemes Council, and as member of the Financial Services Enforcement Committee as well as a member of the National Consumer Tribunal. Her book, *The Franchise Relationship under South African Law* was published in 2012. She is the author of *Advertising Law in South Africa* and a co-author of *Consumer Law in South Africa* and the *Commentary on the Consumer Protection Act*

<sup>33</sup> Lewis, Mervyn. Edward Elgar Publishing. (2016).

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

examines in-depth, eleven Ponzi schemes<sup>36</sup> perpetrated in the United States of America, the United Kingdom, New Zealand and Australia.

In his analysis he seeks to answer the following questions:<sup>37</sup>

- What is a Ponzi scheme?
- How does it differ from a pyramid scheme and other related financial activities;
- What is the attraction to Ponzi schemes;
- Which party is to blame? and
- What are the possible solutions?

Lewis was inspired to research and write about the allure of the Ponzi scheme after his neighbours and friends fell victim to a Ponzi scheme which occurred within their small Australian town.<sup>38</sup> Lewis was simultaneously saddened and stunned when he learned that the perpetrator of the Ponzi scheme was a well-known and trusted member of the town.<sup>39</sup>

Lewis makes a clear distinction between a pyramid scheme and a Ponzi scheme.<sup>40</sup> He describes a pyramid scheme as a “business version of a chain letter”<sup>41</sup> whereas a Ponzi scheme is a type of investment fraud in which returns are paid to investors either by their own money or from the money paid in by new investors to the scheme.<sup>42</sup> Lewis views a Ponzi scheme as being one of the simplest yet one of the most effective financial fraud schemes to engineer. He points out that there is no shortage of new schemes which are regularly introduced into various societies.<sup>43</sup>

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<sup>36</sup> Ibid. p32-118.

<sup>37</sup> Ibid. p3-4.

<sup>38</sup> Ibid. p4-5.

<sup>39</sup> Ibid.

<sup>40</sup> Lewis.K Mervyn. Edward Elgar Publishing. (2016).

<sup>41</sup> Ibid. p19.

<sup>42</sup> Ibid. p6.

<sup>43</sup> Ibid. p1.

After providing a breakdown of the differentiation between pyramid and Ponzi schemes, Lewis delves into the eleven Ponzi schemes he has highlighted as being highly destructive and financially ruinous.<sup>44</sup>

In his analysis of the eleven Ponzi schemes, Lewis identifies the different types of anomalies which should act as red flags. He provides for three categories of anomalies;<sup>45</sup>

- Behavioural - Unusual Patterns of behaviour;
- Statistical - Statistical data that indicates the presence of an irregularity;
- Organizational - business practices which differ from conventional standards.

The three categories mentioned above are an important and helpful guideline which emphasize that in order to effectively protect, regulate and prohibit these types of schemes, a number of factors such the personality traits of the promoter of the pyramid or Ponzi scheme or the psychological devices employed by that promoter to entice investors, requires consideration.<sup>46</sup>

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<sup>44</sup> Ibid. p3-4.

<sup>45</sup> Ibid. p47.

<sup>46</sup> Ibid. The three categories mentioned (behavioural, statistical and organizational) are broad categories which may aid in identifying and categorizing anomalies. Each category mentioned, consists of a number of factors which gives rise to that particular anomaly. For example, in the behavioural category, it consists of studying the behaviour of the perpetrator of the Ponzi scheme. Unusual patterns of behaviour such as living a lavish lifestyle or living beyond one's means may amount to an anomaly. Professor Lewis utilizes the example of Bernie Madoff's spending habits to emphasize that the behaviour of the perpetrator of the Ponzi scheme is one of the many significant factors which requires consideration when addressing a potential Ponzi scheme. Madoff had multiple homes in various parts of the United States of America as well as abroad and his net worth was estimated between \$200 to \$300 million. Immediately this raises concern due to the astronomical wealth accumulated. The second category of statistical anomalies refers to results or numbers which immediately stand out that leads to concern. Utilizing the Madoff scheme, Professor Lewis provides that despite the turbulent nature of the U.S stock exchange, Madoff was consistently able to generate returns on investments. A legitimate investment broker is aware of the uncertainty in the financial markets and this is brought to the attention of the investing party that there is no guarantee on returns. Madoff's investment strategy of achieving consistent returns immediately raises a red flag, therefore, it constitutes a statistical anomaly. The third category of anomalies refers to organizational red flags, where a scheme deviates from the usual business practice or departs from conventional standards. Referring to the Madoff scheme, Madoff was secretive about his trading strategy, refusing to divulge how he achieved such returns. In addition, Madoff throughout the duration of his Ponzi scheme, maintained an air of exclusivity regarding the type of clientele he chose to transact with. If American regulatory authorities had initially paid attention to anyone of these categories of anomalies, Bernie Madoff's scheme would have been identified at a much earlier stage and devastating financial losses which ensued could have been prevented.



The most important Ponzi scheme examined in the book is orchestrated by Mr Bernie Madoff.<sup>47</sup> Lewis describes this scheme as “the mother of all Ponzi Schemes”<sup>48</sup> due to it being the largest and longest running Ponzi scheme in history.<sup>49</sup> The Madoff scheme is a noteworthy example because it illustrates how a Ponzi scheme can deceive both investors and regulatory authorities.<sup>50</sup> Lewis provides conclusive evidence which indicates that if regulatory authorities had noticed the red flags, they would have arrived at the conclusion that a Ponzi scheme was being run and saved all parties involved a lot of money.<sup>51</sup>

Lewis maintains that regulatory authorities need to pay greater attention<sup>52</sup> and act on cases where red flags emerge.<sup>53</sup> One of the important suggestions made by Lewis to aid regulatory authorities when investigating suspected Ponzi schemes would be to enroll in courses or training exercises which are dedicated to the study of human psychology.<sup>54</sup>

Another important aspect covered in Lewis’s book is the role of the victim in Ponzi schemes.<sup>55</sup> The common perception is that victims of Ponzi schemes only have themselves to blame, however, this perception is incorrect.<sup>56</sup> Lewis accurately points out that the role of trust is a key factor when considering why people continue to fall victims to Ponzi schemes.<sup>57</sup> The perpetrators behind these Ponzi schemes inspire trustworthiness by living in lavish accommodation, giving generously to charity and appearing to be selective when choosing clientele. These perpetrators are highly intelligent, manipulative and socially adept when interacting with the public and are

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<sup>47</sup> Lewis.K Mervyn.Edward Elgar Publishing. (2016). p40-59.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Lewis.K Mervyn. Edward Elgar Publishing. (2016). p46-54.

<sup>52</sup> Ibid. p164-167.

<sup>53</sup> Ibid. p50. (see note 13) In May 2003, the U.S Security and Exchange Commission (SEC) in Washington received a tip-off from a hedge Fund manager who was not convinced by Madoff’s returns on investments and lack of options trading.

<sup>54</sup> Ibid. p164.

<sup>55</sup> Ibid. p119.

<sup>56</sup> Ibid.

<sup>57</sup> Lewis.K Mervyn. Edward Elgar Publishing. (2016). p46-48. Bernie Madoff displayed the type of behaviour listed and the Foundation for Humanity which is a charity started by Holocaust survivor Elie Wiesel was a victim of the Madoff scheme.

experts at allaying the fears and concerns of the public about investing in the scheme concerned.

Lewis's book<sup>58</sup> provides that there is no definitive way in which to effectively stop the introduction of new Ponzi schemes. Further, he points out that when regulatory authorities are tasked with the regulation and prohibition of these types of schemes, enactment of additional legislation is not sufficient.

The book<sup>59</sup> provides an understanding of how regulatory authorities and legislation in economically developed countries like the United States of America and Australia regulate the introduction and growth of Ponzi schemes. This is useful when comparing it to the current South African legislative framework and regulatory bodies which are meant to regulate as well as prohibit Ponzi and pyramid schemes. By comparing the various regulatory authorities and legislation to the South African model, it provides an overall perspective about what reforms may be necessary for South Africa's regulatory legislation and bodies to be even more effective.

Historically,<sup>60</sup> South African authorities have had difficulty in regulating pyramid and Ponzi schemes. The presence of high unemployment, poverty, a weakening economy as well as increased inflation are just some of the social and economic factors which continue to play a pivotal role in the continuation of such schemes.

In an academic article written in 2003, Professor Woker expressed this point in her legal analysis of the previously enacted legislative framework.<sup>61</sup> Professor Woker is an accomplished academic and consumer activist.<sup>62</sup> She has extensive knowledge of South African consumer law and the analysis offered, while dated, is relevant for the

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<sup>58</sup> Lewis.K Mervyn. Edward Elgar Publishing. (2016).

<sup>59</sup> Ibid.

<sup>60</sup> 1980 was the first time the South African government had attempted to regulate these types of schemes. Regulation 469 Government Gazette 6880 14 March 1980 was enacted which had imposed conditions on the operation of pyramid and Ponzi schemes.

<sup>61</sup> Woker. TA. If it sounds too good to be true it probably is: Pyramid schemes and other related frauds. 2003 SA Merc LJ 238.

<sup>62</sup>See note 32.

purposes of this study. Woker's published analysis provides the context which caused a discussion of the factors which have influenced the South African legislature to enact several pieces of new consumer protection and financial legislation, in the years which followed Woker's publication <sup>63</sup>

In her analysis, Woker points out that the previous South African regulatory framework was minimal and incomprehensive. The legislative framework at the time consisted primarily of the Consumer Affairs Act<sup>64</sup> which had allowed for the Consumer Affairs Committee to conduct investigations into suspected pyramid, chain-letter or Ponzi schemes. Once the investigation was concluded, the Consumer Affairs Committee made its recommendations to the then Minister of the Department of Trade and Industry for further action.<sup>65</sup>

Woker's article concluded that the Consumer Affairs Act was insufficient when addressing the growth of pyramid and Ponzi scheme activities in South Africa.<sup>66</sup> Despite the broad powers and discretion which the Act had afforded the Committee and the Minister of Trade and Industry, it did not prove to be successful.<sup>67</sup> Some of the factors which contributed towards the ineffectiveness of the legislative framework at the time included the absence of definitive procedural guidelines, a lack of enforcement of the Act's regulations by prosecutorial authorities and a general apathy towards consumer-related matters <sup>68</sup>

Woker suggested that in order for the legislative framework to work effectively, it required consumer organisations, the legislature and the judiciary to work together.<sup>69</sup> She maintained that a concentrated effort by these bodies, empowered with a detailed understanding of how these types of schemes conducted their activities, would be beneficial in addressing pyramid and Ponzi schemes in South Africa.<sup>70</sup>

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<sup>63</sup> Chapter three of this study contains a detailed analysis of the previous legislative framework.

<sup>64</sup> The Consumer Affairs (Unfair Business Practices) Act 71 of 1988. The Consumer Affairs Act replaced the Harmful Business Practices Act 79 of 1988 in 1999.

<sup>65</sup> Woker. TA. (2003).SA Merc LJ 238.

<sup>66</sup> Ibid.

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

## 2.3 Ponzi Schemes:

A Ponzi scheme is defined as a scam where a promoter promises unsuspecting members of the public, that investors will receive a substantial return on their investment.<sup>71</sup> However, there is no real 'investment'.<sup>72</sup> The promoter convinces people to invest their money in the scheme and then uses the money deposited by early investors to pay the first 'dividend' causing investors to feel comfortable and to invest more.<sup>73</sup>

### 2.3.1 The origin of the term “Ponzi”:

The Ponzi scheme is named after the Italian immigrant Charles Ponzi, who made his “fortune” in America.<sup>74</sup> From 1919 to 1920, Charles promised investors that they could obtain significant profits by purchasing international reply coupons<sup>75</sup> from other countries and then have them redeemed in America.<sup>76</sup> To attain a façade of legitimacy, Ponzi created the Securities Exchange Company which was based in Boston.<sup>77</sup> The steady flow of new, eager and financially ignorant investors allowed Ponzi to keep the scheme sustainable because he could pay existing clients their dues

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<sup>71</sup> ASIC- Australian Securities & Investments Commission-  
<https://www.moneysmart.gov.au/scams/investment-scams/ponzi-schemes-> accessed on 4 April 2017.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> Time-

[http://content.time.com/time/specials/packages/article/0,28804,2104982\\_2104983\\_2104997,00.html](http://content.time.com/time/specials/packages/article/0,28804,2104982_2104983_2104997,00.html) – accessed on 4 April 2017.

<sup>75</sup> An international reply coupon is defined as follows: “*The international reply coupon enables customers to pre-pay the postage on a reply from a correspondent abroad. Coupons sent abroad may be exchanged for one or more postage stamps representing the minimum postage to be pre-paid on an airmail letter.*”-

<https://www.postoffice.co.za/products/International/internationalreplycoupons.html>. Accessed 28 October 2017.

<sup>76</sup> Biography: <https://www.biography.com/people/charles-ponzi-20650909>. Accessed 4 April 2017.

<sup>77</sup> Time-

[http://content.time.com/time/specials/packages/article/0,28804,2104982\\_2104983\\_2104997,00.html](http://content.time.com/time/specials/packages/article/0,28804,2104982_2104983_2104997,00.html) – accessed on 4 April 2017.

while making a profit for himself.<sup>78</sup> It has been reported that, on a good day, Ponzi raked in \$250 000 (two-hundred and fifty thousand dollars).<sup>79</sup>

However, all such schemes eventually become unsustainable and so it was in the case of Ponzi. In August of 1920, a newspaper investigated the extraordinary returns made by Ponzi.<sup>80</sup> Their investigation led to various investors trying to remove their monetary contributions. This proved futile as the scheme had collapsed.<sup>81</sup> On 12 August 1920, Charles Ponzi was arrested and charged with 86 counts of fraud.<sup>82</sup> He owed an estimated total of \$7 000 000 (seven million dollars) and subsequently pleaded guilty to the 86 counts of fraud.<sup>83</sup> Ponzi spent 14 years in prison and died a pauper.<sup>84</sup>

### **2.3.2 Example of a Ponzi Scheme operation:<sup>85</sup>**

The table below illustrates how such a scheme can begin with 100 members who each invest R1 000 with a promised return of 30% per month. Every month 100 additional members join the scheme. Each member invests the same amount each month, and members receive their first payment the month after they make their investment. In the second month, there are 200 members and the fund close's with R170 000 after paying dividends of R30 000 to the founding members.<sup>86</sup>The total dividends paid rapidly escalates each month as the membership base increases, until the scheme reaches its seventh month.

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<sup>78</sup> Biography: <https://www.biography.com/people/charles-ponzi-20650909>. Accessed 4 April 2017.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

<sup>85</sup> Example taken from *Mathematical proof Ponzi, pyramid schemes will fail*. 30 May 2016 retrieved from <http://www.fin24.com/Money/Investments/mathematic-proof-ponzi-pyramid-schemes-will-fail-20160530-> Accessed 23 April 2017.

<sup>86</sup> The figures highlighted in green, indicate that the Ponzi scheme is growing exponentially and can meet its financial obligations to its investors.

**Table 1: From hero to zero:<sup>87</sup>**

Month	Investors	Starting fund balance (R'000)	New money (R'000)	Dividends (R'000)	Closing fund balance (R'000)
<u>Inception</u>	100	0	100	-	100
<b>1</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>30</b>	<b>170</b>
<b>2</b>	<b>100</b>	<b>170</b>	<b>100</b>	<b>60</b>	<b>210</b>
<b>3</b>	<b>100</b>	<b>210</b>	<b>100</b>	<b>90</b>	<b>220</b>
<b>4</b>	<b>100</b>	<b>220</b>	<b>100</b>	<b>120</b>	<b>200</b>
<b>5</b>	<b>100</b>	<b>200</b>	<b>100</b>	<b>150</b>	<b>150</b>
<b>6</b>	<b>100</b>	<b>150</b>	<b>100</b>	<b>180</b>	<b>70</b>
<b>7</b>	<b>100</b>	<b>70</b>	<b>100</b>	<b>210</b>	<b>-40</b>

In its seventh month, the scheme begins with R70 000 and receives an additional R100 000 from new investors. However, the scheme must now pay total dividends of R210 000 to its numerous members, leaving it R40 000 short. Thus, instead of R300 each investor only gets R243, and the scheme collapses.<sup>88</sup>

### 2.3.3 Prominent Ponzi Schemes in global history:

<sup>87</sup>Example taken from *Mathematical proof Ponzi, pyramid schemes will fail*.30 May 2016 retrieved from <http://www.fin24.com/Money/Investments/mathematic-proof-ponzi-pyramid-schemes-will-fail-20160530-> Accessed 23 April 2017.

<sup>88</sup> The figures highlighted in red indicates that the scheme has become unsustainable and will collapse.

As mentioned previously, Tulip Mania<sup>89</sup>, the South Sea Bubble<sup>90</sup> and Bernie Madoff<sup>91</sup> are infamous examples of failed Ponzi schemes. Each of the abovenamed Ponzi schemes will be discussed briefly below.

### 2.3.3.1 Tulip Mania:

The Tulip bubble or “Tulip mania”, is considered to be the world’s first recorded financial bubble.<sup>92</sup> It occurred from 1634 to 1637, when the Ottoman Empire introduced the Tulip to the Netherlands.<sup>93</sup>

The Dutch were captivated by the unusual and beautiful flower which had never been seen in Europe before.<sup>94</sup> The appeal of these unique flowers increased after it was discovered that tulips were able to grow within the harsh European climate.<sup>95</sup> Fascination, desirability and a lack of knowledge about the Tulip quickly led to it becoming a coveted luxury item amongst the Dutch, and this created a substantial demand for the exotic flower.<sup>96</sup> The demand created a speculative financial market which saw the Dutch trade in tulip bulbs.<sup>97</sup> Traders who had sold their tulip bulbs for-profit, reinvested the profit on new bulbs or entered into new bulb contracts.<sup>98</sup>

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<sup>89</sup>Beattie.Andrew. *Market Crashes: The Tulip and Bulb Craze*-  
<http://www.investopedia.com/features/crashes/crashes2.asp>. Accessed on 30 July 2017.

<sup>90</sup> Colombo. Jesse. *The South Sea Bubble*. May (2012)- <http://www.thebubblebubble.com/south-sea-bubble/>. Accessed 30 July 2017.

<sup>91</sup> Kadlec.Dan. *Millennials Have No Idea Who Bernie Madoff Was*. May (2014)-  
<http://time.com/105321/bernie-madoff/>. Accessed 30 July 2017.

<sup>92</sup> “Bubble”- The term bubble which is applicable in a financial context, is defined as an event or situation where the price of an asset exceeds its fundamental value by a large margin. During a bubble, prices for a financial asset or asset class are highly inflated, bearing little relation to the intrinsic value of the asset. These bubbles are often called speculative bubbles- <http://www.investopedia.com/articles/stocks/10/5-steps-of-a-bubble.asp>. Accessed 19 August 2017.

<sup>93</sup> Colombo.Jesse. *The Dutch “Tulip Mania”Bubble(aka Tulipmania)*. 15 June 2012.  
<http://www.thebubblebubble.com/tulip-mania/>. Accessed 5 September 2017.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

<sup>98</sup> Beattie.Andrew. *Market Crashes: The Tulip and Bulb Craze*-  
<http://www.investopedia.com/features/crashes/crashes2.asp>. Accessed on 30 July 2017.

However, as with any speculative bubbles, certain sensible individuals decided to sell and realize their profits.<sup>99</sup> This resulted in a domino effect as everyone began selling off their tulip bulb stock instead of buying more.<sup>100</sup> Unsurprisingly, the price of the tulip bulbs lowered substantially, mass panic ensued, and the Tulip bubble popped.<sup>101</sup>

The Dutch government attempted to mediate the disaster by offering to honour contracts at 10% of the face value.<sup>102</sup> However, the market plunged lower, and such restitution became impossible.<sup>103</sup> The popping of the Tulip Bulb Bubble resulted in the country facing a mild economic depression which lasted several years.<sup>104</sup>

### **2.3.3.2 The South Sea Bubble:**

The South Sea Company was a British international trading company founded in 1711.<sup>105</sup> The Company had been granted a monopoly to trade with Spanish colonies in South America and the West Indies.<sup>106</sup> The South Sea Company recognised the potential profits which could be earned by trading with the Spanish colonies, which were rich in gold and silver.<sup>107</sup> Thus, shares were offered by the Company to attract investors.<sup>108</sup> This proved a resounding success and the Company continued to re-issue shares to cope with the high demand.<sup>109</sup>

The phenomenal success of the South Sea Company inspired the growth of similar related joint stock companies.<sup>110</sup> In an attempt to regulate the activity of such

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<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

<sup>102</sup> Colombo.Jesse. The Dutch "Tulip Mania" Bubble(aka Tulipmania). 15 June 2012. <http://www.thebubblebubble.com/tulip-mania/>. Accessed 5 September 2017.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid.

