

## Financial Intelligence Centre Amendment Bill

29/01/2016

To: Mr Yunus Ismail  
 Chairperson of the Portfolio Finance Standing Committee

For Attention: Mr Allen Cowling  
 Secretary: Standing Committee on Finance  
 Per email: awicomb@parliament.gov.za

Dear Mr A Wicomb

Written submission on The Financial Intelligence Center Act

Introduction

The amendment of the Bill of the FICA 2001 as enacted by the parliament of South Africa stated that: The amendment of section 1 of Act 38 of 2001 as amended by the section 27 of Act 33 of 2004; section 1 of Act 11 of 2008 and section 53 of Act 2013 refer it as the principal Act, is amended by the substitution in subsection 1 for the definition of "Administrative Sanction" of the definitions below:

1) The definition of the "Administrative Sanction" in total, clarify the Act as a whole. It include the action in line with the permission of the authority in terms of the support and approval according to the Law. Agreed by the authority the necessary sanctions concerning the plans obtained from various interested authorities as well as the public opinion: customs and influential person that can bring encouragement on the opinion and practices. Align with the Act of making legally authoritative binding agreement by ratifying and confirming them. E.g the day in which the accountable institutions sanctions were in solemnly (legally correct) given to this great Act, should be recorded as the important day. The reward be quoted to uplift the moral of the institutions. The international law to be regulated by means of a regulator sanctions, the interdepartments actions of the nation like blockage, restrictions on the trade, withholding of loans intended to force obedience, to be regulated under the FIC ACT. The lawful action to be taken rather than to threaten with military action, that can show the consideration that leads one to obey a rule, conduct or binding force. To use "Oath" instill the conscience of not stealing from the society instead support firm sanction of getting the consent from the government and that coverup the sanctions from the FIC into the country.

The amendment of the section 45C of Act 38 of 2001 as inserted by section 16 of Act 11 of 2008, section 45C of principal Act, and amended by 45D through addition to section 1 continues as follows:

"The appeal may..... be extended by the additional clause 'The applicant to be given a permission by the authority to extend the period through genuine and non-alternative reasons.' The administrative sanction does not specify an individual and not have direct effect on one to one therefore, a relevant provision be included on the sanctions from the various authorities and be confirmed by the National Review Fund Body, after be added to the administrative sanction. The definition of "Authorised Officer" is amended to expand the scope of the persons who may request information from the financial intelligence center. In that sense the sanctions must include those of the head of the service as being unique for they differ from the sanctions of other service type-based and country wise, yet, applied under the same Law of the FIC and United Nations Act. Thus, the rules which are formulated within the country, honoring the Act above, simplify the enforcement by the UN which will have to find right and wrong, country by country. As well as the National commissions: Director-General on their capacity, practice as above to minimize the undictified practices by the categories but promoting serious minded persons who will learn and get used to abide by the laws.

The deletion of the "Bereavement of Negotiation Instrument" enable the transformation by avoiding contradiction between the states, beneficial owner and the legal person. However, the Act of the prohibition applied to the independent legal person should be included since the "Beneficial Owner" exercise the effective control on him. The content shall encompass the prove on the acceptance of the duty done properly and formerly.

After the definition "Centre" the insertion in section 1 "Client", means a person who has entered into a business relationship or a single transaction with an accountable institution. Now, the UN sanction is to support the client (State/country) that is economically and politically depended on the larger state. The country internal policy to assist through its system in relation to the difficult condition and relationship confronted them. It will be better to monitor the institution by means of analysis on the deterioration of problems towards the trade. The statistics to be submitted to the FIC.

The insertion of the sentence "Domestic Prominent Influential Person" after the definition of "Director", means an individual who holds and as well include position for a period exceeding six months, or preceding 12 months in the Republic. The clause of Director should encompass the word Directorship who his position or term of office allow him to come down to give advices out of the people experiences in the world. The appointed Director to focus on the space where he is needed for the advice. That will promote the uniqueness of the institution of the finance. The information collected by the domestic Influential person nominated, must be compared with that of the other country to form one clause. That will help to enhance the standard of the weak state operationally. As much as to discuss the information to the International organisation based in the country.

After the definition of "Entity" the definition of "Executive Officer" in relation to a company, means a person who a) Exercises general executive control and management, responsible for the business and activities of the company. Irrespective of any particular title given, he regularly participates to a material degree in that exercise of general executive control or a significant portion.

He has the power to put the laws into effect without approval hence can issue the orders or directives granted by the congress or the constitution, as well as can get into agreement between the head and the government. He got the mandate to testify before a court of law or a congressional committee because he theoretically exercise executive privileges. He has the powers to join the executive session of a legislative body, usually close to the public, in which he serves as a council that will help in considering the confirmation of executive appointment after the adjournment of the

Congress. Obviously all these entitled him an executiveship which give him a office/power in the government or organization.

The addition to "Foreign Prominent Public Official". Under Administrative Sanction, he is a person appointed to an administration position and executive in the corporation company of his country. He is a member of high rank above the lower in some honorary official. He must be brave and dedicated to officered the public utility in any state he is deployed to.

"Non-compliance". Amendment to make a distinction between what constitutes non-compliance attracting an administrative sanction from non-compliance that is subject to a criminal sanction states thus:

If the institution doesn't comply with the orders but grown from the opposition to get restriction, that act does not attracts an administrative sanction, yes, constitutes a non-compliance, but if it does not take an order delivered by the law, the act is on the criminal sanction site. If doesn't act in agreement with a request or command from the authority, that constitutes a non-compliance on the administrative sanction site.

