

10 August 2017

The Honourable, Dr Mathole Motshekga
Chairperson of the Portfolio Committee on Justice and Correctional Services

For attention: Mr V Ramaano
Per e-mail: vramaano@parliament.gov.za

STRATE (PTY) LTD'S WRITTEN SUBMISSIONS ON THE CYBERCRIMES AND CYBERSECURITY BILL [B6 – 2017]

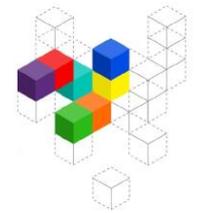
Strate (Pty)Ltd is a market infrastructure or a central securities depository licensed and regulated in terms of Financial Markets Act 19 of 2012 (referred to as "the FMA"). Our submission is concerned with chapter 11 (sections 57 and 58) of the Bill, in relation to the duplication of regulation and costs on market infrastructures.

1. Background

- 1.1. Section 57(2) of the Bill provides for the declaration of a critical information infrastructure if certain conditions are met. It also provides for the issuing of a directive in relation to a critical information infrastructure, in order to regulate the minimum standards relating to information maintenance by the critical information infrastructure. The costs of complying with the directive are for the account of the critical information infrastructure concerned.
- 1.2. Section 58 of the Bill provides for a biennial independent audit to be done on a critical information infrastructure in order to evaluate compliance with the directive. The audit costs are also for the account of the critical information infrastructure concerned.
- 1.3. We would like to bring to your attention that, certain information infrastructures that may be declared critical information infrastructures could, in terms of other legislation or law, be subject to equivalent or higher information maintenance standards than those required by Chapter 11 of the Bill. For instance:
 - 1.3.1. The Financial Services Board ("referred to as "the FSB") licenses and regulates market infrastructures in terms of the FMA.
 - 1.3.2. In order for a market infrastructure to be licensed and to remain licensed, it must have "*security and back-up procedures to ensure the integrity of the records*" (See sections 8(1)(g), 28(1)(h), 48(1)(h) and 55(1)(e) of the FMA).
 - 1.3.3. In terms of the FSB Board Notice 104 of 31 May 2013: *Requirements Applicable to the Granting of a Market Infrastructure License* (GG No 36494), a market infrastructure must before it can be licensed by the FSB, provide a report by an independent party, agreed to by the FSB, confirming that the applicant has:

"(a) adequate systems, procedures and policies in place including a business continuity plan, a disaster recovery plan, ...; and

(b) adequate disaster recovery hardware and related facilities located off-site".



- 1.3.4. In terms of section 59 of the FMA, the FSB must annually assess the market infrastructure's adherence to the FMA, directives, requests, conditions or requirements of the FSB, which includes these licensing requirements. The assessment would include a report by an auditor on adherence to or the adequacy of the security and back-up measures and business continuity and disaster recovery measures, as well as other governance measures as required.
- 1.3.5. In terms of section 95 of the FMA, the FSB must conduct an on-site inspection at the premises of the market infrastructure in order to evaluate compliance with the FMA and these licensing requirements.
- 1.3.6. All these regulatory activities by the FSB in terms of the FMA would achieve the same or better outcomes as intended to be achieved by chapter 11 of the Bill.

2. Submission

- 2.1. It is our submission that market infrastructures regulated by the FSB in terms of the FMA are already subject to higher standards in relation to security, disaster recovery and back-up measures. Further, the FMA requires an annual evaluation of compliance with these measures (which is more stringent), as opposed to biennial evaluation required by this Bill (which is less stringent). The regulatory activities by the FSB in terms of the FMA would achieve the same or better outcomes as intended to be achieved by chapter 11 of the Bill. It is submitted that the Bill should acknowledge such regulatory activities, as further elaborated below.
- 2.2. The Bill does not appear to anticipate the possibility of regulatory duplication in this regard. In order to minimize the effects of regulatory duplication, it is submitted that the Bill should be redrafted to provide for an exemption of an information infrastructure from chapter 11, if the information infrastructure is already subject to equivalent or higher information maintenance standards than those required in chapter 11 (e.g. a market infrastructure regulated in terms of the FMA). We propose the insertion of the following clause(s) in section 57 of the Bill:

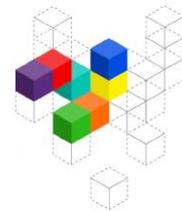
Option 1:

57. (1) This chapter does not apply to a market infrastructure as defined in section 1 of the Financial Markets Act, 2012 (Act No. 19 of 2012).

Option 2:

57. (5) The Cabinet member responsible for State security may exempt the information infrastructure from chapter 11, if the information infrastructure is subject to legislation that provides for equivalent or extensive information maintenance standards than those required by section 57.

- 2.3. It is further submitted that subjecting a market infrastructure regulated by the FSB in terms of the FMA to additional similar parallel regulatory standards could amount to a duplication of regulatory efforts. This could increase regulatory burdens and compliance costs on market infrastructures, and consequently, the South African financial markets. The latter could hamper the "*financial inclusion*" policy objective.



We thank you for the opportunity to submit the comments.

Please contact the writer for any queries.

Yours Sincerely,

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