<sup>105</sup> Beattie.Andrew. *Market Crashes: The Tulip and Bulb Craze-* <http://www.investopedia.com/features/crashes/crashes2.asp>. Accessed on 30 July 2017. In 1711, the South Sea Company was founded, and this marked the beginning of the South Sea speculative bubble.

<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

<sup>110</sup> Ibid.



speculative investment companies, the British Parliament passed the Bubble Act.<sup>111</sup> The Act<sup>112</sup> required that all joint stock companies be incorporated and be in possession of a royal charter.<sup>113</sup> The enactment of this piece of legislation caused the price of shares in the South Sea Company to increase dramatically. It provided further evidence to the British public that speculative investments were legitimate ventures in which to invest.<sup>114</sup>

While the price of shares in the South Sea Company skyrocketed, the profits of the company were average despite continued promises of future growth.<sup>115</sup> This led to the realization by the management team that their personal stock did not reflect the actual value of the Company or its poor earnings.<sup>116</sup> The management of the Company began to sell off their stocks in the hope that the public would not uncover the failure of the venture.<sup>117</sup> Unfortunately, the news of the true state of the Company's finances spread like the plague. It caused mass hysteria and the panic which ensued resulted in the selling of worthless share certificates.<sup>118</sup> Thus, Banks and goldsmiths went bankrupt because they were unable to collect loans that they had made to the public.<sup>119</sup>

Outrage on the part of investors led to Parliament launching an investigation, and the resultant parliamentary report revealed the extensive fraud (including corrupted government officials) which had occurred.<sup>120</sup> The identified offenders were imprisoned or impeached. Several measures were implemented to restore confidence, and the

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<sup>111</sup> Ibid. The Bubble Act passed on 11 June 1720.

<sup>112</sup> The Bubble Act of 1720.

<sup>113</sup> Beattie, Andrew. *Market Crashes: The Tulip and Bulb Craze*-  
<http://www.investopedia.com/features/crashes/crashes2.asp>. Accessed on 30 July 2017.

<sup>114</sup> Ibid.

<sup>115</sup> Beattie, Andrew. *Market Crashes: The South Sea Bubble*  
<http://www.investopedia.com/features/crashes/crashes3.asp>. Accessed 5 September 2017.

<sup>116</sup> Beattie, Andrew. *Market Crashes: The Tulip and Bulb Craze*-  
<http://www.investopedia.com/features/crashes/crashes2.asp>. Accessed on 30 July 2017.

<sup>117</sup> Ibid.

<sup>118</sup> Ibid.

<sup>119</sup> Ibid.

<sup>120</sup> Ibid. It is an interesting point to note that Sir Issac Newton was a victim of the South Sea Company scheme. When the scheme failed, he had lost 20 000 pounds worth of Shares he had purchased in the South Sea Company. He later remarked: "*I can calculate the movement of the stars, but not the madness of men*".

estates of the Company directors were confiscated to remunerate South Sea Company investors.<sup>121</sup>

Due to the severity of the failure of the scheme and the consequences which followed, the British government outlawed the issuing of stock certificates.<sup>122</sup> This law was only repealed in 1825, almost 105 years after the crash of the South Sea Company.<sup>123</sup>

### 2.3.3.3 Bernie Madoff:

Bernard (Bernie) Lawrence Madoff is a former investor, financier and stockbroker who executed the largest Ponzi scheme in American history.<sup>124</sup> For 20 years Madoff ran an elaborate \$65 billion scheme with a variety of clients which included charities, universities and celebrities such as Steven Spielberg and Kevin Bacon.<sup>125</sup> Madoff claimed to generate large steady sums of money through an investment strategy named "split-strike conversion", which does legally exist.<sup>126</sup> However, he merely deposited client funds into a simple bank account, which he used to pay clients who wished to cash out.<sup>127</sup>

He continued to attract capital and investors until the 2008 recession hit the American economy.<sup>128</sup> He was unable to maintain the fraudulent scheme and then confessed to his sons (who both worked with Madoff) that the entire operation was a scam.<sup>129</sup> On 11 December 2008, Madoff was reported to the Federal authorities, arrested and charged with securities fraud.<sup>130</sup>

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<sup>121</sup> Ibid.

<sup>122</sup> Ibid.

<sup>123</sup> Beattie. Andrew. *Market Crashes: The South Sea Bubble*  
<http://www.investopedia.com/features/crashes/crashes3.asp>. Accessed 5 September 2017. The South Sea Bubble occurred during the period of the year 1711 to the year 1720.

<sup>124</sup> Investopedia: <http://www.investopedia.com/terms/b/bernard-madoff.asp>. Accessed 21 May 2017.

<sup>125</sup> Biography: <http://www.biography.com/people/bernard-madoff-466366>.  
Time: [http://content.time.com/time/specials/packages/article/0,28804,1894410\\_1893837\\_1894189,00.html](http://content.time.com/time/specials/packages/article/0,28804,1894410_1893837_1894189,00.html).  
Accessed 21 May 2017.

<sup>126</sup> Biography: <http://www.biography.com/people/bernard-madoff-466366>. Accessed 21 May 2017.

<sup>127</sup> Ibid

<sup>128</sup> Ibid.

<sup>129</sup> Ibid.

<sup>130</sup> Ibid.

Madoff reportedly admitted to investigators that he had lost \$50 billion of his investors' money, and on 12 March 2009, he pleaded guilty to 11 felony counts.<sup>131</sup> On 29 June 2009, Madoff was sentenced to 150 years in prison which is the maximum term which can be imposed.<sup>132</sup> Madoff was sent to Butner Federal Correction Complex in North Carolina to serve his sentence, while efforts were made to reimburse investors.<sup>133</sup>

## 2.4 Pyramid Schemes:

As mentioned previously, a pyramid scheme is best described as a business version of a chain letter.<sup>134</sup> In a pyramid scheme, members of the public are encouraged to invest in the scheme by being offered the opportunity to become a member or distributor or promoter of the products offered by the scheme.<sup>135</sup> However, the profits gained by the scheme arise from the recruitment of additional distributorships/memberships as opposed to the selling of a product.<sup>136</sup>

The structure of the pyramid scheme reflects a hierarchy of investors and the profits are allocated according to an investors position within the hierarchy.<sup>137</sup> The higher a particular investor's position within the hierarchy, the more profit earned by that investor.<sup>138</sup> Moving further up the hierarchy requires the recruitment of ever increasing numbers of investors. It does not depend upon the number of sales achieved by a promoter/ distributor/ member of the scheme.<sup>139</sup>

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<sup>131</sup> Ibid.

<sup>132</sup> Ibid.

<sup>133</sup> Ibid.

<sup>134</sup> Lewis.K Mervyn. Edward Elgar Publishing. (2016). p19.

<sup>135</sup> Ibid. p20.

<sup>136</sup> Ibid.

<sup>137</sup> Lewis.K Mervyn. Edward Elgar Publishing. (2016). p19.

<sup>138</sup> Ibid. p20.

<sup>139</sup> Ibid.

Additional recruited members are expected to pay a membership fee and recruit further members for the scheme.<sup>140</sup> This cycle of recruitment will continue until the supply of potential investors/members is exhausted and this ultimately leads to the failure of the pyramid scheme.<sup>141</sup>

Pyramid Schemes are often mistaken or disguised as Multi-Level Marketing Companies. In a legitimate Multi-Level Marketing company (MLM) however, profits are earned through the selling of authentic products to the public and not from the recruitment process.<sup>142</sup>

### 2.4.1 Example of a Pyramid Scheme Hierarchy:

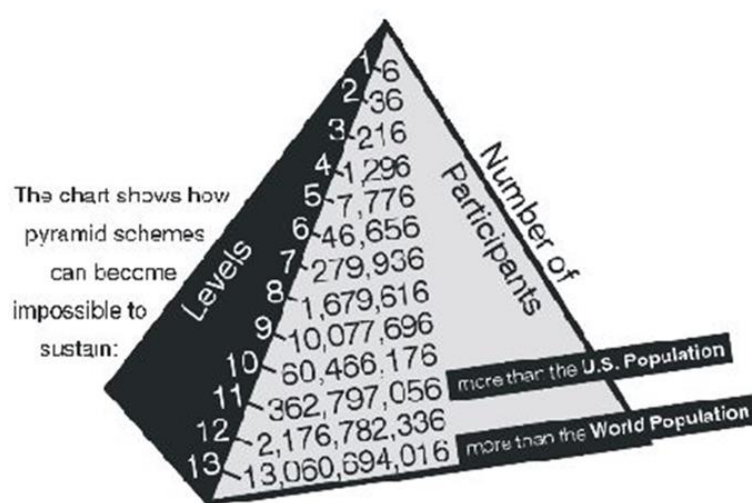


Figure 1.<sup>143</sup>

The above diagram indicates mathematical proof that there is a finite number of individuals who can be recruited before the scheme collapses.<sup>144</sup> The “promoters”

<sup>140</sup> Lewis.K Mervyn. Edward Elgar Publishing. (2016). p19.

<sup>141</sup> Ibid.

<sup>142</sup> Ibid.

<sup>143</sup> Image sourced from the U.S Securities and Exchange Commission- <https://www.sec.gov/fast-answers/answerspyramidhtm.html>-accessed 23 April 2017.

<sup>144</sup> Ibid.

behind a pyramid scheme may go to great lengths to make the program look like a legitimate multi-level marketing program, but despite their claims to have legitimate products or services to sell, these “promoters” simply use money received from recruits to pay off early stage investors.<sup>145</sup> Eventually, the pyramid scheme becomes unsustainable because the promoter cannot raise enough money from new investors to pay earlier investors, and many people across the hierarchy lose their money as the scheme collapses.<sup>146</sup>

## **2.4.2 Examples of recent significant global Pyramid schemes:**

### **2.4.2.1 Fortune Hi-Tech Marketing Inc:**

This was a scheme which was founded in 2001, promoted itself as a Multi-Level Marketing (MLM) company where the average American could gain financial independence by becoming a distributor of their products.<sup>147</sup> The Company sold a wide range of electronic, health, security and beauty products.<sup>148</sup>

Distributors were tasked with the selling of the various products and the recruitment of additional sales representatives.<sup>149</sup> A distributor would move further in the Company’s hierarchy based on the number of sales and additional recruitments.<sup>150</sup>

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<sup>145</sup> Ibid.

<sup>146</sup> Ibid.

<sup>147</sup> Bloomberg- <https://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=6674826>. Accessed 5 September 2017.

Reuters Staff. Fortune Hi-Tech Marketing shut down as pyramid scheme. 28 January 2013- Accessed 5 September 2017.

<sup>148</sup> Reuters Staff. Fortune Hi-Tech Marketing shut down as pyramid scheme. 28 January 2013- Accessed 5 September 2017.

<sup>149</sup> Bloomberg- <https://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=6674826>. Accessed 5 September 2017.

Reuters Staff. Fortune Hi-Tech Marketing shut down as pyramid scheme. 28 January 2013- Accessed 5 September 2017.

<sup>150</sup> Ibid.

However, distributors noticed they earned more from the recruitment of additional salespeople as opposed to the selling of the actual products offered by the Company.<sup>151</sup> This led to the filing of numerous complaints with the relevant regulatory authorities about the Company's suspected pyramid scheme activity.<sup>152</sup>

The Federal Trade Commission acted on these complaints and found that the Company was indeed operating as a pyramid scheme.<sup>153</sup> The Federal Trade Commission subsequently shut down the entire operation, raided the Company's headquarters and confiscated the contents found.<sup>154</sup>

It is estimated that the shutting down of the scheme affected between 100 000 to 300 000 Americans and the Federal Trade Commission has indicated that victims of the pyramid scheme will be entitled to a partial refund.<sup>155</sup>

#### **2.4.2.2 Global Information Network:**

Global Information Network was founded by the controversial Kevin Trudeau<sup>156</sup>, and his scheme was premised on instant wealth and financial freedom.<sup>157</sup> Investors were encouraged to become members of Global Information Network, and their

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<sup>151</sup> Ibid.

<sup>152</sup> Ibid.

<sup>153</sup> Ibid.

<sup>154</sup> Donnell O'. Jayne. *Federal, State regulators shut down Fortune Hi-Tec*. 28 January 2013- <https://www.usatoday.com/story/money/personalfinance/2013/01/28/fhtm-shut-down-pyramid-scheme/1870527/>. Accessed 5 September 2017.

<sup>155</sup> Donnell O'. Jayne. *FTC sends \$3.7 million to victims of pyramid schemes*. 8 November 2016- <https://www.usatoday.com/story/money/business/2016/11/08/ftc-sends-37m-victims-pyramid-scheme/93478038/>. Accessed 5 September 2017.

<sup>156</sup> *Kevin Trudeau jailed for 10 years over weight-loss book claims*. 18 March 2014- <https://www.theguardian.com/world/2014/mar/18/kevin-trudeau-jailed-10-years-swindling>. Accessed 9 September 2017. Kevin Trudeau is an author and salesman who is regarded as a controversial figure due to the numerous fraudulent claims made when advertising certain products on American television. He has swindled a large part of the American population due to his fraudulent claims and has escaped liability for a number of years. In 2014, the American Justice System was finally able to hold Trudeau accountable for his fraudulent behaviour and imprisoned him for ten years.

<sup>157</sup> Janssen.Kim. *After 18 years, TV fraudster Kevin Trudeau's case is over, 'we hope,' judges rule*. 3 January 2017- <http://www.chicagotribune.com/news/chicagoinc/ct-kevin-trudeau-0104-chicago-inc-20170103-story.html>. Accessed 9 September 2017.

membership fee allowed them access to the industry's best financial experts.<sup>158</sup> Trudeau indicated that, together with him and his council of 29 unnamed financial experts, members would be advised on the best possible methods to attain instant wealth.<sup>159</sup> As if to allay any fears or concerns, Trudeau went as far as guaranteeing that members of Global Information Network would become instant millionaires.<sup>160</sup>

Global Information Network soon attracted a number of investors who had easily bought into the millionaire lifestyle dream that Trudeau had sold to them during the fledgling of Global Information Network infomercials.<sup>161</sup> The more investors spent in the scheme, the greater the rewards earned, and a higher status was awarded to top paying investors.<sup>162</sup>

As mentioned previously, Trudeau was a controversial figure because the American Federal Trade Commission had attempted to convict him for his fraudulent claims he had made before the formation of Global Information Network.<sup>163</sup> In one particular case, Trudeau had made fraudulent claims in a health book he authored, and the Federal Trade Commission ruled that he would have to pay a \$37 million fine.<sup>164</sup> However, despite the judgement against him, Trudeau proceeded to begin a new business venture.<sup>165</sup> The new business venture was Global Information Network, and at the time of its inception, Trudeau had failed to pay the Federal Trade Commission.<sup>166</sup>

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<sup>158</sup> Day Andea and Patriarca Valarie. *The 'deceitful' infomercial king and his pyramid scheme: Investigators*. 21 August 2014- <https://www.cnn.com/2014/08/21/deceitful-infomercial-king-kevin-trudeau-and-his-pyramid-scheme-investigators.html>. Accessed 9 September 2017.

<sup>159</sup> Janssen.Kim. *After 18 years, TV fraudster Kevin Trudeau's case is over, 'we hope,' judges rule*. 3 January 2017- <http://www.chicagotribune.com/news/chicago-inc/ct-kevin-trudeau-0104-chicago-inc-20170103-story.html>. Accessed 9 September 2017.

<sup>160</sup> Ibid.

<sup>161</sup> Ibid.

<sup>162</sup> Ibid. - If an investor made it to level 12 of the pyramid scheme, he/she would be entitled to a Ferrari. In order to progress to the next level, more money would be required of investors

<sup>163</sup> *Kevin Trudeau jailed for 10 years over weight-loss book claims*. 18 March 2014- <https://www.theguardian.com/world/2014/mar/18/kevin-trudeau-jailed-10-years-swindling>. Accessed 9 September 2017.

<sup>164</sup> Janssen.Kim. *After 18 years, TV fraudster Kevin Trudeau's case is over, 'we hope,' judges rule*. 3 January 2017- <http://www.chicagotribune.com/news/chicago-inc/ct-kevin-trudeau-0104-chicago-inc-20170103-story.html>. Accessed 9 September 2017.

<sup>165</sup> Ibid.

<sup>166</sup> Ibid.

As a result, the Federal Trade Commission instituted legal action against Trudeau to recover the \$37 million owed and in 2014, the U.S Supreme Court of Appeals, sentenced Trudeau to a decade in prison.<sup>167</sup> Due to his imprisonment, a court-ordered receiver was appointed to take control of all Trudeau's assets including Global Information Network.<sup>168</sup> Trudeau's assets and Global Information Network's remaining assets were auctioned off, with the proceeds allocated to the payment of fines and restitution.<sup>169</sup>

Members of the Global Information Network were informed by Court officials during the liquidation process that the business model which had been touted by Global Information Network amounted to an illegal pyramid scheme and that the so-called Global Information Network council of financial experts did not exist.<sup>170</sup>

Global Information Network was a \$110 million pyramid scheme which was largely for Trudeau's benefit and used in the concealment of millions of dollars in assets from the U.S government.<sup>171</sup> Since Trudeau's imprisonment, there have been no further developments regarding the victims of Global Information Network. However, the Federal Trade Commission has stated that they will continue to investigate the various shell corporations and entities which Trudeau used to hide his millions.<sup>172</sup> Once additional proceeds are identified from Trudeau's entities and recovered, victims will be compensated accordingly.<sup>173</sup>

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<sup>167</sup> Kevin Trudeau jailed for 10 years over weight-loss book claims. 18 March 2014- <https://www.theguardian.com/world/2014/mar/18/kevin-trudeau-jailed-10-years-swindling>. Accessed 9 September 2017.

<sup>168</sup> 13 December 2016. *Pyramid unfolded: Global Information Network (GIN), Kevin Trudeau's \$110 million pyramid scheme*-<https://bankgate.info/pyramid-unfolded-global-information-network-gin-kevin-trudeaus-110-million-pyramid-scheme/>. Accessed 9 September 2017.

<sup>169</sup> Ibid.

<sup>170</sup> Ibid. Unfortunately, the estimated 35000 affected Global Information Network members are not entitled to the restitution recovered from the auction proceeds. The restitutions are only applicable to victims who purchased Trudeau's health book.

<sup>171</sup> Janssen.Kim. *After 18 years, TV fraudster Kevin Trudeau's case is over, 'we hope,' judges rule*. 3 January 2017- <http://www.chicagotribune.com/news/chicago-inc/ct-kevin-trudeau-0104-chicago-inc-20170103-story.html>. Accessed 9 September 2017.

<sup>172</sup> Johnson. Andrew. *Refunds for Kevin Trudeau's victims*. 22 June 2016- <https://www.consumer.ftc.gov/blog/2016/06/refunds-kevin-trudeaus-victims>. Accessed 9 September 2016.

<sup>173</sup> Ibid.



## CHAPTER THREE

### South Africa's Regulatory Legislative Framework

#### 3.1 Introduction :

Before South Africa's democratic dispensation, the Apartheid regime prevented a large section of the population from participating in social, political and economic activities.<sup>174</sup> The Apartheid era saw the White minority population of South Africa exclusively govern and control the social, economic and political activities of everyday life. The exclusive governance and control stemmed from various pieces of strategically enacted legislation which prohibited non-whites from participating in these activities and competing with those classified as white.

The 27th of April 1994 ushered South Africa into a democratic era. The Constitution<sup>175</sup> is the supreme law of the land, and fundamental rights are entrenched in its provisions.<sup>176</sup> The Constitutional provisions allow for the formerly disadvantaged racial groups to participate in the previously denied social, political and economic activities.<sup>177</sup> Arguably the most important of these activities, is participation in the various economic prospects<sup>178</sup> offered in South Africa.

