**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**QUESTION NUMBER: 1247 [NW1395E]**

# DATE OF PUBLICATION: 6 MAY 2016

**1247. Mr D J Maynier (DA) to ask the Minister of Finance:**

Whether the Financial Intelligence Centre (a) has conducted or (b) is conducting an investigation into (i) allegations of money laundering and (ii) any other specified matter in respect of (aa) members of the Gupta family and/or (bb) known close associates of the Gupta family; if not, in each specified case, why not; if so, in each specified case, what are the relevant details?

 NW1395E

**REPLY:**

The short answer is that the Financial Intelligence Centre (FIC) is not an “investigating authority”, and is therefore not mandated to undertake nor conduct investigations to gather evidence to prove criminal conduct in a prosecution.

Legal provisions in the Financial Intelligence Centre Act, Act No 38 of 2001 (the FIC Act), prevent the FIC from disclosing any information on what matters the FIC may be working on or not.

In particular, the FIC Act contains strict limitations to protect the confidentiality of reporters, on the disclosure of information reported to it, information at its disposal and of details of its activities concerning such information (section 29 read with section 53, and sections 40 and 41 read with section 60, of the FIC Act).

The FIC is therefore not able to provide the information requested.

The way the Honourable Member has phrased this Question 1247, reflects certain misunderstandings of the FIC Act and how the FIC is called upon to lawfully administer the FIC Act, which I need to clarify, and do so below, to ensure the Honourable Member is better informed.

The FIC Act requires designated financial and other institutions to establish and verify the identities of their customers, and maintain related records of their customers and their transactions. The FIC Act also requires designated institutions to report certain information, such as large cash transactions (R25 000 and above) and suspicious and unusual transactions to the FIC. Importantly, an institution which reports a suspicious or unusual transaction to the FIC may continue with the reported transaction(s) unless instructed by the FIC not to do so.

The FIC Act currently does not require a financial institution to pay special attention to any category of customers. The FIC Act also does not contain any provisions which require financial institutions to apply a risk-based approach to the manner in which they manage customer relationships. In this respect the FIC Act is not in line with current international standards on measures to combat money laundering and terrorist financing (the Recommendations of the Financial Action Task Force (the FATF)).

These FATF standards require, among others, that financial institutions understand the risks associated with different business relationships and apply enhanced due diligence where they perceive higher risk of money laundering or terrorist financing. Enhanced due diligence implies more diligent identification and verification measures and stricter monitoring of customers’ transaction activities.

Parliament is currently considering amendments to the FIC Act to give effect to the requirements of the international standards. These requirements include the application by financial institutions of a risk-based approach to customer due diligence and applying additional due diligence to PEPs (described in the amendments as Persons in Prominent Positions).

I re-affirm that the FIC does not itself undertake “investigations” with a view to gather evidence to prove criminal conduct in a prosecution.

Instead, the FIC analyses information reported to it and at its disposal, and supplies financial intelligence on financial transactions of reported persons or entities, but not evidence, to competent authorities, such as investigating law enforcement authorities, statutory supervisory bodies and state security agencies, to facilitate the administration and enforcement of the laws of the Republic.

These competent authorities, as lawful recipients of FIC issued financial intelligence, in turn undertake independent criminal investigations, supervisory inspections, or other actions, respectively, within their respective legal mandates.

Accordingly, the sharing of information by the FIC with other competent authorities enables them to better discharge their respective responsibilities in the administration of the criminal justice system, the financial and non-financial sector regulatory systems, and the protection of national security, in the Republic.

The FIC Act contains strict limitations on the disclosure by the FIC of information at its disposal. This also applies to disclosure by the FIC of details of its activities concerning such information. Section 29(4) of the FIC Act provides that:

*“No person who knows or suspects that a report has been or is to be made in terms of this section may disclose that knowledge or suspicion or any information regarding the contents or suspected contents of any such report to any other person, including the person in respect of whom the report is or is to be made, otherwise than-*

*(a) within the scope of that person’s powers and duties in terms of any legislation;*

*(b) for the purpose of carrying out the provisions of this Act;*

*(c) for the purpose of legal proceedings, including any proceedings before a judge in chambers; or*

*(d) in terms of an order of court.”*

Contravention of this provision is an offence punishable by imprisonment for 15 years or to a fine not exceeding R100 million under section 53 read with section 68 of the FIC Act.

Moreover, section 40(1) of the FIC Act restricts the FIC to disclosing information under its control:

*“(a) to an investigating authority inside the Republic, the South African Revenue Service and the intelligence services, which may be provided with such information-*

 *(i) on the written authority of an authorised officer if the authorised officer reasonably believes such information is required to investigate suspected unlawful activity; or*

 *(ii) at the initiative of the Centre, if the Centre reasonably believes such information is required to investigate suspected unlawful activity;*

*(b) to an entity outside the Republic performing similar functions to those of the Centre, or an investigating authority outside the Republic which may, at the initiative of the Centre or on written request, obtain information which the Centre reasonably believes is relevant to the identification of the proceeds of unlawful activities or the combating of money laundering or financing of terrorist and related activities or similar offences in the country in which that entity is established;*

*(c) to an accountable institution or reporting institution which or any other person who may, at the initiative of the Centre or on written request, be provided with information regarding the steps taken by the Centre in connection with transactions reported by such accountable institution, reporting institution or person, unless the Centre reasonably believes that disclosure to such accountable institution, reporting institution or person of the information requested could-*

 *(i) inhibit the achievement of the Centre’s objectives or the performance of its functions, or the achievement of the objectives or the performance of the functions of another organ of state; or*

 *(ii) prejudice the rights of any person;*

 *(d) to a supervisory body, which may at the initiative of the Centre or on written request be provided with information which the Centre reasonably believes is relevant to the exercise by that supervisory body of its powers or performance by it of its functions in relation to an accountable institution*

*(e) in terms of an order of a court; or*

*(f) in terms of other national legislation.”*

In terms of section 41 of the FIC Act:

*“No person may disclose confidential information held by or obtained from the Centre except-*

*(a) within the scope of that person’s powers and duties in terms of any legislation;*

*(b) for the purpose of carrying out the provisions of this Act;*

*(c) with the permission of the Centre;*

*(d) for the purpose of legal proceedings, including any proceedings before a judge in chambers; or*

*(e) in terms of an order of court.”*

Contravention of these two provisions (sections 40 and 41) is an offence and punishable by imprisonment for 15 years or to a fine not exceeding R100 million under section 60 read with section 68 of the FIC Act.

Confirmation or denial by the FIC in the public domain on whether the FIC has received or disclosed any information relating to a particular person or entity to another competent authority, or taken any other action related to such information would amount to a contravention of the above-mentioned provisions of the FIC Act and is therefore not legally permissible.

Moreover, since the FIC’s mandate requires it to assist and work in collaboration with other competent authorities in any given criminal investigation or supervisory inspection or action, any public disclosure of information relating to a specific person or entity who may be the subject of an investigation, supervisory inspection, or details of an operation being conducted by such competent authorities,. It would therefore be irresponsible for the FIC to comment in public on operational matters in which the FIC may or may not be involved. is likely to have a serious detrimental impact on the investigation, inspection or operation.

In conclusion, as Minister of Finance I therefore cannot confirm or deny whether the FIC has information relating to the specific persons or entities previously mentioned at its disposal, nor whether the FIC has or has not made information available to law enforcement authorities in support of investigations of allegations of money laundering against the specific persons or entities.