**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 aftersection 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 byany means or method—*(a)* acquire, collect, use, possess or own property;*(b)* provide or make available, or invite a person to provide or makeavailable property;*(c)* provide or make available, or invite a person to provide or makeavailable any financial or other service;*(d)* provide or make available, or invite a person to provide or makeavailable economic support; or*(e)* facilitate the acquisition, collection, use or provision of property, orthe provision of any financial or other service, or the provision ofeconomic support, intending that the property, financial or otherservice or economic support,as the case may be, be used, or while the person knows or ought reasonablyto have known or suspected that the property, service or support concernedwill be used, directly or indirectly, in whole or in part, for the benefit of, oron behalf of, or at the direction of, or under the control of a person or anentity identified pursuant to a resolution of the Security Council of theUnited 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 anymeans or method deal with, enter into or facilitate any transaction orperform any other act in connection with property which such personknows or ought reasonably to have known or suspected to have beenacquired, 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 anentity identified pursuant to a resolution of the Security Council of theUnited Nations contemplated in a notice referred to in section 26A(1).(3) No person who knows or ought reasonably to have known orsuspected that property is property referred to in subsection (1), may enterinto, or become concerned in, an arrangement which in any way has or islikely to have the effect of—*(a)* making it possible for a person or an entity identified pursuant to aresolution of the Security Council of the United Nations contemplatedin a notice referred to in section 26A(1) to retain or control theproperty;*(b)* converting the property;*(c)* concealing or disguising the nature, source, location, disposition ormovement of the property, the ownership thereof or any interestanyone 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 followingsubparagraph:‘‘(iv) may be relevant to the investigation of an evasion or attemptedevasion of a duty to pay any tax, duty or levy imposed bylegislation administered by the Commissioner for the SouthAfrican 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)* ofthe following words:‘‘(3) No person who made or must make a report in terms of thissection may, subject to subsection 45B(2A), disclose that fact or anyinformation regarding the contents of any such report to any otherperson, 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 prescribedinformation 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, withinthe prescribed period, to report to the Centre the prescribed information inrespect of a cash transaction in accordance with section 28, commits an actof 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. |