Participation in economic activities such as obtaining credit to purchase property or business ventures plays a crucial role in facilitating the growth of the South African economy. Unfortunately, despite access to such economic opportunities, most consumers remain financially ignorant. Many consumers lack a basic understanding of their consumer rights and responsibilities concerning financial matters. Financial

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<sup>174</sup> Apartheid lasted for 46 years (1948-1994). It officially ended with holding of the first democratic election on 27 April 1994. People had been defined according to their racial group designation. Therefore, people who were classified as Black, Coloured or Indian were not permitted to engage in numerous activities especially economic activities. Access to financial services was limited or non-existent.

<sup>175</sup> The Constitution of the Republic of South Africa Act 108 of 1996. Section 2.

<sup>176</sup> Ibid. Chapter 2- The Bill of Rights: section 7 to Section 39.

<sup>177</sup> Ibid. Section 9- The Right to Equality; Section 19- Political Rights; Section 22-The right to freedom of trade, occupation and skill.

<sup>178</sup> Economic prospects include access to credit; investment opportunities; and developing economic enterprises which contribute towards the growth and success of the economy.

ignorance is a contributing factor to the perpetuation of pyramid and Ponzi schemes in South Africa.

The discussion below will provide an analysis of how the previous pieces of consumer and financial regulatory legislation have transformed into a new legislative framework which strengthens existing rights, gives effect to new consumer rights and promotes financial awareness which encourages consumers to make informed financial decisions.

### **3.2 The prior South African regulatory legislative framework**

Pyramid and Ponzi schemes have historically proven challenging to South African authorities, and attempts were made to regulate these types of schemes.<sup>179</sup> The central piece of legislation which regulated the activities of these schemes was the Harmful Business Practices Act.<sup>180</sup>

The Act<sup>181</sup> established the Business Practices Committee, and the committee was tasked with receiving complaints from the public and other regulatory agencies<sup>182</sup> regarding suspected pyramid or Ponzi scheme activity.<sup>183</sup> Once the Committee concluded an investigation into a suspected pyramid or Ponzi scheme, a detailed report was presented to the Minister of Trade and Industry which contained the Committee's findings and recommendations. If the Minister agreed with the Committee's report, he published an Order in the Government Gazette which declared the pyramid or Ponzi scheme as a harmful business practice.

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<sup>179</sup> Woker. TA. (2003).SA Merc LJ 238. (see note 61). As far back as 1980, the South African government had tried to regulate such schemes, regulation 469 of the Government Gazette had been introduced. Unfortunately, there are no reported decisions which involved these regulations because they were too cumbersome when practically applied.

<sup>180</sup> The Harmful Business Practices Act 71 of 1988.

<sup>181</sup> Ibid. The Business Practices Committee had been established in 1988.

<sup>182</sup> Other regulatory agencies include The South African Reserve Bank;

<sup>183</sup> Woker. TA. (2003).SA Merc LJ 238. (see note 61).

The Act<sup>184</sup> empowered the Committee to conduct both preliminary<sup>185</sup> and formal investigations. Formal investigations were conducted in terms of section 8 of the Act<sup>186</sup> and this section obliged the Committee to publish a notice in the Government Gazette which informed the public of the investigation into a suspected business practice.

Section 8 allowed for two types of investigations to be conducted by the Committee. The first type of investigation conducted was in terms of section 8(1)(a), and it was an investigation into the suspected activities of a specific person or business.<sup>187</sup> The order published by the Minister of Trade and Industry after the conclusion of section 8(1)(a) investigation was binding on the person or business which was the focus of the investigation.<sup>188</sup>

The second type of investigation conducted was in terms of Section 8(1)(b), and it was a general investigation into business practices.<sup>189</sup> The Order issued by the Minister after the conclusion of a Section 8(1)(b) investigation, meant that any person or business which had operated or conducted that type of activity within a particular industry, had committed a harmful business practice which amounted to a criminal offence.<sup>190</sup>

Initially, the Committee preferred to conduct investigations in terms of Section 8(1)(a). However, since the Minister's Order, following a section 8(1)(a) investigation applied only to persons or businesses who were the focus of the investigation, it created a loophole. The loophole allowed for others to set up similar schemes because the regulations published in the Minister's Order did not apply to them. Therefore, no criminal offence had been committed and the subsequent parties escaped liability.<sup>191</sup>

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<sup>184</sup> The Harmful Business Practices Act 71 of 1988.

<sup>185</sup> Ibid. In terms of Section 4(1)(c) of the Act, the Committee could launch a preliminary investigation into a suspected pyramid or Ponzi scheme. An investigation conducted in terms of this section allowed for the Business Practices Committee to determine whether it would pursue a formal investigation in terms of Section 8 of the Act. Notice of section 4(1)(c) investigations are not published in the Government Gazette as opposed to section 8 investigations.

<sup>186</sup> Ibid.

<sup>187</sup> Woker. TA. (2003).SA Merc LJ 238. (see note 61).

<sup>188</sup> Ibid.

<sup>189</sup> The Harmful Business Practices Act 71 of 1988. Section 8.

<sup>190</sup> Ibid.

<sup>191</sup> Woker. TA. (2003).SA Merc LJ 238. (see note 61).

The Committee stopped further section 8(1)(a) investigations into suspected pyramid and Ponzi schemes after the loophole was identified. To address the various requests received from the public and other agencies<sup>192</sup>, concerning alleged pyramid or Ponzi schemes, the Committee embarked on a general investigation in terms of Section 8(1)(b).<sup>193</sup>

The general investigation exposed multiple businesses practices which amounted to pyramid and Ponzi schemes.<sup>194</sup> Therefore, when the Minister of Trade and Industry received the detailed report<sup>195</sup> of the Committee's findings and recommendations, he published an Order<sup>196</sup> which declared all pyramid and Ponzi schemes as harmful business practices.<sup>197</sup> Therefore, it was a criminal offence for any person or any business to have participated in or conducted such schemes.<sup>198</sup>

The main problem with the Harmful Business Practices Act<sup>199</sup> was that it was a catch-all piece of legislation.<sup>200</sup> The one size fits all approach gave the Committee and the Minister of Trade and Industry a great deal of power and discretion. The broad definition of a "harmful business practice" as well as the lack of procedural guidelines and parameters created concern about the constitutionality of the Harmful Business Practices Act<sup>201</sup>. The former Transvaal High Court and the Constitutional Court explored this precise issue in the Janse Van Rensburg case.

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<sup>192</sup>Ibid. The South Reserve Bank, the Financial Services Board and the Office for Serious Economic Offences regularly lodged complaints with the Committee about suspected pyramid and Ponzi schemes operating in South Africa.

<sup>193</sup> Ibid.

<sup>194</sup> Ibid.

<sup>195</sup> Investigation in terms of section 8(1)(b) of the Harmful Business Practices Act, 71 of 1988, into money revolving or pyramid schemes- [https://www.acts.co.za/iframe/consumer-affairs-committee-reports/r76\\_report\\_76\\_business\\_practices\\_committee](https://www.acts.co.za/iframe/consumer-affairs-committee-reports/r76_report_76_business_practices_committee). Accessed 28 October 2017.

<sup>196</sup> GN 1135 GG20169 of 9 June 1999- [https://www.acts.co.za/iframe/consumer-affairs-committee-reports/r76\\_notice\\_1135\\_of\\_1999](https://www.acts.co.za/iframe/consumer-affairs-committee-reports/r76_notice_1135_of_1999). Accessed 28 October 2017.

<sup>197</sup> Woker. TA. (2003).SA Merc LJ 238. (see note 61).

<sup>198</sup> Ibid.

<sup>199</sup> 71 of 1988.

<sup>200</sup> Its provisions and definitions were deliberately of widespread application

<sup>201</sup> 71 of 1988.

Van Rensburg was a trustee of Omega Trust Power Marketing CC an organization which had promoted consumer power through collective bargaining.<sup>202</sup> The Business Practices Committee believed that Omega's business activities constituted a pyramid scheme; therefore, it embarked on a formal investigation in terms of Section 8(1)(a) to confirm that the business activities amounted to a harmful business practice.<sup>203</sup>

When the Committee notified Omega Trust of its intended investigation, Mr Van Rensburg and the Omega Trust launched urgent proceedings in the former Transvaal High Court.<sup>204</sup> They sought an order which declared the Harmful Business Practices Act 71 of 1988 or specific portions of the Act as constitutionally invalid.<sup>205</sup>

Van Dijkhorst J in the High Court considered the application at length and concluded that while the entire Act was not unconstitutional, certain provisions namely, Section 7(3) and Section 8(5)(a) were.<sup>206</sup> The order of the High Court would be valid once the Constitutional Court confirmed it. It is important to note that the decision reached by the High Court occurred in 1998 prior to the amendment of the Harmful Business Practices Act 71 of 1988.

In order to make its provisions more effective, the Harmful Business Practices Act<sup>207</sup> underwent substantial amendments in 1999.<sup>208</sup> In addition to the amendments, the Act<sup>209</sup> and the Business Practices Committee were renamed in the process. The Act<sup>210</sup> became the Consumer Affairs (Unfair Business Practices) Act<sup>211</sup>, and the Committee

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<sup>202</sup> Woker.T. Business practices and the consumer affairs (Harmful Business Practices) Act 71 of 1988. 2001 SA Merc LJ 315.

<sup>203</sup> The investigation had been launched by the Business Practices Committee in terms of the previous Harmful Business Practices Act 71 of 1988. When the matter reached the High Court in 1998, the decision was based on the definitions and provisions of the Harmful Business Practices Act prior to its amendments and renaming which occurred in 1999.

<sup>204</sup> Woker. T. (2001). SA Merc LJ 315.

<sup>205</sup> *Janse Van Rensburg NO v Minister of Trade and Industry* 2001 (1) SA 29 (CC) at Paragraph 7.

<sup>206</sup> Woker. T. (2001). SA Merc LJ 315.

<sup>207</sup> 71 of 1988.

<sup>208</sup> This is important as it affects the Van Rensburg matter when it reached the Constitutional Court.

<sup>209</sup> The Harmful Business Practices Act 71 of 1988.

<sup>210</sup> Ibid.

<sup>211</sup> The Consumer Affairs (Unfair Business Practices) Act 71 of 1988, hereinafter referred to as the Consumer Affairs Act.

became the Consumer Affairs Committee.<sup>212</sup> The amendment process did not affect or alter the role of the Committee or the powers of the Minister of Trade and Industry.<sup>213</sup>

When the matter<sup>214</sup> came before the Constitutional Court in 2001, the Court had to determine if it would uphold the order of invalidity as declared by Van Dijkhorst J.<sup>215</sup> The Constitutional Court examined Section 8 and its related provisions in its entirety before reaching a decision. The Constitutional Court concluded that the decision of the High Court was correct and section 8(5) of the Consumer Affairs (Harmful Business Practices) Act was unconstitutional.<sup>216</sup> The reasoning provided by the Constitutional Court recognized that section 8 (5) conferred a wide discretion of power on the Minister of Trade and Industry, but it failed to specify the manner in which that power ought to be exercised.<sup>217</sup> Section 8(5) did not provide a set of guidelines nor did it suggest any administrative procedure which should be followed by the Minister when he exercised his powers in terms of section 8(5).<sup>218</sup> Thus section 8(5) amounted to an infringement of Section 33 of the South African Constitution, and it could not be justified.<sup>219</sup>

However, while it confirmed that Section 8(5) was unconstitutional, the Constitutional Court acknowledged that it was not in the public interest to simply remove the section in its entirety.<sup>220</sup> If section 8(5) was removed, it would have allowed for those who had been under investigation for unlawful business practices to continue that practice or conceal assets.<sup>221</sup> Therefore, the Constitutional Court provided the Minister of Trade

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<sup>212</sup> Ibid. Section 2(1).

<sup>213</sup> Woker. TA. (2003).SA Merc LJ 238.

<sup>214</sup> *Janse Van Rensburg NO v Minister of Trade and Industry* 2001 (1) SA 29 (CC).

The matter came before the Constitutional Court, three years after the High Court had made the decision regarding the unconstitutionality of Section 7(3) and Section 8(5). During the three- year period, the Harmful Business Practices Act was substantially amended and renamed. Section 7(3) had been altered during the amendment process, therefore, it was unnecessary for the Constitutional Court to consider the section's invalidity.

<sup>215</sup> *Janse Van Rensburg NO v Minister of Trade and Industry* 2001 Para 2. This was an important matter and the Law Review Project joined the Constitutional Court proceedings as an amicus curiae. See Para) 6.

<sup>216</sup> *Janse Van Rensburg NO v Minister of Trade and Industry* 2001. Para 25 and Para 26.

<sup>217</sup> Ibid.

<sup>218</sup> Ibid.

<sup>219</sup> Ibid. Infringement of the right to just administrative action.

<sup>220</sup> *Janse Van Rensburg NO v Minister of Trade and Industry* 2001. Para 29.

<sup>221</sup> Ibid.

and Industry with a set of temporary measures which ensured administrative fairness.<sup>222</sup> After the Constitutional Court decision, the legislature corrected the defects identified by the Court. Therefore, the order of invalidity regarding section 8(5) was no longer applicable.<sup>223</sup>

Section 8(5) was a drastic remedy which empowered the Consumer Affairs Committee and the Minister of Trade and Industry to take urgent action against unscrupulous individuals or businesses. However, the Consumer Affairs Committee preferred to resolve matters through consultation and negotiation.<sup>224</sup> Therefore, to exercise section 8 (5), it required a great deal of thought and the exercise of caution by both the Consumer Affairs Committee and the Minister of Trade and Industry.

As evidenced by the above discussion, the legislative measures enacted to address pyramid and Ponzi schemes in South Africa proved ineffective. The legislative measures which were in place was not necessarily a framework, but a primary piece

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<sup>222</sup> *Janse Van Rensburg NO v Minister of Trade and Industry* 2001. Para 36. The temporary measures had provided that the Minister of Trade and Industry cannot utilize section 8(5) unless the following conditions had been met:

a. *“has a reasonable suspicion that there exists an unfair business practice involving the person under investigation;*

b. *has a reasonable apprehension that without such action the public will be irreparably harmed;*

c. *is satisfied that there is no alternative remedy; and*

d. *is satisfied that, having weighed the foregoing factors, the prospect of harm to the public if the order were not granted outweighs the harm to the interests of the affected person or persons if the order were granted.”* In addition to above conditions, the Constitutional Court had imposed a further obligation on the Minister of Trade and Industry:

*“The Minister may not take action under section 8(5)(a)(ii) unless, in addition to satisfying the conditions stipulated in paragraph 4.1 of this order, he or she also has a reasonable suspicion that the person to be interdicted has or will have the intention to defeat the claims of the public by concealing or dissipating assets.”*

*“At the same time that the notice under either section 8(5)(a) subparagraph (i) or (ii) of the Act is issued, the Minister must furnish any person named in the notice with a written statement containing the facts on which he or she relied to satisfy himself or herself of the factors referred to in paragraphs 4.1 and 4.2 of this order. This statement should also advise the recipient that he or she has the right under section 13(1) of the Act to appeal the action of the Minister to the special court or to take it on review to an appropriate court. The written statement should be furnished at the same time as the notice is given under section 8(5)(a).”*

<sup>223</sup> On 26 September 2001, Parliament had published a notice in the Government Gazette 22701 which had notified the public of the amendments to the Consumer Affairs (Unfair Business Practices) Act 71 of 1988. The Consumer Affairs (Unfair Business Practices) Amendment Act 21 of 2001 had corrected the defects that had been identified in the Constitutional Court (namely the invalidity of section 8(5)). Section 8 (3), 8(5), 8(6) and 8(7) had been deleted and replaced with provisions which had provided definitive parameters of power for the Consumer Affairs Committee and the Minister of Trade and Industry.

<sup>224</sup> Woker. TA. (2003).SA Merc LJ 238.

of legislation which addressed a variety of consumer-related issues.<sup>225</sup> The legislative measures failed to consider the complexities associated with pyramid and Ponzi schemes.

Although the Consumer Affairs Act allowed for drastic measures to be taken by the Consumer Affairs Committee and the Minister of Trade and Industry, it proved to be ineffective especially in the regulation of pyramid and Ponzi schemes.<sup>226</sup> The failure to regulate such schemes can be attributed to the Consumer Affairs Committee being under-resourced and lacking the authority to take investigations further.<sup>227</sup>

Another prominent failure of the Consumer Affairs Act was the lack of provisions which allowed for victim recourse and redress.<sup>228</sup> The Consumer Affairs Act allowed for the Consumer Affairs Committee to advise the Minister of Trade and Industry and once the investigation had concluded, the Committee made its recommendation to the Minister.<sup>229</sup> The Minister acted on the Committee's recommendation and declared a practice as illegal.<sup>230</sup> Unfortunately, while the Order addressed the violation of the Consumer Affairs Act, it failed to address the position of victims of the illegal business practice.

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<sup>225</sup> The Consumer Affairs (Unfair Business Practices) Act 71 of 1988 (previously named the Harmful Business Practices Act). The Consumer Affairs Act together with the Consumer Affairs Committee had been aided by regulatory authorities such as the South African Reserve Bank, the Financial Services Board and the South African Revenue Services. However, these regulatory bodies could not embark on their own investigations nor could they act independently. Their concerns and complaints about suspected pyramid or Ponzi had to be conveyed to the Consumer Affairs Committee for further action. Therefore, the Consumer Affairs Act and the Consumer Affairs Committee had been the primary means to take further action against suspected pyramid and Ponzi scheme activities.

<sup>226</sup> Woker. TA. (2003).SA Merc LJ 238. The Sunday Times had reported on 4 March 2001 on a Ponzi scheme which had been conducted in the Eastern Cape. The newspaper report had alleged that an estimated R500 million had been "invested" and lost by about 900 people.

<sup>227</sup> Once the investigations had been concluded and the Minister of Trade and Industry had issued the Orders, they would be referred to the South African Police Service and the National Prosecuting Authority who were meant to prosecute the identified perpetrators of pyramid and Ponzi schemes. However, due to the high level of violent crimes committed in South Africa, both agencies resources are overburdened. Therefore, perpetrators of pyramid and Ponzi schemes are left unpunished.

<sup>228</sup> Woker. T. *Why the need for consumer protection legislation? A look at some of the reasons behind the promulgation of the National Credit Act and the Consumer Protection Act.* 2010 31(2) Obitar 217.

<sup>229</sup> The Consumer Affairs Act 71 of 1988. Section 8 and Section 12.

<sup>230</sup> Ibid. Section 12.



When victims of these illegal schemes came forward and reported the matter to a member of the South African Police Services, such victims were encouraged to consult with an attorney to pursue the matter further in their private capacity.<sup>231</sup> Violent crimes are rampant in South Africa, and the South African Police Services are overburdened due to the prevalence of such crimes.<sup>232</sup> Therefore, despite pyramid and Ponzi schemes which constituted an offence in terms of an order issued by the Minister of Trade and Industry, the perpetrators of these schemes were left unpunished. In addition, the Consumer Affairs Committee was unapproachable as it lacked the power to order an offending entity to refund or compensate the victims of its unfair business practice.<sup>233</sup> Therefore, victims of these schemes had no other alternative but to seek private legal counsel. Unfortunately, many victims could not seek legal advice because they were left financially ruined and had no other means to recover or mitigate the loss suffered.

The previous legislative framework proved to be ineffective and obsolete. The Consumer Affairs Act despite its “title” did not cater for the average South African consumer who was often financially ignorant of such matters.<sup>234</sup> The Act was an inconsistent piece of legislation which had the intention of regulating many consumer-related issues. What constituted a pyramid or Ponzi scheme had not been adequately defined by the legislature and despite the amendments, the Consumer Affairs Act did not provide substantial guidelines or parameters which would have significantly aided the Committee in pursuing its investigations.<sup>235</sup> In addition, the absence of adequate resources; the disregard for consumer matters, along with the failure to exercise police and prosecutorial authority had primarily contributed to the ineffectiveness of the previous legislative framework.

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<sup>231</sup> Woker.T.(2010). 31(2) Obiters 217.

<sup>232</sup> Ibid.

<sup>233</sup> Ibid.

<sup>234</sup> As discussed above, the consumer’s rights in terms of the Consumer Affairs Act had been severely limited. The Act had failed to address the issues of redress and recourse.

<sup>235</sup> Amendments to the Consumer Affairs Act in 2001 addressed the sections which had been identified as unconstitutional by the Constitutional Court in the Janse Van Rensburg case. Apart from these amendments, the Act largely remained the same. There was no overall guideline or parameters which had been established to aid the Committee and streamline its investigation process

It is evident from the discussion above that South Africa's financial and consumer-related legislative framework was in dire need of serious reformation which would strengthen and give effect to the fundamental rights entrenched within the Bill of Rights and bring South Africa's regulatory framework in line with international standards.