"Risk Management and Compliance Programs". In the FIC is further detailed in clause 25 and amend section 42 of FIC Act

It is a risk to manage policy that can spuck another country's programs and being exposed to the staff members. E.g In order to win a war, we have to take a risk of offending neutral nations. Second one, to spark major raw material development program to another country may cause you to run at a loss due to the hazardous, dangerous poison that could be used to manage the decreasing of dangerous insects. It is a disadvantage to risk capital on developing such policy. Instead the regulation on administrative skills to be put in place to help the institutions to comply easily with the policy.

"Trust" inserted in FIC Act and as defined in the "Trust Property Control Act no 57 of 1988" and excluded trust established by a0 The virtue of a court order and others.

The FIC must have a provision of confident expectations that will keep the stock expectation into the business with other institutions. Have a central committee to control the product and prices of the commodity and resulted in reducing the competition through the illegal combination of businessmen or companies.

#### Amendment of Aims.

The extension of the objective through training, will produce the skillful people on dealing and using sanctions on finance. The deletion of the provision related to the counter money laundering advisory council is of paramount important. The provision of a risk based approach to client identification and verification should include the testifying and affirmation through the combination of awaiting a verification of time and a demonstration of truth by facts of circumstances, evidence and testimony direct to the client. Also be applied with the risk assessment, management Identified money laundering and the terrorism financing risks management. All these are the addition to the regulation content and the flexibility of it. The obligation to keep the identity and verification and transaction records to be provided.

#### Setting out the procedures in respect of the financial Sanction control measures pursuant to the notification of the person and entities identified by the security council of the United Nations.

In the procedures of the Act, the notification that should put amongst others state like this: The director or Minister shouldn't carry the blame in terms of the application which is wrongly completed neither don't match the notice advised. That can in totality protect the advise.

The proceeds from penalties, must be procedurally obtained from the offenders. the way of doing so, should the same to every one who's gonna be investigated for a default. In this way the policy or regulation on which the notification is included, will be enacted from the uniform reasoning.

The measures Act, of the FIC on warranting the inspector should be of uniform method. To practice in one way, the method used for the similar faults be recognised by means of the same code.

The money of the Penalties to be paid in the National Revenue Funds could be recognised by separating it before is send into the revenue funds. The National Revenue Funds be divided into financial operations, sub coffins that show where the money comes from. E.g Loans, credit or from management funds. The financers of the NRF be skilled differently to cover-up all the categories of the defaulters. For example, Those who have little financial sense, need the improvement on financial affairs. Management to assist the institutions how to raise money that can close the gap of penalty, internally and externally. The codes of Law will guide the finacers on dealing with crime and its punishment. (heavy and light fine) On appeals, the regulation to be reformed on the introduction of an evidence which was not given to either party prior to a decision. Its operation should seek to know the origin, evidence and the necessity of it, why should to be considered. The provision to be extended by increasing the number of the appeal board members to equalize the votes. The decision of the majority to be further adjudicated by the elected body which will be authorised to finalise the decision of the board. E.g Lawful adjudicator/judge to be take part in the decision-making process.

#### The further provision for offences.

There must be a code of conduct to be inspected if it is complied with and if it qualifies the offence before the punishment is declared. If the accountable Institution's obligation regarding the due diligence record keeping measures are over applied, the inspection should be conducted to confirm the offence.

#### Concerns

- 1) The importance of the bill and how it will affect me and the public are stated below;  
It is important in the sense that, its sanctions are approved by various authorities which represent all stake holders at large. E.g public and private environment form community. Thus, the respond from the public to the authority, and vice versa, will benefit everybody.
- 2) It is very important that the reward be quoted to enhance the low moral of the uncertain and defaulters involved parties. Their re-existance could result into a recognised individual or institution.
- 3) The regulated International Law, if diminishes the actions of terrorism between the Interdepartments of the nation, will be endorsing the comfortable relation amongst the nation and elevate the survival of more creatures universally.
- 4) The confirmation of the sanction by the National Review Fund Body, before it is added to the administrative sanction avoid the wrong assessment by other authority. Hence the extension of the provision for permitting the applicant to appeal is recommended. The applicant by repeating the appeal, will be recognising the knowledge that was unaware created

and reinforcing the corrected information.

5) The expansion of the number of authority Officers, increase the scope of people who are to have an access to the information held by the Financial Intelligence Centre. More Institutions, more people, Globally, will know exact sanctions to apply and less court cases initiated.

6) The approbation provision which will replace negotiation issue will enforce the respect between the Beneficial Owner and the Legal Person. Due to the reason that, the beneficial owner will be forced to reward the legal person and the legal person will act in accordance with the obedience sanction to record good behaviour. Therefore the two parties will live under the good conditions.

7) The Domestic Prominent Influential Person as an individual, must be on board with his responsibility. Acting inline with the United Nation Laws, will help him to cope with the advices needed by the lower involved stake holders in the area of finance of the Financial Intelligence Centre environment.

8) The creation of the bodies like, financier, National review Funds body, will assist by scrutinizing the decisions taken already. Whether the correct measures are followed and the decision does not favor any site between the authority and the person whom the coffin belong to.

9) Inspection on compliance and non-compliance on the penalty, will help to reduce or revoke the penalty of the person compiled with the conduct.

#### Speaking in the committee meeting

The drive of the intention to speak in the committee meeting, is the significance of the formal nature of the conversation herein. To emphasize the stability of the resolutions/facts written in here. As well as to get use to the system of presenting before the audience.

#### Support

I consulted the secretary of the committee for more guidance. Mr Allen Wicomb, Higher Authority member of Nehawu: Mr Jerry Make for the permission to submit and present, and Mr Abram Malindi ANC member gave me a go ahead.

#### Conclusion

The amendment under this Act should be scrutinised further through the proceedings already advanced.

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