

**RESPONSE TO STANDING COMMITTEE OF FINANCE DELIBERATIONS ON
FINANCIAL INTELLIGENCE CENTRE AMENDMENT BILL, 2015 ON 20 APRIL 2016
ON CLAUSES THAT MAY REQUIRE FURTHER AMENDMENTS**

1. **Amend the definition of ‘investigative division in an organ of state’ to include reference to national legislation.**
 - 1.1 The Bill defines 'investigative division in an organ of state' as follows: means an investigative division in an organ of state in the Republic having a function by law to investigate unlawful activity within the organ of state.
 - 1.2 The Constitution defines ‘national legislation’ as follows: **“national legislation”** includes—
 - (a) subordinate legislation made in terms of an Act of Parliament; and
 - (b) legislation that was in force when the Constitution took effect and that is administered by the national government;
 - 1.3 The Interpretation Act defines ‘law’ as follows: “law” means any law, proclamation, ordinance, Act of Parliament or other enactment having the force of law. This would therefore, for example, include any provincial law.
 - 1.4 In order to fulfil the primary objective of the Centre, which is to **assist** in the identification of the proceeds of unlawful activities and the combatting of unlawful activities and the financing of terrorist and related activities, it should be able to assist government at all levels and not be limited to national level.
 - 1.5. Further, the objective of the Centre is to also make information collected by it available to certain authorities in order to facilitate the administration and enforcement of the laws of the Republic. The intention is therefore not to confine the assistance the Centre may provide to only authorities falling under national legislation.
 - 1.5 Taking the above into account, it is proposed that the definition of ‘investigative division in an organ of state’ not be amended to confine it to only national legislation.

2. **Access to information held by Centre (Clause 25)**
 - 2.1 The use of the word ‘may’ in section 40(1) was raised as a concern and the suggestion was to replace it with ‘must’.
 - 2.2 There is merit in using “must” instead of “may”, and therefore it is proposed that ‘may’ be changed to ‘must’ in section 40 and that it be made clear that it is subject to the applicable requirements stipulated in section 40. For example, for the first category of institutions (see the proposed s40(1A)), the disclosure of the

information is conditional on the Centre reasonably believing that the information is required to investigate suspected unlawful activity. Minor drafting changes to make some of these requirements clearer are also proposed.

- 2.3 The use of the word 'may' in section 40(8) was also raised as a concern and the suggestion was to replace it with 'must'. In addition, a concern was raised regarding the alignment of the provisions to recent amendments to the National Strategic Intelligence Act, 1994, by the General Intelligence Laws Amendment Act, 2013 in respect of the definition of "national security".
- 2.4 There is merit in using "must" instead of "may" and being consistent also with the proposed amendment to section 40(1), and therefore it is proposed that the 'may' in section 40(8) be changed to 'must' and that the provision be simplified by referring to the definition of 'national security' as contained in the National Strategic Intelligence Act, 1994, as amended by the General Intelligence Laws Amendment Act, 2013.
- 2.5 The proposed amendments to section 40 in paragraphs 2.2 and 2.4 above are included in the draft A-Bill and, highlighted in green, in the draft B-Bill.