### **3.3 South Africa's current consumer protection and financial legislative framework**

The Financial Intelligence Centre Act,<sup>236</sup> the National Credit Act,<sup>237</sup> and the Consumer Protection Act<sup>238</sup> were enacted by the legislature to create an inclusive consumer and financial legislative framework. The enactment of such legislation aims to provide a comprehensive structure which promotes consumer rights, establishes alternative dispute resolution bodies, encourages business accountability and allows South Africa to participate with international markets. The abovementioned Acts are discussed in chronological order (date in which the Acts became effective) and the discussion will provide insight into how effective these pieces of legislation have been since they have come into effect.

#### **3.3.1 The Financial Intelligence Centre Act:<sup>239</sup>**

The Financial Intelligence Centre Act came into effect on 1 July 2003, and its primary purpose is to combat financial crimes within South Africa.<sup>240</sup> The Act<sup>241</sup> was designed to bring South Africa on par with international legislation, and it seeks to identify the movement or placement of money which has resulted from unlawful activities.<sup>242</sup>

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<sup>236</sup> The Financial Intelligence Centre Act 38 of 2001.

<sup>237</sup> The National Credit Act 34 of 2002.

<sup>238</sup> The Consumer Protection Act 68 of 2008.

<sup>239</sup> The Financial Intelligence Centre Act 38 of 2001.

<sup>240</sup> The Banking Association of South Africa: <http://www.banking.org.za/consumer-information/legislation/financial-intelligence-centre-act>. These financial crimes include money laundering, tax evasion and terrorist financing activities. Accessed on 13 October 2017.

<sup>241</sup> Ibid.

<sup>242</sup> Ibid. South Africa has been a member of the Financial Action Task Force (FATF) since 2003 and the Financial Action Task Force works with financial institutions to combat financial crimes.

The Act<sup>243</sup> established the Financial Intelligence Centre<sup>244</sup> and the Money Laundering Advisory Council.<sup>245</sup> The Financial Intelligence Centre is South Africa's national center for the receipt and analysis of financial data as well as the distribution of financial intelligence to the competent authorities.<sup>246</sup>

The Money Laundering Advisory Council is mandated by the Act<sup>247</sup> to advise the Minister of Finance on the best possible practices or policies which helps identify unlawful activities and combat money laundering.<sup>248</sup> In addition, the Council acts as a forum for the Financial Intelligence Centre, representatives of accountable institutions, organs of state and supervisory bodies to engage with one another.<sup>249</sup>

The Act requires all accountable institutions and reporting institutions which are listed in Schedules one and three of the Act, to inform the Financial Intelligence Centre of their clients.<sup>250</sup> All accountable or reporting institutions are required to register an account with the Financial Intelligence Centre.<sup>251</sup> Accountable and reporting institutions are obligated to file reports on all financial activity as mandated by section 27 the Act.<sup>252</sup> The reports submitted by the listed institutions in Schedule one and three are required to provide the Centre with detailed information relating to all of their clients.<sup>253</sup> The information submitted by accountable and reporting institutions to the Centre includes copies of clients identity documents, banking information and any other information which formed part of the financial transaction. Prior to submitting such information, accountable and reporting institutions must take the appropriate measures to ensure the verification of their clients. The verification procedures

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<sup>243</sup> The Financial Intelligence Centre Act 38 of 2001.

<sup>244</sup> The Financial Intelligence Centre Act 38 of 2001. Sections 2 (Establishment).

<sup>245</sup> The Financial Intelligence Centre Act 38 of 2001. Section 17 (Establishment)

<sup>246</sup> The Financial Intelligence Centre: About us: <https://www.fic.gov.za/aboutus/Pages/WhoWeAre.aspx>. Competent authorities include but are not limited to the South African Police Services (SAPS); the South African Revenue Services (SARS) and various international agencies. Accessed on 15 October 2017.

<sup>247</sup> The Financial Intelligence Centre Act 38 of 2001. Section 18 (Function).

<sup>248</sup> Ibid. Section 18(1).

<sup>249</sup> Ibid. Section 18(1)(c).

<sup>250</sup> The Financial Intelligence Centre Act. Section 27.

<sup>251</sup> The Financial Intelligence Centre: <https://www.fic.gov.za/Resources/Pages/WhoMustRegister.aspx>.

<sup>252</sup> The Financial Intelligence Centre Act 38 of 2001. Section 27 - Accountable institutions to advise Centre of clients.

<sup>253</sup> The Financial Intelligence Centre: Frequently asked Questions: <https://www.fic.gov.za/Pages/FAQ.aspx?p=3>.

implemented by these institutions at the point of transacting, ensures that the information reported to the Financial Intelligence Centre is accurate.

Section 28 and section 29 of the Act are of great significance because these provisions provide that all accountable and reporting institutions must report their business activity to the Financial Intelligence Centre.<sup>254</sup> The mandate imposed by Section 28 and Section 29 encourages accountability and transparency among the financial and consumer-related institutions in South Africa.

When a client of an accountable or reporting institution conducts a single cash transaction<sup>255</sup> which exceeds the prescribed limit<sup>256</sup> as provided for in Section 28, that institution must within two business days report that transaction to the Financial Intelligence Centre.<sup>257</sup> Failure to adhere to the requirements mandated by Section 28 is a criminal offence which carries a punishment of 15 years imprisonment (maximum) or a fine which does not exceed R100 000 000.

Apart from the institutions listed in Schedules one and three, the Financial Intelligence Centre requires businesses to submit client information to the Centre.<sup>258</sup> Section 29 of the Financial Intelligence Centre Act obliges businesses to report suspicious or unusual transactions which may amount to unlawful activity.<sup>259</sup>

The Act and its regulations<sup>260</sup> do not define a suspected or unusual transaction; therefore, the Financial Intelligence Centre published a downloadable guidance note<sup>261</sup> which helps businesses identify a section 29 transaction. The guidance note

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<sup>254</sup> The Financial Intelligence Centre Act 38 of 2001. Section 27 (see note 252).

<sup>255</sup> The Financial Intelligence Centre: Frequently asked Questions

Means all transactions involving domestic and foreign notes and coins and includes travellers' cheques-  
<https://www.fic.gov.za/Pages/FAQ.aspx?p=5>. Accessed 15 October 2017.

<sup>256</sup> The Financial Intelligence Centre: Frequently asked Questions The prescribed limit is R25000-  
<https://www.fic.gov.za/Pages/FAQ.aspx?p=5>. Accessed 15 October 2017.

<sup>257</sup> The Financial Intelligence Centre: Frequently asked Questions:  
<https://www.fic.gov.za/Pages/FAQ.aspx?p=5>. Accessed 15 October 2017.

<sup>258</sup> The Financial Intelligence Centre Act 38 of 2001. Section 29(Suspicious and unusual transactions).

<sup>259</sup> Ibid. Section 29(1)(a)-(c).

<sup>260</sup> Regulations in terms of the Financial Intelligence Act 38 of 2001. Published on 20 November 2002.

<sup>261</sup> Government Gazette no 30873 on 14 March 2008.

provides that a suspicious transaction will often be one where the transaction raises questions or gives rise to discomfort, apprehension or mistrust.<sup>262</sup>

To determine if a transaction is suspicious or unusual, one must have regard to the context of the situation, considering the standard business practices of that particular industry.<sup>263</sup> A transaction may contain several factors which may appear insignificant when viewed individually, however, when observed as a whole, it may lead to suspicion; therefore, context is the defining factor in such a transaction.<sup>264</sup>

The suspicious transaction report is a detailed document which is intended to extract as much information as possible so that the Centre can make an accurate assessment.<sup>265</sup> This assessment will enable the Centre to make an informed decision regarding the transaction, and it will determine if further action is required.<sup>266</sup>

Reports of suspicious or unusual transactions have proven to be a helpful tool in regulating pyramid and Ponzi schemes in South Africa.<sup>267</sup> For example, on 19 December 2016, the Centre had published a case study, which saw the Financial Intelligence Centre uncover a Ponzi scheme.<sup>268</sup> The Financial Intelligence Centre

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<sup>262</sup> The Financial Intelligence Centre: Frequently asked Questions: What constitute a suspicion?  
<https://www.fic.gov.za/Pages/FAQ.aspx?p=3>. Accessed 16 October 2017.

<sup>263</sup> Ibid. If a business owner views a transaction as suspicious, the business owner must consider if the transaction deviates from the standard practices of that business industry. For example, if a customer insists on paying for his or her clothing items with an unmarked cheque, that transaction may amount to a Section 29 transaction. Due to the advancement in technology and the safety associated with digital banking many consumers prefer to make payments with their debit or credit cards. Cheques are fast becoming obsolete banking instruments, therefore in the example given, the transaction deviates from the norm and can be considered a Section 29 transaction.

<sup>264</sup> Ibid.

<sup>265</sup> Financial Intelligence Centre-User Guide to submit suspicious and unusual transaction reports on the registration and reporting platform of the Financial Intelligence Centre.  
[https://www.fic.gov.za/Documents/171002\\_%20FIC%20userguide\\_uploading%20of%20a%20STR.PDF](https://www.fic.gov.za/Documents/171002_%20FIC%20userguide_uploading%20of%20a%20STR.PDF). Accessed on 16 October 2017.

<sup>266</sup> The Financial Intelligence Centre may consult with other South African regulatory authorities regarding a suspicious transaction report. The Centre and the relevant authorities will determine what additional steps need to be taken in order to effectively address the matter.

<sup>267</sup> The case studies published by the Financial Intelligence Centre which are used in this discussion omit the identities of the parties who are involved in these types of schemes.  
<https://www.fic.gov.za/CaseStudies/Case%20Studies/Foreign%20exchange%20ponzi%20scheme.pdf>

<sup>268</sup> Case Study: Foreign Exchange Ponzi Scheme. 19 December 2016.  
<https://www.fic.gov.za/CaseStudies/Case%20Studies/Foreign%20exchange%20ponzi%20scheme.pdf>. Accessed 16 October 2017.

used suspicious and unusual transaction reports<sup>269</sup> to identify a forex trader scheme which had promised average returns of 48% per year on small investments and 84% on big investments.<sup>270</sup> The Promoter of the Forex trader scheme had used large sums of investors' funds to purchase luxury vehicles, property and partake in extravagant shopping sprees.<sup>271</sup> Due to the nature and value of the various transactions entered into by the promoter of the Ponzi scheme, it required the submission of reports to the Financial Intelligence Centre.<sup>272</sup> The Centre shared its analysis of the section 29 reports with other supervisory bodies and law enforcement authorities, which led to the blocking of all the accounts held by the Forex trader scheme.<sup>273</sup> The accounts blocked amounted to R87 million, and the Asset Forfeiture Unit<sup>274</sup> had successfully obtained a preservation order which blocked property and funds to the value of R12 million.<sup>275</sup>

The Financial Intelligence Centre Act<sup>276</sup> and the Financial Intelligence Centre<sup>277</sup> have proven to be useful tools in addressing the regulation of pyramid and Ponzi schemes in South Africa. It is evident that it is a marked departure from the previous legislative framework because the Act and the Centre have proven to work cohesively with other regulatory authorities to combat these types of schemes.

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<sup>269</sup> Section 29 Reports.

<sup>270</sup> Case Study: Foreign Exchange Ponzi Scheme. 19 December 2016.

<https://www.fic.gov.za/CaseStudies/Case%20Studies/Foreign%20exchange%20ponzi%20scheme.pdf>. Accessed 16 October 2017. Ponzi schemes offer higher than normal returns on investments. The public are encouraged to invest in the elaborately described investment opportunity, however, there is no real investment. The promoter of the scheme utilises the money from new investors to pay out existing investors (a simple case of borrowing from Peter to pay Paul and Molly). This vicious cycle continues until the scheme runs out of new investors and is unable to meet its financial obligations to existing investors due to the lack of income. As a result, the scheme collapses, and investors are left financially ruined. Refer to Page 13 for a detailed explanation of a Ponzi scheme operation.

<sup>271</sup> Ibid.

<sup>272</sup> Ibid.

<sup>273</sup> Ibid.

<sup>274</sup> The Asset Forfeiture Unit was established in May 1999 in the office of the National Director of Public Prosecution. Its focus is to implement Chapters 5 and 6 of the Prevention of Organised Crime Act 121 of 1998 and to ensure that the seizure of criminal asset would be used to their maximum effect in the fight against crime. <https://www.npa.gov.za/node/13>. Accessed on 16 October 2017.

<sup>275</sup> Case Study: Foreign Exchange Ponzi Scheme. 19 December 2016.

<https://www.fic.gov.za/CaseStudies/Case%20Studies/Foreign%20exchange%20ponzi%20scheme.pdf>. Accessed 16 October 2017.

<sup>276</sup> 38 of 2001.

<sup>277</sup> The Financial Intelligence Centre Act 38 of 2001. Section 2.

However, as South Africa is a member of an international body called the Financial Action Task Force, the overall approach advocated by the Financial Intelligence Centre Act 38 of 2001 to deal with financial crimes did not meet the Financial Action Task Force standards.<sup>278</sup> Therefore, the Financial Action Task Force provided the South African government with a deadline, to ensure the legislature enacted adequate amendments. The amendments would then bring the Financial Intelligence Act 38 of 2001 on par with international standards.<sup>279</sup> After a prolonged delay, former President Jacob Zuma finally signed the Financial Intelligence Centre Amendment Act<sup>280</sup> at the end of April 2017.<sup>281</sup> The amendments to the Act allow for a greater scope of scrutiny and allow for easier reporting of individuals or transactions which relate to money laundering.<sup>282</sup> In addition, the amendments allow for the Financial Intelligence Centre to play a more significant role as a regulator.<sup>283</sup>

The amendments have strengthened the existing financial and consumer legislative framework. The amendments increase the level of scrutiny about the verification of sources of wealth which makes it much more difficult for pyramid and Ponzi schemes to operate within South Africa.<sup>284</sup> Accountable and reporting institutions, as well as businesses, require stringent risk and compliance policies which enables them to comply with the new amendments. Therefore, these entities are likely to increase their due diligence processes which are in line with their new internal compliance policies. These measures are intended to facilitate transparency and accountability of that institution which is one of the primary objectives of the Financial Intelligence Centre Act.<sup>285</sup>

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<sup>278</sup> Thompson. Warren. *New Fica bill finds its teeth*. 3 May 2017. Moneyweb-  
<https://www.moneyweb.co.za/news/industry/new-fica-bill-finds-its-teeth/>. Accessed 16 October 2017.

<sup>279</sup> Bloomber. Hill Matthew. *Zuma signs Fica into law*. 29 April 2017. Money web-  
<https://www.moneyweb.co.za/news/south-africa/zuma-signs-fica-into-law/>. Accessed 16 October 2017.

<sup>280</sup> The Financial Intelligence Centre Amendment Act 1 of 2017.

<sup>281</sup> Thompson. Warren. *New Fica bill finds its teeth*. 3 May 2017. Moneyweb-  
<https://www.moneyweb.co.za/news/industry/new-fica-bill-finds-its-teeth/>. Accessed 16 October 2017.

<sup>282</sup> Bloomber. Hill Matthew. *Zuma signs Fica into law*. 29 April 2017. Money web-  
<https://www.moneyweb.co.za/news/south-africa/zuma-signs-fica-into-law/>. Accessed 16 October 2017.

<sup>283</sup> Ibid.

<sup>284</sup> Ibid.

<sup>285</sup> Ibid.

The Financial Intelligence Centre Act 38 of 2001 and the new amendments, are viewed as a positive measure in combatting financial crimes. The activities of pyramid and Ponzi schemes will not disappear; however, these types of schemes will have greater difficulty in transacting due to the amendments. The increased level of scrutiny as well as due diligence processes implemented by accountable and reporting institutions places these types of schemes in a precarious position. The implementation of stringent due diligent processes is highly encouraged as it would allow for these types of schemes to be identified at an earlier stage and it will enable the relevant authorities to take immediate action, which helps minimize loss.<sup>286</sup>

### **3.3.2 The National Credit Act:<sup>287</sup>**

The National Credit Act<sup>288</sup> is a new piece of consumer legislation which has allowed for improved access to credit and the creation of an affordable credit market for South African consumers.<sup>289</sup>

The National Credit Act does not address the regulation of pyramid or Ponzi schemes, however for the purposes of this study, it is necessary to include this piece of legislation in the ensuing discussion. The Satinsky Group R699 Car Deal scam is the focus of this study and the resultant victims of the scam had agreements which fell within the ambit of the National Credit Act<sup>290</sup>. Therefore, it is necessary to analyze the terminology, mechanisms and institutions established by the National Credit Act 34 of 2005. The discussion of the Satinsky Group R699 Car deal scam contained in Chapter four of this study will frequently refer to the terms, mechanisms and institutions created by the Act<sup>291</sup>.

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<sup>286</sup> The Financial Intelligence Centre must pay attention to any red flags which appear in the reports submitted and this will help identify the presence of any pyramid or Ponzi scheme related activities.

<sup>287</sup> The National Credit Act 34 of 2005.

<sup>288</sup> Ibid

<sup>289</sup> The Banking Association of South Africa: <http://www.banking.org.za/consumer-information/legislation/national-credit-act>. Accessed 17 October 2017.

<sup>290</sup> The National Credit Act 34 of 2005.

<sup>291</sup> Ibid.



The consumer rights protected by the Act represent a significant shift in the relationship between the consumer and a credit provider. Previously, the consumer was in an unequal bargaining position; the credit provider held power, and in the event of a dispute, the credit provider could seek legal action to enforce the credit agreement because of the *pacta sunt servanda*<sup>292</sup> principle. The National Credit Act acknowledges the imbalance of power and attempts to correct it by requiring all credit providers to comply with the strict requirements contained in the Act.

For the protection of consumer rights, the Act contains several distinct sections which require strict compliance from credit providers.<sup>293</sup> The following sections are some of the critical features of the National Credit Act which credit providers are obliged to consider when transacting with consumers;

- Reckless credit:<sup>294</sup> credit providers are required to conduct a thorough assessment of a consumer's ability to meet their obligations in a timely manner and have regard to a consumer's existing financial status.<sup>295</sup> The evaluation requires credit providers to take reasonable steps to ensure that the consumer understands and appreciates the extent of the risk, costs, and obligations as contained in the credit agreement.<sup>296</sup> If a credit provider fails to conduct a proper assessment or if a consumer enters into a credit agreement without understanding the risks, obligations, and costs or is unable to afford the required repayments, such a credit agreement is deemed to have been recklessly<sup>297</sup> entered into.<sup>298</sup>

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<sup>292</sup> The term *pacta sunt servanda* is a Latin term which means that agreements entered into must be upheld- <https://definitions.uslegal.com/p/pacta-sunt-servanda/>. Accessed 17 October 2017.

<sup>293</sup> Mercantile Bank: [https://www.mercantile.co.za/Stakeholder\\_Relations/Pages/National-Credit-Act-.aspx](https://www.mercantile.co.za/Stakeholder_Relations/Pages/National-Credit-Act-.aspx). Accessed 17 October 2017.

<sup>294</sup> The National Credit Act 34 of 2005. Sections 78 to sections 88.

<sup>295</sup> Mercantile Bank: <https://www.mercantile.co.za/National-Credit-Act> (see note 293).

<sup>296</sup> Ibid. Reasonable steps would include providing the consumer with a copy of the agreement to peruse prior to signing the agreement or requiring the consumer to sign certain sections of the agreement stating that their signature constitutes an understanding of the credit agreement.

<sup>297</sup> The National Credit Act 34 of 2005. Section 80(1)-Reckless Credit.

<sup>298</sup> Mercantile Bank: <https://www.mercantile.co.za/National-Credit-Act> (see note 293).

