**WRITTEN SUBMISSIONS ON FINANCIAL INTELLIGENCE CENTRE AMENDMENT BILL [B 33–2015]**

**BARLOWORLD AUTOMOTIVE**

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| **Amendment** | **Comment** |
| **Insertion of Part 2A and sections 26A, 26B and 26C in Act 38 of 2001**  **17.** The following heading and sections are hereby inserted in the principal Act after  section 26:  ‘‘***Part 2A***  ***Financial sanctions***  **Prohibitions relating to persons and entities identified by Security**  **Council of the United Nations**  **26B.** (1) No person may, directly or indirectly, in whole or in part, and by  any means or method—  *(a)* acquire, collect, use, possess or own property;  *(b)* provide or make available, or invite a person to provide or make  available property;  *(c)* provide or make available, or invite a person to provide or make  available any financial or other service;  *(d)* provide or make available, or invite a person to provide or make  available economic support; or  *(e)* facilitate the acquisition, collection, use or provision of property, or  the provision of any financial or other service, or the provision of  economic support, intending that the property, financial or other  service or economic support,  as the case may be, be used, or while the person knows or ought reasonably  to have known or suspected that the property, service or support concerned  will be used, directly or indirectly, in whole or in part, for the benefit of, or  on behalf of, or at the direction of, or under the control of a person or an  entity identified pursuant to a resolution of the Security Council of the  United Nations contemplated in a notice referred to in section 26A(1).  (2) No person may, directly or indirectly, in whole or in part, and by any  means or method deal with, enter into or facilitate any transaction or  perform any other act in connection with property which such person  knows or ought reasonably to have known or suspected to have been  acquired, collected, used, possessed, owned or provided for the benefit of,  or on behalf of, or at the direction of, or under the control of a person or an  entity identified pursuant to a resolution of the Security Council of the  United Nations contemplated in a notice referred to in section 26A(1).  (3) No person who knows or ought reasonably to have known or  suspected that property is property referred to in subsection (1), may enter  into, or become concerned in, an arrangement which in any way has or is  likely to have the effect of—  *(a)* making it possible for a person or an entity identified pursuant to a  resolution of the Security Council of the United Nations contemplated  in a notice referred to in section 26A(1) to retain or control the  property;  *(b)* converting the property;  *(c)* concealing or disguising the nature, source, location, disposition or  movement of the property, the ownership thereof or any interest  anyone may have therein;  *(d)* removing the property from a jurisdiction; or  *(e)* transferring the property to a nominee. | **Clause 17 (insertion of 26B in the Principal Act) –** whilst the intent of the prohibition relating to persons and entities identified by the Security Council of the United Nations is appreciated, an unintended consequence of this is that it requires a business to have a screening system or tool in place to screen the transactions against the designated United Nations Security Council sanctions lists.  It must be borne in mind that not all businesses, in particular smaller businesses, cannot afford to purchase screening tools, which may result in a challenge to monitor clients against the sanction lists as it is impractical to do it manually without a screening tool. |
| **Amendment of section 29 of Act 38 of 2001, as amended by section 27 of Act 33 of**  **2004**  **21.** Section 29 of the principal Act is hereby amended—  *(a)* by the substitution in subsection (1)*(b)* for subparagraph (iv) of the following  subparagraph:  ‘‘(iv) may be relevant to the investigation of an evasion or attempted  evasion of a duty to pay any tax, duty or levy imposed by  legislation administered by the Commissioner for the South  African Revenue Service; **[or]**’’; and  *(b)* by the addition to subsection (1)*(b)* of the following subparagraph:  ‘‘(vi) relates to the contravention of a prohibition under section 26B;  or.’’;  *(c)* by the substitution in subsection (3) for the words preceding paragraph *(a)* of  the following words:  ‘‘(3) No person who made or must make a report in terms of this  section may, subject to subsection 45B(2A), disclose that fact or any  information regarding the contents of any such report to any other  person, including the person in | **Clause 21(b) (addition of 29(1)(b)(vi) in the Principal Act) –** refer comments above regarding the requirement for a screening system or tool. |
| **Substitution of section 51 of Act 38 of 2001**  **41.** The following section is hereby substituted for section 51 of the principal Act:  ‘‘**Failure to report cash transactions**  **51.** (1) An accountable institution or reporting institution that fails,  within the prescribed period, to report to the Centre the prescribed  information in respect of a cash transaction in accordance with section 28,  is guilty of an offence.  (2) An accountable institution or reporting institution that fails, within  the prescribed period, to report to the Centre the prescribed information in  respect of a cash transaction in accordance with section 28, commits an act  of non-compliance and is subject to an administrative sanction.’’. | **Clause 41 (addition of 51(2) in the Principal Act) –** whilst every effort is made to report cash transactions within the prescribed period, there are instances when cash is deposited into an institution’s bank account by a person unknown to the institution or whom the institution does not have details for, save for the reference on the bank statement. In these instances, the institution approaches the bank to obtain further details about the depositor, which may delay the reporting of the cash transaction depending on when the bank responds.  There are times when no contact details are provided on the deposit slip. This makes tracing even more difficult and in such instances, the institution literally has to wait for the depositor to make contact with the institution. Accordingly, it is not possible to report the cash transaction with the prescribed period as not all of the depositor’s details are known to the institution.  The above instances should be eligible to receive leniency and should not be subject to an administrative sanction due to circumstances beyond the institution’s control. |