



**MINISTER: FINANCE
REPUBLIC OF SOUTH AFRICA**

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Ref. M3/4/1/7 (1811/17)

Dr M Motshekga, MP
Chairperson: Portfolio Committee on Justice and Correctional Services
Parliament of the Republic of South Africa
P O Box 15
CAPE TOWN
8000

Dear Dr Motshekga,

CYBERCRIME AND CYBERSECURITY BILL [B6—2017]

I refer to the invitation for written submissions on the above Bill by 28 July 2017.


During the consultation on the Bill before tabling of the Bill in Parliament, the National Treasury (NT) had fruitful engagements with the Department of Justice and Constitutional Development and the State Security Agency. Most of the amendments proposed by the NT were accommodated in the Bill. I wish to use this opportunity to raise the following technical proposals for consideration by your Committee:

- (a) The definition of “financial institution” in clause 1 of the Bill refers to the Financial Services Board Act, 1990. In June 2017 Parliament passed the Financial Sector Regulation Bill which is to repeal the Financial Services Board Act. Once the Financial Sector Regulation Bill is assented to and gazetted, the definition should be amended to refer to definition in the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017).
- (b) Clause 52 deals with obligations of electronic service providers and financial institutions. Clause 52(5) excludes from its application a financial sector regulator or a function performed by the South African Reserve Bank (SARB) in terms of section 10 of the South African Reserve Bank Act, 1989. Since SARB also performs functions in terms of other legislation, we proposed the addition after the words “the South African Reserve Bank Act, 1989” of the words “or any other legislation”. Examples of other legislation are the Currency and Exchanges, 1933 and the National Payment Systems Act, 1998.
- (c) Clause 53 provides for the Cyber Response Committee and includes NT, SARB and South African Revenue Service. The Chairperson of the Committee may request any other department or public entity to assist the committee. Though the term “public entity” is not defined in the Bill, it may be construed to be limited to public entities listed in the Schedules 2 and 3 of the Public Finance Management Act, 1999.

To provide for the Prudential Authority to be established by the Financial Sector Regulation Bill, which will not be a public entity; it is proposed that instead of "any other department or public entity" the provision states "any other organ of state", as defined in section 239 of the Constitution".

Your favourable consideration of the above proposals will be appreciated.

Yours sincerely,



MR MKN GIGABA, MP
MINISTER OF FINANCE
DATE: 20/7/08/03