• Over-Indebtedness:<sup>299</sup> one of the purposes of the National Credit Act is to promote the responsible use and granting of credit.<sup>300</sup> Therefore, credit providers are obliged to ensure that the consumer is not over-indebted<sup>301</sup> at the point of transacting. A consumer is considered to be over-indebted when after deducting living expenses from his or her total income, that consumer is unable for the foreseeable future to repay his/her debts.<sup>302</sup> If the consumer is unable to meet his/her obligations under the credit agreement, it may allege that the credit provider had recklessly granted credit, and this carries severe consequences for the credit provider.<sup>303</sup>

• Debt Counselling:<sup>304</sup> One of the central mechanisms introduced by the Act to protect Consumers from over-indebtedness is the process of debt counselling. A consumer is allowed under the Act to apply for financial management and debt counselling assistance if he or she is unable to meet their debt repayments.<sup>305</sup> Debt counselling provides for an over-indebted consumer to approach a debt counsellor<sup>306</sup> who will help the consumer restructure or re-arrange their debt repayments and this process may be instituted voluntarily<sup>307</sup> or with a court order.<sup>308</sup>

The Act established two new regulatory institutions, the National Credit Regulator<sup>309</sup> and the National Consumer Tribunal,<sup>310</sup> to administer its comprehensive provisions. The National Credit Regulator is a juristic entity who is tasked with the regulation of the South African credit industry and ensures that credit providers comply with the

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<sup>299</sup>The National Credit Act 34 of 2005. Section 79- Over Indebtedness

<sup>300</sup> Mercantile Bank: <https://www.mercantile.co.za/National-Credit-Act> (see note 293).

<sup>301</sup> The National Credit Act 34 of 2005. Section 79.

<sup>302</sup> Mercantile Bank: <https://www.mercantile.co.za/National-Credit-Act> (see note 293).

<sup>303</sup> Ibid. Reckless Credit and over indebtedness are important sections in respect of this dissertation. Victims of the Satinsky Group R699 car deal scheme had agreements which fell under the National Credit Act 34 of 2005. Section 80 (reckless credit) was the provision relied upon in the R699 Car deal case of *Bartosch v Standard Bank of South Africa Ltd and Others* [2014] ZAECPHC 52. This will be discussed in further detail in Chapter four.

<sup>304</sup>The National Credit Act 34 of 2005. Sections 86-88.

<sup>305</sup>The National Credit Act 34 of 2005. Section 86- Application for debt review.

<sup>306</sup> The National Credit Act 34 of 2005. Section 44- Registration of debt counsellors.

The Debt Counsellor is required to register with National Credit Provider (NCR) as a debt counsellor and meet the educational, competency and experience requirements as prescribed by the Regulator.

<sup>307</sup> The National Credit Act 34 of 2005. Section 86(1).

<sup>308</sup> The National Credit Act 34 of 2005. Section 87- Magistrate's Court may re-arrange consumer's obligation.

<sup>309</sup> The National Credit Act 34 of 2005. Section 12 – Establishment of National Credit Regulator

<sup>310</sup> The National Credit Act 34 of 2005. Section 26- Establishment and constitution of Tribunal.

provisions of the Act.<sup>311</sup> In addition, the National Credit Regulator deals with issues relating to research and policy development, registration of credit industry participants<sup>312</sup>, and the investigation and evaluation of consumer complaints.<sup>313</sup>

The National Consumer Tribunal is also a juristic entity<sup>314</sup> who is mandated by the National Credit Act to hear and adjudicate on applications made by consumers, credit providers, credit bureaus and debt counsellors regarding the Act.<sup>315</sup> In addition, the National Consumer Tribunal may also hear and adjudicate on matters in terms of the Consumer Protection Act; applications for interim relief; review the National Credit Regulator's and the National Consumer Commission's decisions; review of matters which have been referred by the Regulator; address complaints which contain allegations of prohibited conduct; and consent orders.<sup>316</sup>

The National Consumer Tribunal is of equal status to a South African High Court, which makes its decision binding. If a party is unhappy with a decision reached by the Tribunal, that decision may be appealed or reviewed by a High Court.<sup>317</sup>

The National Credit Act is considered the first piece of legislation which aims to give effect to consumer rights. The previous legislative framework as mentioned above, had a one size fits all approach which failed to address the various issues which faced South African consumers and did not provide an avenue for consumer recourse or redress.

The National Credit Act<sup>318</sup> has proven to be an invaluable addition to the South African financial and consumer legislative framework. The National Credit Regulator and the National Consumer Tribunal have been useful in regulating the credit industry and establishing avenues for victim recourse and redress.

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<sup>311</sup> Mercantile Bank: <https://www.mercantile.co.za/National-Credit-Act> (see note 293).

<sup>312</sup> Ibid.

<sup>313</sup> Ibid.

<sup>314</sup> The National Credit Act 34 of 2005. Section 12(1)(b).

<sup>315</sup> Mercantile Bank: <https://www.mercantile.co.za/National-Credit-Act> (see note 293).

<sup>316</sup> Ibid.

<sup>317</sup> The National Credit Act 34 of 2005. Section 152 (1)(a)-(f).

<sup>318</sup> Ibid.

### 3.3.3 The Consumer Protection Act:<sup>319</sup>

Before the enactment of the National Credit Act,<sup>320</sup> consumer matters remained unregulated due to the previous legislative framework. South African consumers lacked basic consumer rights, limited dispute resolution platforms and were subject to exploitation by unscrupulous goods and services suppliers.<sup>321</sup>

The Consumer Protection Act 68 of 2008 had been a highly anticipated piece of legislation for South African consumers following the introduction of the National Credit Act 34 of 2005. The Consumer Protection Act was enacted on 24 April 2009, it became effective on 1 April 2011, and it replaced the inadequate Consumer Affairs (Unfair Business Practices) Act 71 of 1988.<sup>322</sup>

The Consumer Protection Act is a highly comprehensive piece of legislation which contains substantial consumer protection measures.<sup>323</sup> The Act creates a standard legal framework which encourages fairness, accessibility and efficiency between the consumer and the supplier.<sup>324</sup> It creates a platform to address consumer grievances; it promotes responsible consumer behaviour; it protects consumers from unfair business practices, and it provides avenues for disgruntled consumers to seek effective recourse and redress.<sup>325</sup>

Aside from addressing a variety of consumer issues<sup>326</sup> the Consumer Protection Act is the primary piece of legislation which contains specific provisions which prohibit

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<sup>319</sup> The Consumer Protection Act 68 of 2008.

<sup>320</sup> The National Credit Act 34 of 2005.

<sup>321</sup> The Banking Association- <http://www.banking.org.za/consumer-information/legislation/consumer-protection-act>. Accessed 17 October 2017.

<sup>322</sup> Ibid.

<sup>323</sup> Ibid.

<sup>324</sup> Ibid.

<sup>325</sup> Ibid.

<sup>326</sup> The Consumer Protection Act 68 of 2008.

It covers a range of consumer issues from marketing, contractual terms, defective good or services; to warranties of goods. There are specific provisions which details the consumer issue addressed in that provision.

pyramid and Ponzi scheme activities in South Africa.<sup>327</sup> The specific provisions are a marked departure from the previously enacted Consumer Affairs Act<sup>328</sup> which had a one size fits all approach when addressing these types of schemes. The Consumer Affairs Act<sup>329</sup> failed to appreciate the subtle distinctions associated with pyramid and Ponzi schemes.

Section 43 is a significant provision of the Consumer Protection Act as it specifically addresses pyramid and Ponzi scheme activities.<sup>330</sup> The South African legislature utilized the information contained in the previous investigative reports on pyramid and Ponzi schemes by the Consumer Affairs Committee to create Section 43.<sup>331</sup>

Section 43 begins by providing a set of definitions which pertains to these types of schemes, and it further provides a clear distinction between a pyramid scheme,<sup>332</sup> multiplication schemes<sup>333</sup> and chain letters.<sup>334</sup> The terminology and definitions contained within section 43 creates a parameter which specifies when the section becomes applicable.

Section 43(1) provides that the term consideration has the same meaning as provided for in Section 1 of the Act, however, in terms this section, the following exclusions apply to the definition of consideration:<sup>335</sup>

*“(i) the purchase of any goods at cost to be used in making sales, or not for resale; (ii) the purchase of any goods in exchange for which the seller of those goods offers to repurchase the participant’s products under reasonable commercial terms; or (iii) the participant’s time and effort in pursuit of sales or recruiting activities”;*

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<sup>327</sup> Ibid. Section 42- Fraudulent Schemes and offers and Section 43- Pyramid and related schemes.

<sup>328</sup> The Consumer Affairs Act 71 of 1988.

<sup>329</sup> Ibid.

<sup>330</sup> The Consumer Protection Act 68 of 2008. Section 43- Pyramid and related schemes. Related schemes include Ponzi schemes and chain letters.

<sup>331</sup> Naudé, T et al. Commentary on the Consumer Protection Act. 2015. Juta. Section 43- Pyramid and related schemes discussion.

<sup>332</sup> The Consumer Protection Act 68 of 2008. Section 43(4).

<sup>333</sup> The Consumer Protection Act 68 of 2008. Section 43(3). Multiplication schemes are also referred to as Ponzi schemes.

<sup>334</sup> The Consumer Protection Act 68 of 2008. Section 43(5).

<sup>335</sup> The Consumer Protection Act 68 of 2008. Section 43(1)(a).

The next definition relevant to the application of this section is the term "participant".<sup>336</sup> The term "participant" is defined as: *"a person who is admitted to a scheme for consideration."*

The next point to consider is the type of prohibited conduct as envisaged by section 43.

Section 43(2) provides that a person must<sup>337</sup> not promote or knowingly join, enter or participate in a multiplication scheme<sup>338</sup> or a pyramid scheme<sup>339</sup> or a chain letter<sup>340</sup> scheme or any other scheme as declared by the Minister of Trade and Industry.<sup>341</sup> Therefore, if a consumer knowingly joins, promotes or is a participant in any one of the mentioned schemes, he or she is in direct contravention of Section 43 of the Consumer Protection Act.<sup>342</sup>

The issue presented is how does the consumer determine that an arrangement, practice or scheme constitutes a multiplication scheme or a pyramid scheme or a chain letter scheme. This is where sections 43(3) to section 43(5) play a pivotal role in providing a set of definitive guidelines which consumers can consult to determine if they are dealing with one of the abovementioned schemes.

Section 43(3) provides that a multiplication scheme exists:<sup>343</sup>

*"when a person offers, promises or guarantees to any consumer, investor or participant an effective annual interest rate, as calculated in the prescribed manner,"*<sup>344</sup>

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<sup>336</sup> The Consumer Protection Act 68 of 2008. Section 43(1)(b).

<sup>337</sup> The use of the word "must" provides that a person is obligated to act in accordance with the standard of conduct required from this section.

<sup>338</sup> The Consumer Protection Act 68 of 2008. Section 43(2)(a).

<sup>339</sup> The Consumer Protection Act 68 of 2008. Section 43(2)(b).

<sup>340</sup> The Consumer Protection Act 68 of 2008. Section 43(2)(c).

<sup>341</sup> The Consumer Protection Act 68 of 2008. Section 43(2)(d).

<sup>342</sup> Ibid.

<sup>343</sup> The Consumer Protection Act 68 of 2008. Section 43(3).

<sup>344</sup> The Consumer Protection Act 68 of 2008 Regulations. 1 April 2011.

Regulation 17- Calculation of interest for multiplication scheme. Regulation 17 provides that section 120(1)(e) read together with section 43(3) of the Consumer Protection Act, that to calculate the promised rate of return in a multiplication scheme, it is calculated according to the following formula:

$$r = \frac{R \times 1200}{C \times T}$$

*that is at least 20 percent above the REPO Rate determined by the South African Reserve Bank as at the date of investment or commencement of participation, irrespective of whether the consumer, investor or participant becomes a member of the lending party."*

As mentioned above, the South African legislature collated the information collected by the previous Consumer Affairs Committee about pyramid and Ponzi schemes to create and develop section 43.<sup>345</sup> During the investigative process, the Consumer Affairs Committee identified schemes which promised high returns on investments.<sup>346</sup> The promoters of this type of scheme enticed consumers to invest minimal amounts of money into the scheme and within a short period of time, receive a higher return on their initial investment.<sup>347</sup> This essentially meant that the money invested would continually multiply and would then yield a greater return.<sup>348</sup> Therefore, the Consumer Affairs Committee termed this type of scheme as a money multiplication scheme.<sup>349</sup> When creating section 43 of the Consumer Affairs Act,<sup>350</sup> the legislature did not alter the terminology found in the investigative reports by the Consumer Affairs Committee.<sup>351</sup> Thus the term money multiplication is another term which can be used to describe Ponzi schemes and these terms can be used interchangeably as they mean the same thing.

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Where:

r = the effective interest rate;

R = the interest in Rand, which is the difference between the amount paid out to the investor or participant and the amount invested.

C = the amount invested by the investor or any amount paid by a person to become a member of a scheme, and

T = the period of the investment in months.

<sup>345</sup> Ibid.

<sup>346</sup> Woker. TA. (2003).SA Merc LJ 238.

<sup>347</sup> Ibid.

<sup>348</sup> Ibid.

<sup>349</sup> Ibid.

<sup>350</sup> The Consumer Protection Act 68 of 2008.

<sup>351</sup> Ibid.

The next type of scheme addressed by Section 43 is pyramid schemes.<sup>352</sup> Section 43(4) provides that an arrangement, agreement, practice or scheme constitutes a pyramid scheme if:<sup>353</sup>

*“(a) participants in the scheme receive compensation derived primarily from their respective recruitment of other persons as participants, rather than from the sale of any goods or services; or  
(b) the emphasis in the promotion of the scheme indicates an arrangement or practice contemplated in paragraph (a).”*

This provision is self-explanatory because in a pyramid scheme there is an increased emphasis placed on the recruitment of additional people rather than the sale of goods or services. For further income to be derived, new members must continuously be recruited to sustain the scheme.<sup>354</sup>

The third type of scheme addressed is a chain letter scheme, section 43(5) provides that an arrangement, agreement, practice or scheme constitutes a chain letter scheme if:<sup>355</sup>

*“(a) it has various levels of participation;  
(b) existing participants canvass and recruit new participants, or  
(c) each successive newly recruited participant—  
(i) upon joining—  
(aa) is required to pay certain consideration, which is distributed to one, some or all of the previously existing participants, irrespective of whether the new participant receives any goods or services in exchange for that consideration; and  
(bb) is assigned to the lowest level of participation in the scheme; and  
(ii) upon recruiting further new participants, or upon those new participants recruiting further new participants, and so on in continual succession—*

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<sup>352</sup> The Consumer Protection Act 68 of 2008. Section 43(4).

<sup>353</sup> Ibid.

<sup>354</sup> World Ventures which is an international travel company is currently under investigation by the National Consumer Commission. The National Consumer Commission is addressing complaints made by the public about World Ventures which implies that the travel company is a gigantic pyramid scheme. If found guilty, World Ventures will be in contravention of Section 43(4) and face severe consequences as a result. This will be addressed further in Chapter Four of this dissertation.

<sup>355</sup> The Consumer Protection Act 68 of 2008. Section 43(5).



*(aa) may participate in the distribution of the consideration paid by any such new recruit; and (bb) moves to a higher level within the scheme, until being removed from the scheme after reaching the highest level.”*

Section 43(5) explicitly provides that there is a significant overlap in the characteristics of a chain letter scheme and a pyramid scheme. This section re-affirms the point that a pyramid scheme is the business version of a chain letter.<sup>356</sup> In a pyramid scheme, the success of the scheme rests on the recruitment of additional members who bring in new funds and new recruitments which moves the promoter of the scheme to a higher level within the hierarchy.

In a chain letter scheme, the scheme begins with a message which has been sent via post or electronic mail (e-mail) which promises a large financial return for minimal effort.<sup>357</sup> The letter or e-mail requests that a consumer send an amount of money (usually a pre-determined sum) to every person listed in the letter or e-mail.<sup>358</sup> Once the consumer completes the request, the consumer must then add his or her name to the list and pass the letter or e-mail to as many people as possible in order to receive the promised financial return.<sup>359</sup> A “chain” is created and the “chain” consists of an indeterminable number of individuals who form part of the scheme.<sup>360</sup> Therefore, it is evident that a pyramid scheme is a refined model of a chain letter scheme as there is a clear hierarchy of “investors”.

Many of these types of schemes hope to avoid contravention of section 43(4) and section 43(5) by touting their businesses as multi-level marketing or network marketing ventures.<sup>361</sup> However, when analyzing these network marketing ventures, it reveals that the business opportunity being offered is nothing more than an elaborate pyramid scheme or chain letter scheme.

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<sup>356</sup> Lewis.K Mervyn. Edward Elgar Publishing. (2016).

<sup>357</sup> Government of Western Australia - [http://www.scamnet.wa.gov.au/scamnet/Scam\\_types\\_\\_Temp\\_Remove-Pyramid\\_Schemes\\_and\\_chain\\_letters.htm](http://www.scamnet.wa.gov.au/scamnet/Scam_types__Temp_Remove-Pyramid_Schemes_and_chain_letters.htm). Accessed 28 October 2017.

<sup>358</sup> Ibid.

<sup>359</sup> Ibid.

<sup>360</sup> Ibid.

<sup>361</sup> News24: *Is multi level marketing a scam?* 14 August 2012-<http://www.news24.com/MyNews24/Is-multi-level-marketing-a-scam-20120814>. Accessed 17 October 2017.

Section 43 ends by providing for schemes which have not been addressed in the preceding provisions and allows the Minister of Trade and Industry to declare an arrangement, agreement, or the practice of scheme to be a scheme as provided in section 43(2)(d).<sup>362</sup>

The Consumer Protection Act<sup>363</sup> is a comprehensive piece of legislation which affords many consumer protections and requires extensive compliance from suppliers, therefore, to ensure its administration, the Act established the National Consumer Commission.<sup>364</sup> The National Consumer Commission is a juristic entity<sup>365</sup> which is required to register and assesses complaints,<sup>366</sup> investigates alleged misconduct by businesses,<sup>367</sup> refers individual complaints to Alternate Dispute Resolution agencies for resolution<sup>368</sup> and represents consumers in the National Consumer Tribunal.<sup>369</sup>

The National Consumer Commission provides its services to consumers free of charge, and it is the primary regulatory authority when addressing pyramid or Ponzi schemes.<sup>370</sup> Complaints or concerns by the public, the Financial Services Board, the South African Revenue Services, the Financial Intelligence Centre or the South African

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<sup>362</sup>The Consumer Protection Act 68 of 2008. Section 43(6):

*“The Minister, by regulation made in accordance with section 120, may declare any arrangement, agreement, practice or scheme to be a scheme contemplated in subsection (2)(d), if it is similar in purpose or effect to a scheme contemplated in that subsection.”*

<sup>363</sup>The Consumer Protection Act 68 of 2008.

<sup>364</sup>The Consumer Protection Act 68 of 2008. Section 85- Establishment of the National Consumer Commission.

<sup>365</sup>The Consumer Protection Act 68 of 2008. Section 85(2)(b).

<sup>366</sup>The Consumer Protection Act 68 of 2008. Section 99(b).

<sup>367</sup>The Consumer Protection Act 68 of 2008. Section 99(d), (e) and (f).

<sup>368</sup>The Consumer Protection Act 68 of 2008. Section 69(c)(iii). Alternative Dispute Resolution agencies include Provincial Consumer Affairs Authorities and relevant ombudsman schemes.

<sup>369</sup>The Consumer Protection Act 68 of 2008. Section 99(h). The National Consumer Tribunal is established in terms of the National Credit Act 34 of 2005. Since the enactment of the Consumer Protection Act 68 of 2008, the National Consumer Tribunal’s mandate is extended to include matters arising from the Consumer Protection Act. Thus, orders made by the Tribunal in relation to matters arising from the Consumer Protection Act are binding as if it were a High Court Order.

<sup>370</sup>The Consumer Protection Act 68 of 2008 is the primary piece of legislation which specifically prohibits pyramid and Ponzi schemes (Section 43). Therefore, in such an instance the National Consumer Commission will be body to approach when addressing such activities.

Reserve Bank will approach the National Consumer Commission to investigate activities which they believe to be a suspected pyramid or Ponzi schemes.<sup>371</sup>

The National Consumer Commission will carry out its preliminary investigations and conclude if a suspected arrangement, practice or scheme contravenes section 43. The National Consumer Commission is then obliged to hand over its investigation to the South African Police Services Commercial Crimes Unit. While the Act prohibits pyramid and Ponzi schemes, it does not allow for the National Consumer Commission to conduct forensic investigations into these types of schemes.<sup>372</sup> Once the South African Commercial Crimes Unit concludes its investigation, it may be handed to the National Prosecuting Authority<sup>373</sup> for further action. The National Prosecuting Authority will prosecute the promoters of such schemes if the Commercial Crimes Unit investigations uncover fraudulent activity.<sup>374</sup>

### **3.4 Theory vs Reality: The shortfalls of the current consumer and financial legislative framework**

Within its 23-year democratic period, the South African legislature has enacted various pieces of new financial and consumer legislation. The purpose of passing such

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<sup>371</sup> Arde. Angelique. *Pyramid scams thriving in SA*. 6 February 2016- <https://www.iol.co.za/personal-finance/pyramid-scams-thriving-in-sa-1980769>. Accessed 17 October 2017.

<sup>372</sup> The forensic investigation would amount to a financial/forensic audit which is the analysis of the financial information associated with the suspected pyramid or Ponzi scheme – Investopedia- <http://www.investopedia.com/terms/f/forensic-audit.asp>. Accessed 17 October 2017. This type of investigation is conducted to lawfully gather evidence which will aid the National Prosecuting Authority in prosecuting the promoter of the pyramid or Ponzi scheme for the crime of fraud.

<sup>373</sup> The National Prosecuting Authority is established by Section 179 of the South African Constitution Act 108 of 1996. The legislation governing the prosecuting authority is the National Prosecuting Authority Act 32 of 1998. The Constitution, read with the said Act, provides the prosecuting authority with the power to institute criminal proceedings on behalf of the State and to carry out any necessary functions incidental to instituting criminal proceedings – National Prosecuting Authority-<https://www.npa.gov.za/node/8>. Accessed 17 October 2017.

<sup>374</sup> Timeslive. *Cape Town couple behind R278m Ponzi scheme sentenced*. 21 September 2017- <https://www.timeslive.co.za/news/south-africa/2017-09-21-cape-town-couple-behind-r278m-ponzi-scheme-sentenced/>. Accessed 17 October 2017. The Commercial Crimes Unit uncovered a 278 million Rand Ponzi scheme being run in the Western Cape. The Ponzi scheme had operated a forex trading scheme from September 2002 to November 2009 and had a total of 934 clients. The couple behind the scheme, Graeme Minnie was sentenced to 15 years' imprisonment, while Carolina Minnie was slapped with a 3-year house arrest and correctional supervision.

legislation is to strengthen existing rights, create a comprehensive regulatory framework and ensure South African laws are in line with international standards.<sup>375</sup>

It is a remarkable feat to have enacted so many pieces of legislation within such a brief time frame. The legislature must be given its dues for enacting new legislation which reflects the changing South African financial and consumer landscape.

The current financial and consumer legislative framework is far more comprehensive than the previous legislative framework in respect of dealing with pyramid and Ponzi scheme activities. There is a clear association between the financial legislation enacted and the enactment of consumer protection legislation. It is evident that the pieces of legislation mentioned in the discussion above are intended to work together as a cohesive unit in order address the scourge of pyramid and Ponzi schemes in South Africa.

In the above discussion, the case studies and online newspaper reports provide that the legislation and its associated institutions are working together in regulating pyramid and Ponzi schemes. However, due to the high volumes of complaints, lack of administrative and financial resources, these new regulatory financial and consumer institutions are experiencing significant difficulties in executing their intended mandates.<sup>376</sup> As a result, pyramid and Ponzi schemes in South Africa are more likely to collapse than be shut down.<sup>377</sup>

It is important to remember that the National Consumer Commission is the primary body tasked with addressing pyramid and Ponzi schemes in South Africa. One of the essential services which is absent from Commission's mandate is allowing for the Commission to conduct forensic investigations into suspected pyramid and Ponzi schemes. The South African Police Services Commercial Crimes Unit is tasked with

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<sup>375</sup> The Financial Intelligence Centre Act 37 of 2001 is an example of South Africa adhering to international standards regarding money laundering and financing of terrorist activities.

<sup>376</sup> The listed institutions are dealing with a variety of consumer and financial matters. Their focus is not solely on addressing pyramid and Ponzi schemes. Resources are allocated to other issues which may require greater attention.

<sup>377</sup> Arde, Angelique. *Pyramid scams thriving in SA*. 6 February 2016- <https://www.iol.co.za/personal-finance/pyramid-scams-thriving-in-sa-1980769>. Accessed 17 October 2017.

taking the Commission's preliminary investigations further. This is a failure on the part of the legislature because, the Commission should be given a forensic auditing department or unit or allow a private contractor to provide its forensic services to the Commission, so that it may further its investigations.<sup>378</sup> The Commission is the primary institution which must be approached when addressing suspected pyramid or Ponzi scheme activity; therefore, it should be equipped with the necessary tools which can aid the Commission in efficiently exercising its mandate.

Despite its inadequacies as mentioned above, the most significant achievement of the current financial and consumer legislative framework, are the avenues available to consumers to seek recourse and in certain instances, redress. The National Credit Regulator<sup>379</sup>; the Consumer Tribunal<sup>380</sup> and the National Consumer Commission<sup>381</sup> are institutions which have aided consumers in addressing their respective disputes. Victim recourse and redress was predominantly missing in the previous legislative framework.

It is evident that the current financial and consumer legislative framework is making great strides; however, for the current legislative framework to be of greater effect, there needs to be a process of streamlining of how financial and consumer institutions created by this framework, function. These institutions require further financial and administrative support to execute their mandates efficiently. The National Consumer Commission is especially in need of further financial and administrative support because the Commission provides an invaluable service to the South African consumer.

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<sup>378</sup> The South African Police Services are overburdened and should not be given additional mandates to consider consumer related matters. The Consumer Commission would greatly benefit from its own forensic department or unit because it would allow for the Commission to embark on a thorough investigation of suspected pyramid or Ponzi scheme, gather the necessary evidence and then refer the matter to the National Prosecuting Authority for prosecution. Under Section 99(i) of the Consumer Protection Act 68 of 2008, the Commission is entitled to refer a matter to the National Prosecuting Authority.

<sup>379</sup> The National Credit Act 34 of 2005. Section 12.

<sup>380</sup> The National Credit Act 34 of 2005. Section 26.

<sup>381</sup> The Consumer Protection Act 68 of 2008. Section 85.

The current financial and consumer legislative framework has only been in place for about fourteen years<sup>382</sup> and what it has thus far achieved is remarkable. However, there exists room for improvement which will only aid in the strengthening of the current framework.

## CHAPTER FOUR

### The R699 Car Deal and World Ventures

#### 4.1 Introduction

In order to evaluate the effectiveness of the current financial and consumer legislative framework in curbing pyramid and Ponzi schemes, especially the available platforms for victim recourse, it is necessary to analyze prominent examples of pyramid and Ponzi schemes which have been perpetrated in South Africa.

The two ventures which will be the focus of this chapter are the Satinsky R699 car deal scheme and the suspected<sup>383</sup> pyramid scheme World Ventures. These two ventures selected are due to the popularity of the ventures and the complexity associated with each venture. The Satinsky R699 car deal scheme and the travel scheme promoted by the company World Ventures, are great examples of how complex pyramid and Ponzi schemes have become. In addition, the immense popularity of these two ventures provides an insight into what entices members of the public to willingly participate in these types of ventures. Both ventures have lured a variety of clientele which ranges from the lower income members of South African society to the vastly wealthy. The bridging of the divide between the wealthy and non-

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<sup>382</sup> The Financial Intelligence Centre Act 38 of 2001 came into effect in 2003, which makes it effective for fourteen years. The National Credit Act 34 of 2005 became effective on 1 June 2007, which makes it effective for ten years and the Consumer Protection Act 68 of 2008 became effective on 1 April 2011, which makes it effective for seven years.

<sup>383</sup> Shaikh, Nabeela. *Crunch time for WorldVentures*. 31 January 2016. <https://www.iol.co.za/news/crime-courts/crunch-time-for-worldventures-1977893>. Accessed 18 October 2017.

The travel company known as World Ventures is currently the subject of a National Consumer Commission investigation.

wealthy members of South African society offers an insight into the unique approach employed by the promoters of these schemes when attracting participants.

#### 4.2 The Satinsky Group: The R699 Car Deal Ponzi scheme



Figure 2.<sup>384</sup>

The Satinsky Group introduced the R699 Car deal through their subsidiary company called Just Group Africa.<sup>385</sup> Just Group Africa traded as Drive Car Sales, and they partnered with a Hong Kong-based advertising company Blue Lakes Trading and Promotions to offer the car deal to the South African public.<sup>386</sup> The car deal options offered by Drive Car Sales were financed by three of South Africa's prominent banking institutions: Absa Bank Ltd, Standard Bank Ltd and Nedbank Ltd.<sup>387</sup> These three banking institutions provided their financial approval of the Drive Car Sales venture and their association with the scheme was public knowledge.<sup>388</sup>

Drive Car Sales initially offered the South African public the opportunity to own a brand-new car from as little as R499 a month.<sup>389</sup> The deal did not require consumers

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<sup>384</sup> Image from the ENCA online report: *R699 scheme boss to sue WesBank* – report. 23 August 2014. <https://www.enca.com/r699-scheme-boss-sue-wesbank-report>. Accessed 18 October 2017.

<sup>385</sup> Clark, Jeanette. *Can you own a new car for only R499 per month?* 24 September 2012- <https://www.moneyweb.co.za/archive/can-you-own-a-new-car-for-only-r499-per-month/>. Accessed 18 October 2017.

<sup>386</sup> Shaikh, Nabeela. <https://www.iol.co.za>. 31 January 2016.(see note 383)

<sup>387</sup> *R699 car numbers shock*. 6 August 2014- <https://businesstech.co.za/news/banking/65004/r699-car-numbers-shock/>. Accessed 18 October 2017.

<sup>388</sup> *Bank warns each owner in R699 car deal will be called*. 24 July 2014- <http://www.heraldive.co.za/news/2014/07/24/bank-warns-owner-r699-car-deal-will-called/>. Accessed 18 October 2017.

<sup>389</sup> Clark, Jeanette. *Can you own a new car for only R499 per month?* 24 September 2012- <https://www.moneyweb.co.za/archive/can-you-own-a-new-car-for-only-r499-per-month/>. Accessed 18

to have an initial deposit to purchase the car, and it was free of residual charges.<sup>390</sup> Drive Car Sales offered South African consumers a variety of vehicles, and they additionally provided for two types of options from which consumers could choose to purchase a car. Consumers had a choice between the following options: Own while you Earn or Drive while you Earn.<sup>391</sup>

The Own while you Earn option required the consumer to use the vehicle purchased as a moveable billboard<sup>392</sup> and the consumer had to travel a minimum of 500 kilometres per month to qualify for the R570 rebate.<sup>393</sup> In addition, each car purchased under this option displayed a unique code which interested parties could text for further information.<sup>394</sup> For every successful referral made by the consumer's unique code, that consumer would receive R3000.<sup>395</sup>

The second option of Drive while you Earn required consumers to pay in the full monthly instalment amount to the Bank, and the consumer was then paid an advertising fee based on the number of kilometres driven by the consumer for the month.<sup>396</sup> If a consumer travelled between 500 kilometres to 1000 kilometres in a month, they would earn 65% of the repayment instalment amount for the vehicle.<sup>397</sup> The rebate percentage increased if the consumer drove further and it was possible for a consumer to receive a 100% rebate under this option.<sup>398</sup> A consumer would receive

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October 2017. In the succeeding months, the price of the deal went up to R699 as more people participated in the scheme.

<sup>390</sup> Ibid.

<sup>391</sup> Ibid.

<sup>392</sup> In terms of the agreement Drive Car Sales had concluded with Blue Lakes Trading and Promotions company, the cars which had been purchased through the Own while you Earn option, had been branded with advertisements which were prominently displayed on the vehicles. Refer to Image 2 which displays the advertisements featured on Drive Car Sales vehicles.

<sup>393</sup> Clark, Jeanette. *Can you own a new car for only R499 per month?* 24 September 2012- <https://www.moneyweb.co.za/archive/can-you-own-a-new-car-for-only-r499-per-month/>. Accessed 18 October 2017.

<sup>394</sup> Ibid.

<sup>395</sup> Ibid. For example, if three people had signed up for a Drive Car Sales deal after texting through the unique code, the consumer assigned the unique code would be entitled to R9000 as a result of the successful referral.

<sup>396</sup> Ibid.

<sup>397</sup> Ibid. For example, if the consumer purchased an Audi A4 via Drive Car Sales and the monthly instalment amount was R4999, that consumer under the Drive while you Earn option would pay the R4999 to the bank and if he/she travelled the required kilometres would be entitled to a 65% rebate. 65% of R4999 = R3249.35. This meant that the consumer was entitled to R3249.35 as a rebate.

<sup>398</sup> Ibid.



100% of their instalment amount if he/she travelled more than 2000 kilometres during a particular month.<sup>399</sup>

Whichever option was chosen by the consumer, the consumer was obligated to provide Drive Car Sales with two date stamped photographs of the odometer of the vehicle.<sup>400</sup> The date stamped photographs served as evidence of the number of kilometres travelled by the consumer and was used to calculate the rebate amount to which the consumer was entitled.<sup>401</sup>

As mentioned previously, the deals offered by Drive Car Sales were financially underwritten by three of South Africa's biggest banks.<sup>402</sup> Thus, consumers who were interested in purchasing a vehicle through Drive Car Sales would fill in the required online application forms provided, and these applications were later forwarded to the banks mentioned, to determine if that party qualified for vehicle finance.<sup>403</sup> The application forms required consumers to provide detailed financial information which each of the abovementioned banking institutions could assess in their due diligence processes. The assessment would enable the chosen bank to decide on whether or not to grant vehicle financing, based on the information provided in the application form.<sup>404</sup>

If a consumer was approved for vehicle finance by any of the three mentioned Banks, the consumer was required to sign two written agreements. The first was a credit agreement between the bank and the consumer which pertained to vehicle financing and the monthly instalments which were due and payable each month.<sup>405</sup> The second agreement was related to the advertising arrangement which would allow for the

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<sup>399</sup> Ibid.

<sup>400</sup> Ibid. Consumers would log into the advertising company's Blue Lakes website and upload their time stamped photographs.

<sup>401</sup> Ibid.

<sup>402</sup> *R699 car numbers shock*. 6 August 2014- <https://businesstech.co.za/news/banking/65004/r699-car-numbers-shock/>. Accessed 18 October 2017.

<sup>403</sup> Barry.Hanna. *Sales of R699-per month cars growing*. 7 February 2014- <https://www.moneyweb.co.za/archive/sales-of-r699per-month-cars-growing/>. Accessed 18 October 2017.

<sup>404</sup> Ibid.

<sup>405</sup> SABC Digital News. *Special Assignment: R699 Car Scam*. 27 December 2015- <https://www.youtube.com/watch?v=oDPjIHB9UM0>. Accessed 18 October 2017.

consumer to be reimbursed by the Satinsky Group with the promised fee for adhering to the conditions contained in this agreement.<sup>406</sup> The second agreement concluded was between the consumer and the Satinsky Group. The Bank which provided financing did not feature in the second agreement.

The R699 car deal venture attracted many South Africans.<sup>407</sup> In 2012, an online newspaper report featured the CEO of the Satinsky Group Albert Venter, boasting about the amount of interest and sales which had been generated by the venture.<sup>408</sup> Venter stated that Drive Car Sales had been selling more than 600 cars a month and that the company had timeously met all its financial obligations regarding its various agreements with consumers.<sup>409</sup> He further stated that the company complied with all relevant legislation especially the National Credit Act 34 of 2005 and that the National Credit Regulator was approached for approval before the introduction of the venture.<sup>410</sup>

However, cracks in the venture began surfacing in late 2012, and despite Venter's public reassurances, many consumers had taken to the online forum HelloPeter<sup>411</sup> to air their grievances.<sup>412</sup> Consumers posted complaints which ranged from receiving the incorrect rebate amounts to difficulties in uploading the odometer photographs on the Blue Lakes website.<sup>413</sup> Additional complaints referred to difficulty in obtaining help or

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<sup>406</sup> Ibid. The conditions contained in the second agreement related to the two purchase options provided by Drive Car Sales; Earn while your drive or Own while you drive. Depending on the option chosen, the consumer was obligated to drive a certain number of kilometres; provide the evidentiary material which displayed the vehicles odometer and the agreement provided the consumer with his/her own unique code which was to be used for referral purposes. In addition. The agreement would stipulate where the advertisements had to be displayed on the vehicle and the duration for the advertisement.

<sup>407</sup> Barry.Hanna. *Sales of R699-per month cars growing*. 7 February 2014- <https://www.moneyweb.co.za/archive/sales-of-r699per-month-cars-growing/>. Accessed 18 October 2017. Between the period of late 2012 to early 2014 the Drive Car Sales venture reached its peak. It is estimated that there had been more than 27000 South African consumers who had participated in the scheme.

<sup>408</sup> Clark. Jeanette. *Can you own a new car for only R499 per month?* 24 September 2012- <https://www.moneyweb.co.za/archive/can-you-own-a-new-car-for-only-r499-per-month/>. Accessed 18 October 2017.

<sup>409</sup> Ibid.

<sup>410</sup> Ibid.

<sup>411</sup> Ibid. HelloPeter is an online forum which South African consumers can post a compliment or complaint about any retailer, service provider or company. It is a public platform with a huge following. Retailers; service providers and companies pay attention to what consumers post. It is an effective platform as matters are usually resolved so that the offending retailer, service provider or company avoids further negative publicity.

<sup>412</sup> ENCA online report. <https://www.enca.com>. 23 August 2014. (see note 384)

<sup>413</sup> Ibid.

service from Satinsky and if help was provided, consumers were charged an administration fee of R750 which was levied against the advertising fee.<sup>414</sup>

Over time, consumers also began to notice a steady decline in their rebates, especially those who were on the Earn While You Drive option.<sup>415</sup> Things became worse when the Hong Kong based company Blue Lakes Trading and Promotion dissolved its partnership with the Satinsky Group.<sup>416</sup> The dissolution of the partnership proved disastrous as the entire Drive Car Sales venture imploded and the Satinsky Group began the process of informing its clients that the monthly advertising fees which consumers had relied upon to meet their repayments to the bank had come to an end.<sup>417</sup>

Many of the consumers under the scheme had taken the deal because the cash rebates would allow them to make the monthly repayments for the vehicle to the bank, and without the monthly advertising fee, the consumer was liable for the entire instalment amount.<sup>418</sup> This meant that the only agreement which was still in effect was the credit agreement between the bank and the consumer. Under this agreement, the consumer was liable for the full instalment amounts for six years (72 months).<sup>419</sup>irate consumers who were a part of the scheme created a social media group<sup>420</sup> to determine a way forward after hearing the announcement by the Satinsky Group.<sup>421</sup>

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<sup>414</sup> Clark, Jeanette. *Can you own a new car for only R499 per month?* 24 September 2012- <https://www.moneyweb.co.za/archive/can-you-own-a-new-car-for-only-r499-per-month/>. Accessed 18 October 2017.

<sup>415</sup> Bronkhost, Quinton. *The inside story of the R699 car scheme*. 9 July 2014- <https://businesstech.co.za/news/general/62203/the-inside-story-of-the-r699-car-scheme/>. Accessed 18 October 2017.

<sup>416</sup> *R699pm car business falls apart: report*. 3 July 2014- <https://businesstech.co.za/news/general/61895/r699pm-car-business-falls-apart-report/>. Accessed 18 October 2017.

<sup>417</sup> Knowler, Wendy. *'R699' car deal implodes*. 4 July 2014- <https://www.iol.co.za/motoring/industry-news/r699-car-deal-implodes-1714079>. Accessed 18 October 2017.

<sup>418</sup> Ibid.

<sup>419</sup> Ibid.

<sup>420</sup> Omarjee, Lameez. *Wheels come off on 'Drive a new car for R699'*. 3 July 2014- <http://www.fin24.com/Companies/Advertising/Wheels-come-off-on-Drive-a-new-car-for-R699-20140703>. Accessed 18 October 2017. The Facebook Group is called 'I have been done in by Drive a New Car from R699 per month' and it provides detailed consumer accounts of what occurred after the scheme collapsed.

<sup>421</sup> Omarjee, Lameez. *R699 car drivers moving forward*. 13 July 2014- <http://www.fin24.com/Companies/Advertising/R699-car-drivers-moving-forward-20140713>. Accessed 18 October 2017.

At the end of July 2014, it was decided by the social media group that legal action would be taken against the Satinsky group and the three associated banks.<sup>422</sup>

Duncan Heuer of the firm Pieterse Cary Finlaison, based in Port Elizabeth, offered his legal services to victims of the scheme, after being approached by Johannes Ignatius Bartosch who fell victim to the scheme.<sup>423</sup> Thereafter, several other victims contacted Heuer requesting his help in the matter. This led to Heuer filing an urgent application with the High Court to proceed with a class action suit, based on the number of victims who had been affected by the collapse of the scheme.<sup>424</sup> The victims represented by Heuer sought to have the credit agreements concluded which they had concluded with the various banks declared null and void by the Court.<sup>425</sup>

The matter was heard in early August of 2014 in the Eastern Cape High Court. Johannes Ignatius Bartosch became the face of this important legal battle.<sup>426</sup> In the case of *Bartosch v Standard Bank of South Africa Ltd and Others*,<sup>427</sup> the High Court had to determine if it would approve the application for the certification of a class action.<sup>428</sup> The purpose of the proposed class action was to seek a declarator<sup>429</sup> to declare the thousands of credit agreements concluded between Satinsky clients and the three Banking institutions associated with the scheme, as reckless and therefore void.<sup>430</sup>

As envisaged by Section 80 of the National Credit Act 34 of 2005, an agreement is deemed to be reckless where a credit provider fails to conduct a proper assessment or enters in to a credit agreement despite the fact that consumer does not appreciate

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<sup>422</sup> Ibid.

<sup>423</sup> *R699 car deal case going to high court*. 22 July 2017- <http://www.heraldive.co.za/news/2014/07/22/r699-car-deal-case-going-high-court/>. Accessed 18 October 2017.

<sup>424</sup> Ibid. Heuer was representing close to 550 consumers who had fallen victim to the scheme and had contacted Heuer requesting his assistance. These victims had made contact after Heuer's contact information was circulated over social media.

<sup>425</sup> Ibid.

<sup>426</sup> Ibid.

<sup>427</sup> *Bartosch v Standard Bank of South Africa Ltd and Others* [2014] ZAECPEHC 52.

<sup>428</sup> Ibid. Para 1.

<sup>429</sup> A declarator is a legal action by which a judicial declaration of a fact is obtained-<https://www.merriam-webster.com/dictionary/declarator>.

<sup>430</sup> *Bartosch v Standard Bank of South Africa Ltd and Others* [2014] ZAECPEHC 52.Para 1.

or understand the risks, costs or obligations under the agreement. By entering into that credit agreement, it would result in the consumer becoming over-indebted.<sup>431</sup> Section 80 read with section 83(2)<sup>432</sup> of the National Credit Act 34 of 2005, allows for a Court to set aside all or part of the consumer's obligations under such a credit agreement or to suspend the force and effect of the agreement.<sup>433</sup>

In assessing the application, the Court referred to the Supreme Court of Appeal Judgement Trustees for the time being of *Children's Resource Centre Trust and Others v Pioneer Food (Pty) Ltd and Others*<sup>434</sup> as being the leading authority regarding the requirements for a class action.<sup>435</sup> The Supreme Court of Appeal held that;<sup>436</sup>

*"The party seeking to represent a class must apply to a court for it to certify the action as a class action. Thereafter it may issue a summons. The court faced with the application need consider and be satisfied with the presence of the following factors, before certifying the action-*

- (1) the existence of a class identifiable by objective criteria;*
- (2) a cause of action raising a triable issue;*
- (3) that the right to relief depends on the determination of issues of fact, or law, or both, common to all members of the class;*
- (4) that the relief sought, or damages claimed, flow from the cause of action and are ascertainable and capable of determination;*
- (5) that where the claim is for damages, there is an appropriate procedure for allocating the damages to the class members;*
- (6) that the proposed representative is suitable to conduct the action and to represent the class;*

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<sup>431</sup> The National Credit Act 34 of 2005. Section 80(1)(a)-(b).

<sup>432</sup> The National Credit Act 34 of 2005. Section 83-Court May suspend a reckless credit agreement.

<sup>433</sup> Ibid.

<sup>434</sup> *Trustees for the time being of Children's Resource Centre Trust and Others v Pioneer Food (Pty) Ltd and Others* [2012] ZASCA 182.

<sup>435</sup> *Bartosch v Standard Bank of South Africa Ltd and Others* [2014] ZAECPHC 52. Para 2.

<sup>436</sup> *Trustees for the time being of Children's Resource Centre Trust and Others v Pioneer Food (Pty) Ltd and Others* [2012] ZASCA 182. Para 23 – Para 26.

*(7) whether, given the composition of the class and the nature of the proposed action, a class action is the most appropriate means of determining the claims of class members.”*

Judge Chetty began his judgement by stating that no cause of action raising a triable issue<sup>437</sup> had been disclosed in the applicant's papers and the Court did not have the jurisdiction to adjudicate the matter.<sup>438</sup> As a result, these two issues proved sufficient for the Court not to consider the other class action requirements and to dismiss the application for certification of the class action.<sup>439</sup>

Judge Chetty elaborated on his decision not to certify the class action by stating that the lack of jurisdiction to adjudicate upon a matter would ordinarily not require further consideration of an application or action.<sup>440</sup> However, given the nature of the relief sought and the cogent legal issues raised, it was necessary to consider whether a cause of action raising a triable issue was disclosed.<sup>441</sup>

Establishing a prima facie case in relation to founding or confirming jurisdiction is not a difficult hurdle to overcome.<sup>442</sup> Jurisdiction is said to be established where the applicant shows that there is evidence which, if accepted, will establish a cause of action.<sup>443</sup> The evidence the applicant relies on must consist of allegations of fact and not assertions.<sup>444</sup> Evidence is required to identify the class or the common issue and show that a class action is appropriate.<sup>445</sup> This means that there must be evidence showing a prima facie cause of action because the existence of a cause of action

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<sup>437</sup> This essentially meant that the applicant's legal representatives had failed to adequately disclose the legal cause of action which required the institution of such legal proceedings.

<sup>438</sup> *Bartosch v Standard Bank of South Africa Ltd and Others* [2014] ZAECPEHC 52. Para 3. The other consumers who were a part of the application, did not reside in Port Elizabeth, therefore, the Court could not adjudicate on the matter.

<sup>439</sup> *Ibid.*

<sup>440</sup> *Bartosch v Standard Bank of South Africa Ltd and Others* [2014] ZAECPEHC 52. Para 12.

<sup>441</sup> *Ibid.*

<sup>442</sup> *Bartosch v Standard Bank of South Africa Ltd and Others* [2014] ZAECPEHC 52. Para 13.

<sup>443</sup> *Ibid.*

<sup>444</sup> *Ibid.*

<sup>445</sup> *Ibid.*

supports the existence of a class and serves to identify the issues common to that class which require a resolution.<sup>446</sup>

When the Court assessed the plaintiff's application papers, it found that the basis of the case relied on assertions and conjectures.<sup>447</sup> The papers failed to reveal any factual submission which supported the assertions made.<sup>448</sup> Judge Chetty held that the entire case had been “predicated upon extravagant assertions” and even if the Court had granted some latitude regarding the poor draftsmanship of the applicant's papers, it was clear that a cause of action had not been disclosed.<sup>449</sup> As a result, the failure to disclose a cause of action had led to the dismissal of the application.<sup>450</sup>

Therefore, based on this reasoning, Judge Chetty dismissed the application. Judge Chetty was especially critical of the way in which the applicant's legal representatives handled the entire case. He provided at the end of his judgement that Heuer's conduct of inviting the public to participate in the litigation proceedings was a matter of aggrandizement, which he pursued for self-interest and not in the public interest.<sup>451</sup>

The decision of the Court was a devastating blow to all victims of the scheme. The consumers who had been affected by the collapse of the scheme were left on their own and had to approach their respective Banks to find a way forward.<sup>452</sup> Many of the victims either underwent debt counselling; sought legal advice for further clarity or extended the time frame for their loan agreements to avoid being blacklisted by the Credit Bureaus or having their vehicles repossessed.<sup>453</sup> Presently, the majority of victims remain saddled with the full vehicle repayments which are due under their respective credit agreements.

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<sup>446</sup> Ibid.

<sup>447</sup> *Bartosch v Standard Bank of South Africa Ltd and Others* [2014] ZAECPEHC 52. Para 16.

<sup>448</sup> Ibid.

<sup>449</sup> Ibid.

<sup>450</sup> *Bartosch v Standard Bank of South Africa Ltd and Others* [2014] ZAECPEHC 52. Para 17.

<sup>451</sup> *Bartosch v Standard Bank of South Africa Ltd and Others* [2014] ZAECPEHC 52. Para 22. Heuer had used social media and print media to gather support for the application by appealing to victims of the scheme. His actions were highly publicised and garnered huge support from the victims of the scheme.

<sup>452</sup> Knowler.Wendy. *R699 car buyers out on their own now*.25 August 2014-  
<https://www.iol.co.za/motoring/industry-news/r699-car-buyers-out-on-their-own-now-1740233>. Accessed 18 October 2017.

<sup>453</sup> Ibid.

The banking institutions which had provided financing for the vehicles sold by the scheme have remained relatively unscathed by the collapse of the Satinsky scheme. An online newspaper report dated 4 March 2017, reported that Absa Bank Ltd had reached a settlement agreement with the National Credit Regulator relating to a case against the bank due to its lending practices regarding the R699 car deal scheme.<sup>454</sup> Regarding the settlement agreement, Absa Bank Ltd is to pay a R10 million administrative fine and is to:<sup>455</sup>

- Write off the cost of credit on credit agreements;
- Restructure repayments for consumers who are in arrears;
- Rescind any civil court judgments against consumers at its own cost; and
- Instruct the credit bureaus to remove adverse listings from the credit records of consumers.

The conditions contained in the settlement agreement are only applicable to Satinsky victims who have existing credit agreements with Absa Bank Ltd. It is unclear what penalties (if any) will be imposed on Standard Bank Ltd and Nedbank Ltd by the National Credit Regulator for their involvement in the Satinsky scheme.

The Satinsky scheme revealed the improper lending practices by the Banks associated with the scheme and their failure to conduct proper due diligence. Many of the victims of the Satinsky scheme participated in the scheme because of the approval given by the three prominent South African banks. The financial approval and support offered by these three banking institutions (which are heavily regulated by legislation<sup>456</sup> and entities such as the South African Reserve Bank), naturally allayed any fears or concerns which consumers may have had. The Satinsky R699 Car Deal scheme used reputable institutions to win consumer trust and legitimize the venture even though it was a Ponzi scheme. This provides an insight into the lengths that

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<sup>454</sup> Arde. Angelique. *Absa to pay R10m fine to settle with credit regulator*. 4 March 2017- <https://www.iol.co.za/personal-finance/absa-to-pay-r10m-fine-to-settle-with-credit-regulator-8029640>. Accessed 19 October 2017.

<sup>455</sup> Ibid. A R10 million fine is essentially a slap on the wrist for Absa Bank Ltd who are worth far more.

<sup>456</sup> The Banks Act 94 of 1990; the Financial Intelligence Centre Act 38 of 2001; the Financial Advisory and Intermediary Services Act 38 of 2002; the National Credit Act 34 of 2005 are a few pieces of legislation which governs Banking institutions in South Africa.



promoters of these schemes will go to for people to participate in their schemes and part with their hard-earned money.

First National Bank was the only banking institution to not participate in the Satinsky R699 car deal scheme. When the scheme imploded in July of 2014, the CEO of First National Bank's vehicle division, Wesbank, gave an interview with an online newspaper in which he explained why Wesbank refused to transact with the Satinsky Group.<sup>457</sup> CEO of Wesbank Chris De Kock said the bank was approached in late 2011 by the Satinsky Group, who had introduced the R699 Car deal venture to Wesbank.<sup>458</sup> When Wesbank conducted its due diligence process regarding the sustainability of the R699 car deal venture, the due diligence process had revealed that the venture depended on “upfront profits to fund its downstream obligations”.<sup>459</sup> The dependence on receiving funds upfront to meet other financial obligations is a typical Ponzi scheme trait, and this led to Wesbank concluding that the R699 car deal venture constituted an elaborate Ponzi scheme.<sup>460</sup>

CEO of the Satinsky Group Albert Venter, has yet to face criminal charges or civil action for his role in the scheme. Since the scheme's collapse, Albert Venter remains free of liability, and it is rumoured that he has begun a new car dealership venture which shares similar characteristics to the R699 Car deal scheme.<sup>461</sup> Bosphorus Motors is the new car dealership based in Pretoria, and it offers a variety of vehicles which begin from R2377 per month.<sup>462</sup> Advertisements for Bosphorus Motors have begun to appear on social media and other communication platforms enticing

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<sup>457</sup> Fin24: *Drive a R699 car typical Ponzi scheme – WesBank*. 5 July 2017- <https://www.fin24.com/Companies/Advertising/Drive-a-R699-car-typical-Ponzi-Scheme-WesBank-20140705>. Accessed 19 October 2017.

<sup>458</sup> Ibid.

<sup>459</sup> Ibid.

<sup>460</sup> Ibid. It is a simple case of borrowing from Peter to pay Paul and Cindy. The Satinsky Group relied heavily on the advertising fees which would be provided from their partnership with Blue Lakes Trading and Promotion. Thus, when the partnership dissolved, the Satinsky Group had no way in which to meet its financial obligations towards its customers under the scheme.

<sup>461</sup> Eybers. Johan. *R699-man het weer 'n kar-skema*. 8 October 2017- <https://www.netwerk24.com/Nuus/Algemeen/r699-man-het-weer-n-kar-skema-20171007>. Accessed 19 October 2017. This article appears in the Afrikaans newspaper Rapport and the headline when translated into English means that the R699 man has yet another car scheme.

<sup>462</sup> [http://bosphorusmotorcars.com/modern-inventory/..](http://bosphorusmotorcars.com/modern-inventory/)

consumers to purchase a car via the new venture.<sup>463</sup> This is highly concerning given the devastation which occurred when the R699 car deal scheme collapsed. It reaffirms the need for greater action to be taken against promoters of these types of schemes.

The Satinsky 699 Car Deal scheme is an example of the devastation Ponzi schemes can have on people and the financial ruin which is an inevitable consequence when these types of schemes collapse. The scheme would not have had such a severe impact if the three associated banking institutions had conducted proper due diligence.<sup>464</sup> The three banking institutions associated with the Satinsky scheme, are mandated by regulatory financial and consumer legislation to conduct themselves in a fair, just and reasonable manner. These banking institutions are thought of as reputable, secure and safe entities to transact with. Regulatory authorities should have imposed far harsher penalties on the three banking institutions associated with the Satinsky scheme to strengthen accountability and transparency within the financial and consumer sectors. In addition, some would argue that the promoters of the R699 Car Deal scheme should face criminal prosecution for promoting a Ponzi scheme and profiting from its illicit gains.<sup>465</sup> The South African regulatory authorities are in an advantageous position to pursue legal proceedings against the alleged offenders given the amount of information and evidence available from the collapse of the Satinsky R699 car deal scheme.

### 4.3 World Ventures

The "You Should Be Here" banner is a unique marketing ploy by the travel company World Ventures which is designed to elicit immediate attention from the viewer. People often display these banners in exotic locations, and the images are usually

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<sup>463</sup> Eybers. Johan. *R699-man het weer 'n kar-skema*. 8 October 2017- <https://www.netwerk24.com/Nuus/Algemeen/r699-man-het-weer-n-kar-skema-20171007>. Accessed 19 October 2017. The following text message has been sent as a mass message: *"Interested in BUYING a NEW/DEMO CAR? Pay no Deposit, get R5000 cash back! Up to R3000 p/m cash back on our loyalty program. Reply 'YES' & we will call you back! To Opt-out, sms STOP. STD sms rates and T's&C's apply. Bosphorus Motor Cars 0107300039"*.

<sup>464</sup> It is estimated that more than 27000 South Africans fell victim to the Satinsky R699 Car deal scheme.

<sup>465</sup> *R699 man's high life*. 13 July 2014- <http://www.news24.com/Archives/City-Press/R699-mans-high-life-20150429-2>. Accessed 19 October 2017.

accompanied by captions which expresses gratitude to World Ventures for making their dream trip possible.<sup>466</sup>



**Figure 3.**<sup>467</sup>

World Ventures is an American based private travel and entertainment company founded by Wayne Nugent.<sup>468</sup> Its primary undertaking is the sale of vacation club memberships<sup>469</sup>, and it has operations in over 34 countries which includes South Africa.<sup>470</sup> The company advertises itself as a multi-level marketing company which aims to promote affordable travel and provides substantial rewards for members who recruit additional individuals to join the company.<sup>471</sup>

To take advantage of World Ventures travel deals, one must be a member of the company; pay the required membership signup fee and the monthly membership fee.<sup>472</sup> There are two types of memberships offered by the company: Gold or Platinum

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<sup>466</sup>Shaikh.Nabeela. *Do friends pay your travel bills*. 6 September 2015- <https://www.iol.co.za/news/south-africa/kwazulu-natal/do-friends-pay-your-travel-bills-1911463>. Accessed 19 October 2017. Other catchphrases include: "Make a living while living; Trapped in a job you hate? and; Longing to see the world? Join us and become your own boss. Work from anywhere. Earn fabulous rewards like cars and vacations."

<sup>467</sup> Image first appeared in the online newspaper report; Do friends pay your travel bills? By Nabeelah Shaikh. 6 September 2015- <https://www.iol.co.za/news/south-africa/kwazulu-natal/do-friends-pay-your-travel-bills-1911463>. Accessed 19 October 2017.

<sup>468</sup>World Ventures: <https://www.worldventures.com/en-us/about>. Accessed 19 October 2017.

<sup>469</sup> The vacation club memberships offered by World Ventures are very similar to timeshare agreements which enables several different people to have the right to use a property as a holiday home as provided for in the agreement.

<sup>470</sup> Shaikh.Nabeela. *Do friends pay your travel bills*. 6 September 2015- <https://www.iol.co.za/news/south-africa/kwazulu-natal/do-friends-pay-your-travel-bills-1911463>. Accessed 19 October 2017.The South African World Ventures headquarters is located in Johannesburg.

<sup>471</sup> Ibid.

<sup>472</sup> Ibid.

memberships.<sup>473</sup> The Gold membership, requires an initial signup fee of R4000 and thereafter a monthly fee of R1000.<sup>474</sup> The Platinum membership requires an initial signup fee of R6000 and like with the Gold membership, a monthly fee of R1000 is applicable thereafter.<sup>475</sup>

Members of the travel company, earn points on their membership when making these payments and after the accumulation of a certain number of points, that member is allowed to book various travel packages as offered by World Ventures.<sup>476</sup> The travel packages offered by World Ventures contains certain terms and conditions which members must adhere to.<sup>477</sup>

In addition to the sale of vacation club memberships, World Ventures provides a commission-based structure which rewards members for recruiting additional people.<sup>478</sup> The more people recruited, the greater the rewards earned by that member and if a member recruits four or more people within a month, the monthly membership fee is waived.<sup>479</sup>

World Ventures additionally provides weekly cash incentives for members who have successfully recruited large groups of people.<sup>480</sup> The cash incentives are calculated in American Dollars and the Company issues each of its members with Visa Mastercards which allows for the easy deposit of funds.<sup>481</sup> Members are encouraged by World Ventures representatives to do their own taxes and the company does not take responsibility for those who fail to declare the additional income on their tax returns.<sup>482</sup>

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<sup>473</sup> Ibid. The membership fees are calculated in accordance with the Rand/Dollar exchange rate and the figures are subject to change.

<sup>474</sup> Ibid.

<sup>475</sup> Ibid.

<sup>476</sup> Ibid.

<sup>477</sup> Ibid. For example, members must use the travel services providers which are affiliated with World Ventures or members must travel within a specified period as pre-determined by World Ventures.

<sup>478</sup> Ibid.

<sup>479</sup> Ibid.

<sup>480</sup> Ibid. Social media posts have shown members receiving luxury motor vehicles, jewellery and additional travel trips based on the successful recruitments they have achieved.

<sup>481</sup> Ibid.

<sup>482</sup> Ibid.

In South Africa, an estimated 20000 people have signed on as members of World Ventures and the company is reported to have earned an estimated R130 million in signup fees alone.<sup>483</sup> This has naturally raised concern amongst South Africa's regulatory authorities, especially the Financial Services Board and the South African Reserve Bank.<sup>484</sup> As a result, these two regulatory entities approached the National Consumer Commission to investigate World Ventures activities.<sup>485</sup> Both the Financial Services Board and the South African Reserve Bank believe that World Ventures business model amounts to a pyramid scheme.

The National Consumer Commission completed its preliminary investigation into World Ventures in early 2016, and the preliminary findings have yet to be released.<sup>486</sup> The matter has been handed to the Commercial Crimes Unit for further investigation as the National Consumer Commission is unable to conduct forensic investigations into such schemes and there are additional business ventures suspected of operating pyramid schemes.<sup>487</sup> If World Ventures is found guilty of contravening section 43 of the Consumer Protection Act 68 of 2008, the National Consumer Commission will hand the matter over to the National Prosecuting Authority for criminal prosecution.<sup>488</sup> In addition, since World Ventures is American based and its monies are held in offshore accounts, other regulatory entities like the South African Revenue Services will institute legal proceedings of their own.<sup>489</sup> The concealment of money amounts to tax evasion, and the South African Revenue Services will be entitled to recover the revenue.<sup>490</sup>

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<sup>483</sup> Duncan.Gareth. *WorldVentures to be declared an illegal pyramid scheme*. 28 January 2016-  
<http://www.capetownlately.co.za/worldventures-to-be-declared-an-illegal-pyramid-scheme/>. Accessed 20 October 2017.

<sup>484</sup> Ibid.

<sup>485</sup> Shaikh. Nabeela. *Crunch time for WorldVentures*.31 January 2016-<https://www.iol.co.za/news/crime-courts/crunch-time-for-worldventures-1977893>. Accessed 20 October 2017.

<sup>486</sup> Arde. Angelique. *Pyramid scams thriving in SA*. February (2016) - <http://www.iol.co.za/personal-finance/pyramid-scams-thriving-in-sa-1980769>. Accessed 30 July 2017.

<sup>487</sup> Ibid. The other business ventures which are under investigation include; Wealth Creation Club, My Deposit 24, Make Believe, NMT Investments, Instant Wealth Club, MMM scheme, DIPESA and Sikhese (Pty) Ltd.

<sup>488</sup> Ibid.

<sup>489</sup> Ibid.

<sup>490</sup> In the matter of *MP Finance Group CC (in liquidation) v CSARS* [2007] (69 SATC 141), the issue before the Court concerned the taxability of amounts received by pyramid schemes. The Supreme Court of Appeal provided that an illegal contract is not without legal consequences, it can have fiscal consequences (at para12). The operators of the pyramid scheme took the money received from investors for their own benefit. As a

Further, members and representatives of World Ventures may not be immune to the actions of regulatory and prosecutorial authorities if the travel company is declared a pyramid scheme. Members and representatives who are deeply involved with the travel company may find themselves in contravention of the law. Every aspect of their financial undertakings is likely to be scrutinized, and determinations will be made thereafter as to what penalty should be imposed. The consequences are severe if World Ventures constitutes a pyramid scheme and South Africans should be especially wary of transacting with the company while it remains under investigation.

World Ventures has been in operation for more than ten years, and it has expanded into many countries.<sup>491</sup> The travel company has proven problematic for many regulatory authorities because of its business model.<sup>492</sup> The Norwegian Gaming and Foundation Authority is one of the first regulatory authorities to have declared World Ventures a pyramid scheme.<sup>493</sup> In May 2013, the Norwegian Gaming and Foundation Authority launched an investigation into World Ventures as the company was suspected of operating a pyramid scheme.<sup>494</sup> Nine months later the Norwegian Gaming and Foundation Authority had concluded its World Ventures investigation and found that the travel company amounted to a pyramid scheme.<sup>495</sup> World Ventures had contravened section 16 of the Norwegian Lottery Act which prohibited pyramid schemes.<sup>496</sup> Upon hearing the verdict, World Ventures immediately appealed the decision of the Norwegian Gaming and Foundation Authority.<sup>497</sup> The Lottery Board is

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result, the pyramid scheme had no intention of complying with its contracts with its various investors, therefore, they received income which was duly taxable.

<sup>491</sup> Shaikh.Nabeela. *Do friends pay your travel bills*. 6 September 2015- <https://www.iol.co.za/news/south-africa/kwazulu-natal/do-friends-pay-your-travel-bills-1911463>. Accessed 19 October 2017.

<sup>492</sup> It has proven controversial due to the way in which the company earns its revenue. It appears that there is a greater emphasis placed on the recruitment of additional people as opposed to the sales of vacation club memberships.

<sup>493</sup> Behind MLM: World Ventures a pyramid scheme in Norway. 24 February 2014- <http://behindmlm.com/companies/world-ventures/world-ventures-a-pyramid-scheme-in-norway/>. Accessed 20 October 2017.

<sup>494</sup> Ibid.

<sup>495</sup> Ibid.

<sup>496</sup> The Lottery Act 24 of 1995. Section 16 of the Norwegian Lottery Act 24 of 1995 is the equivalent to section 43 of the National Consumer Protection Act 68 of 2008.

<sup>497</sup> Behind MLM: World Ventures a pyramid scheme in Norway. 24 February 2014- <http://behindmlm.com/companies/world-ventures/world-ventures-a-pyramid-scheme-in-norway/>. Accessed 20 October 2017.

the Norwegian body which supervises the Norwegian Gaming and Foundation Authority, and it was the body tasked with reviewing the appeal made by World Ventures.<sup>498</sup> In November of 2014, the Lottery Board announced its verdict and upheld the decision of the Norwegian Gaming and Foundation Authority.<sup>499</sup> Therefore, World Ventures remained a pyramid scheme in Norway and within a month of the appeal verdict, it had ceased its operations in Norway.<sup>500</sup>

South Africa has yet to find out if World Ventures constitutes a pyramid scheme and the investigation into the travel company has garnered great public interest.<sup>501</sup> It will be interesting to note if the National Consumer Commission takes into consideration the decision made by Norwegian authorities and what happens to the travel company after the Commission releases its findings. It is essential for regulatory and prosecuting authorities to swiftly act when addressing perpetrators of pyramid schemes so that they cannot escape or dispose of property to avoid liability. This is especially important because World Ventures is an international based company with various resources at its disposal. It is fervently hoped that the National Consumer Commission releases its findings within the near future so that further action can be taken by regulatory and prosecutorial authorities.

#### **4.4 Conclusion**

The two schemes which have been the focus of this chapter provide detailed insight into the progression and appeal of pyramid and Ponzi schemes. The promoters behind the R699 car deal scheme went to great lengths to legitimize their business venture by utilizing reputable, registered financial services providers<sup>502</sup> which endorsed the

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<sup>498</sup> Behind MLM: World Ventures lose Norway appeal, still a pyramid scheme. 29 November 2014- <http://behindmlm.com/companies/world-ventures/world-ventures-lose-norway-appeal-still-a-pyramid-scheme/>. Accessed 20 October 2017.

<sup>499</sup> Ibid.

<sup>500</sup> Ibid.

<sup>501</sup> Social Media in particular is abuzz with activity when the print and online media release articles which provides updated information regarding the investigation into World Ventures.

<sup>502</sup> Absa Bank Ltd Financial Services Providers Licence number: 292; Nedbank Ltd Financial Services Providers Licence Number: 9363; and Standard Bank Ltd Financial Services Providers Licence Number:11287.

scheme.<sup>503</sup> It is submitted that with the financial backing of three of South Africa's biggest banking institutions, consumer concerns or doubts were most likely alleviated. It was assumed that these three banking institutions conducted the required due diligence before associating with the scheme; therefore, it was a valid business venture. It is possible that the conduct of both Albert Venter and the three banking institutions played a significant role in attracting consumers to the scheme. It is further submitted that it was unlikely that victims of the Satinsky R699 Car Deal scheme were naïve or financially ignorant when they chose to participate in the scheme. At the time of contracting with the Satinsky Group and the chosen banking institution, victims of the scheme did not see any plausible warning signs which raised concern.

It is unfortunate that after the collapse of the scheme, it affected an estimated 27000 South Africans, and many remain saddled with the burden of paying the total monthly instalments for their vehicles. The National Credit Regulator which is an entity meant to regulate and promote fair, accessible and responsible credit practices failed the victims of the R699 car deal scheme dismally.<sup>504</sup> The National Credit Regulator should have imposed stricter penalties on all three banking institutions for their improper and reckless lending practices.

As far as World Ventures is concerned, the travel company is in a precarious position. If World Ventures is declared a pyramid scheme, it is likely there will be severe consequences attached to the National Consumer Commission's findings. The number of people who will be affected by the National Consumer Commission's decision is concerning. It must be remembered that the proceeds derived from an illegal venture will bear legal consequences.<sup>505</sup> The South African Revenue Services will be a potential concern for those who may be affected by the outcome of the National Consumer Commission's investigative results. The Supreme Court of Appeal in *MP Finance Group CC (in liquidation) v CSARS*<sup>506</sup> confirmed that money received

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<sup>503</sup>Bank warns each owner in R699 car deal will be called. 24 July 2014-  
<http://www.heraldive.co.za/news/2014/07/24/bank-warns-owner-r699-car-deal-will-called/>. Accessed 18 October 2017.

<sup>504</sup>Arde. Angelique. Absa to pay R10m fine to settle with credit regulator. 4 March 2017-  
<https://www.iol.co.za/personal-finance/absa-to-pay-r10m-fine-to-settle-with-credit-regulator-8029640>. Accessed 19 October 2017.

<sup>505</sup> *MP Finance Group CC (in liquidation) v CSARS* [2007] (69 SATC 141) (see note 490)

<sup>506</sup> Ibid



from a pyramid scheme may amount to illegal proceeds; however, it is taxable and can be recovered by the South African Revenue Services. Therefore, the South African Revenue Services is likely to be one of the first regulatory institutions to launch legal proceedings against World Ventures to recover any income derived by the travel scheme. Once the South African Revenue Services receives its entitled share of the proceeds, whatever remains (if any) will likely result in the payment of administrative fines and penalties imposed by the other regulatory authorities such as the South African Reserve Bank. It is highly unlikely that members of World Ventures will recover what they have lost once the regulatory authorities have received their entitled portions of the income generated by the travel company.

The two schemes which have been discussed in this chapter should be used as guides for South African regulatory authorities when addressing pyramid and Ponzi schemes. Both schemes attracted South Africans across the race, creed and wealth divide. For regulatory authorities to effectively control the growth of pyramid and Ponzi schemes in South Africa, it is not sufficient to enact further legislation. It is important for South African regulatory authorities to take into consideration the psychological devices used, and behavioural patterns as displayed by the promoters of these schemes.

## **CHAPTER FIVE**

### **Conclusion**

The terms pyramid scheme and Ponzi scheme are often used interchangeably. As discussed in the preceding chapters, however, pyramid and Ponzi schemes are subtly different from each other. Ponzi schemes are characterised by the offer of high or extraordinary returns on investments<sup>507</sup>, while pyramid schemes are characterised by the emphasis placed on the recruitment of additional members.<sup>508</sup> Both schemes however, have the primary intention of extracting monetary payments from their

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<sup>507</sup> Lewis.K Mervyn. Edward Elgar Publishing. (2016). p 28.

<sup>508</sup> Ibid. p20.

victims. Furthermore, as evidenced in the above discussion, both types of schemes present a myriad of problems for regulating authorities.<sup>509</sup>

South Africa's financial and consumer legislative framework<sup>510</sup> has developed over the 23-years since the demise of the Apartheid era. The enactment of the discussed pieces of financial and consumer legislation has brought about the introduction of new consumer rights; strengthened existing rights, give effect to the values and ideals as entrenched in the Bill of Rights<sup>511</sup> and placed South Africa on par with international standards. The regulatory institutions which have been created have proven to be fairly effective in the regulation of pyramid and Ponzi schemes in South Africa.<sup>512</sup> The various pieces of legislation are intrinsically linked to one another which results in a cohesive network of regulation.<sup>513</sup> However, for this regulatory network to truly be effective, the manner in which the regulatory authorities approach pyramid and Ponzi schemes requires change. When addressing the regulation of pyramid and Ponzi schemes in South Africa, regulatory authorities need to consider additional factors which will help strengthen the current financial and consumer legislative framework.

Regulatory authorities need to begin by considering the personality profiles of individuals who commonly promote pyramid and Ponzi schemes.<sup>514</sup> The promoters of pyramid and Ponzi schemes are pervasive, destructive and highly unscrupulous.<sup>515</sup> Promoters of these types of schemes are self-confident and give the appearance of having in-depth financial knowledge when promoting their schemes.<sup>516</sup> These personality traits enable fraudsters to inspire and instill trust in their victims.<sup>517</sup> The concept of trust is a significant factor which causes victims to participate in either a

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<sup>509</sup> Refer to Chapter three and Chapter four.

<sup>510</sup> Discussed in Chapter three.

<sup>511</sup> The South African Constitution Act 108 of 1996. Chapter 2. Sections 7- 39.

<sup>512</sup> Refer to Chapter three for the detailed discussion on alternative dispute resolution platforms.

<sup>513</sup> The Financial Intelligence Centre, the Financial Services Board, The National Credit Regulator, the Consumer Tribunal, the National Consumer Commission, the South African Reserve Bank and the South African Revenue Services form a network which results in the exchange of pertinent information.

<sup>514</sup> Lewis.K Mervyn. Edward Elgar Publishing. (2016). p165.

<sup>515</sup> Ibid. Bernie Madoff is a perfect example of the type of promoters which endorse pyramid and Ponzi schemes.

<sup>516</sup> Lewis.K Mervyn. Edward Elgar Publishing. (2016). p121.

<sup>517</sup> Ibid.

pyramid<sup>518</sup> or Ponzi<sup>519</sup> scheme. Victims cannot be said to be at fault because the perceptions of trust which have been created by the promoters of these types of schemes immediately dispel any misgivings or concerns. Promoters of these types of schemes are dangerous because of their ability to manipulate and deceive large groups of people. Although their crimes are non-violent, they should be regarded as very serious, since they often have very severe consequences for the victims.

The second problem with the current financial and consumer legislative framework is the lack of prosecutorial authority on the part of regulators, when addressing the perpetrators of pyramid or Ponzi schemes.<sup>520</sup> The regulatory authorities have no alternative but to hand over their findings to the overburdened National Prosecuting Authority for further action. As a result, perpetrators of pyramid and Ponzi schemes fall through the cracks of the South African criminal justice system. For the current financial and consumer legislative framework to be truly effective, the regulatory authorities require further investigative powers, and the regulatory bodies which have been established to address disputes require further powers to prosecute infractions of the regulations and to impose harsher penalties on offenders than is at present the case.<sup>521</sup>

The third problem with the current financial and consumer legislative framework is the manner in which alternative dispute resolution bodies address matters reported by disgruntled consumers. The establishment of alternative dispute resolution bodies is one of the most noteworthy features of the current legislative framework. The

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<sup>518</sup> World Ventures pays celebrities to endorse their brand and attend World Venture events as if they are members of the company. When these celebrities advertise their association with World Ventures, members of the public often mistake the paid celebrity endorsement as a sign of legitimacy.

<sup>519</sup> This was demonstrated with the R699 car deal scheme. CEO of the Satinsky Group Albert Venter cunningly made use of registered financial services providers to financially endorse his scheme.

<sup>520</sup> CEO of the Stainsky Group Albert Venter is a prime example of failed prosecutorial authority despite being guilty of operating a Ponzi scheme.

<sup>521</sup> The point which is made in the preceding chapters refers to the National Consumer Commission which lacks the capacity to conduct forensic investigations into suspected pyramid and Ponzi schemes. If the Commission establishes its own forensic investigative unit or hires the services of a third party to carry out its forensic investigations, it avoids handing over its findings to the Commercial Crimes Unit. In addition, members of the Commission are more knowledgeable when addressing suspected pyramid and Ponzi schemes. They are able to identify the makings of a pyramid or Ponzi scheme and take the requisite action after confirming its findings with the forensic unit. This would streamline the entire process and allow the Commission to execute its mandate far more effectively.

establishment of alternative dispute resolution bodies allows for consumers to seek recourse, and in certain instances, redress for their claims against unscrupulous providers. In practice, however, following this route has proved to be time-consuming, financially demanding and, in certain instances, fruitless.<sup>522</sup> The consumer is often, in effect, in the same position they were in before the establishment of these alternative dispute resolution bodies.<sup>523</sup> The consumer has no other alternative but to approach private counsel to resolve the problem. This is wholly unacceptable. The purpose of the alternative dispute resolution bodies is to provide efficient, and effective solutions to consumers, which eliminates the need to approach the courts.<sup>524</sup> The various alternative dispute resolution bodies created under the current legislative framework appear appealing in theory, but reality proves far different to theory. In order to address consumer complaints in a timeous, efficient and cost-effective manner, alternative dispute resolution bodies require comprehensive administrative and financial support. Increased administrative and financial support will greatly aid alternative dispute resolution bodies in executing their mandates and improving the overall effectiveness of the current legislative framework.

To sum up, it is evident that the enactment of additional financial and consumer legislation will not be sufficient to address the complexities surrounding pyramid and Ponzi schemes in South Africa. South African regulatory authorities require further investigative powers, as well as the authority to impose harsher penalties, which will help to alleviate the burden on policing and prosecutorial authorities. Further, the alternative dispute resolution bodies require greater administrative and financial support to carry out their mandates more effectively.

Pyramid and Ponzi schemes will not be entirely eradicated. However, as discussed above, the South African financial and consumer legislative framework can be strengthened so that it is more difficult for these types of schemes to operate. The pyramid and Ponzi schemes which have been discussed in this study serve as a reminder of the devastation which can occur if they are not nipped in the bud.

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<sup>522</sup> Woker.Tanya. *Evaluating the role of the national consumer commission in ensuring that consumers have access to redress*. 2017 SA Merc LJ 1.

<sup>523</sup> Ibid.

<sup>524</sup> Refer to Chapter three discussion.

Therefore, South African regulatory authorities need to respond to anomalies as soon as they surface so that they are able to protect consumers from suffering further financial losses and prevent these types of schemes from gaining further momentum.

Additionally, consumers should be encouraged to play their role in aiding regulatory authorities in their fight against pyramid and Ponzi schemes. Advancements in modern technology have allowed for consumer and financial information to be freely and readily available. The information may serve to develop and enhance consumer awareness and knowledge. Consumers are encouraged by the various regulatory bodies and authorities to utilize this information and make informed decisions when transacting. An educated consumer is less likely to be conned by promoters of pyramid and Ponzi schemes. Consumer awareness and knowledge are important factors in the overall success of even the most progressive legislative framework.

The two schemes which have formed the topic of this study offer the legislature, regulatory authorities and consumer organizations insight into the intricate workings of these types of schemes. The insight offered by the R699 car deal, the travel scheme set up by the company World Ventures and other schemes discussed in this study, may serve to contribute to a greater understanding of the way in which pyramid and Ponzi schemes conduct their activities. Understanding the manner in which these types of schemes conduct their activities remains a key factor in curbing their growth. It is hoped that authorities will eventually take cognizance of the true impact these types of schemes have on their victims and society at large. Despite their non-violent nature, the consequences associated with failed pyramid and Ponzi schemes are dire. Victims are often left financially ruined, and there is no way in which they are able to mitigate the loss suffered.

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27 September 2017

Ms Rivona Ajodapersad (208511565)  
School of Law  
Howard College Campus

Dear Ms Ajodapersad,

Protocol reference number: HSS/1776/017M

Project title: A legal analysis of the regulation of Pyramid / Ponzi schemes in South Africa with specific focus on the following: the R659 Car Deal scheme and the travel scheme World Ventures

**Approval Notification – No Risk / Exempt Application**

In response to your application received on 21 September 2017, the Humanities & Social Sciences Research Ethics Committee has considered the abovementioned application and the protocol has been granted **FULL APPROVAL**.

Any alteration/s to the approved research protocol i.e. Questionnaire/Interview Schedule, Informed Consent Form, Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through the amendment/modification prior to its implementation. In case you have further queries, please quote the above reference number.

**PLEASE NOTE:** Research data should be securely stored in the discipline/department for a period of 5 years.

The ethical clearance certificate is only valid for a period of 3 years from the date of issue. Thereafter Recertification must be applied for on an annual basis.

I take this opportunity of wishing you everything of the best with your study.

Yours faithfully

Dr Sherrika Singh (Chair)

/ms

Cc Supervisors: Professor S Pete  
Cc Academic Leader Research: Professor Shannon Bosch  
Cc School Administrator: Mr Pradeep Ramsewak

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