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Attention: Ms Teboho Sepanya / Mr Allen Wicomb
National Treasury
3rd Floor
90 Plein Street
Cape Town
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By electronic mail: tsepanya@parliament.gov.za / awicomb@parliament.gov.za

7 February 2019

Dear Ms Sepanya / Mr Wicomb

BDO SOUTH AFRICA'S COMMENTARY SUBMISSION TO THE FINANCIAL MATTERS AMENDMENT BILL, 2019 (No 1 of 2019)

This commentary letter is submitted on behalf of BDO South Africa in response to the Financial Matters Amendment Bill, 2019 (No 1 of 2019) with specific reference to the proposed insertions of sections 24 A and sections 24 B to the Auditing Profession Act, 2005 (Act 26 of 2005).

1. We would like to express our concern in that the period of time provided for commentary to the Bill has been unrealistic. It has prevented international firms, such as ours, from providing a holistic response as we would have liked to research best practice internationally. Nevertheless we thank you for the opportunity to provide our commentary.
2. In terms of the proposed insertion "Section 24A" the Regulatory Board of the Independent Regulatory Board for Auditors ("IRBA") is able to send an official to enter any premises with either, prior consent or without prior consent and without prior notice, subject to obtaining a warrant by a Magistrate or Judge.
3. We would like to provide commentary herein, that the abovementioned section could possibly allow for abuse of the process within the section as there is no current obligation on the Regulatory Body to first seek to request consent for entry, instead, the Regulatory Body could instead easily obtain a warrant.

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The company's principal place of business is at 22 Wellington Road, Parktown, Johannesburg, where a list of directors' names is available for inspection. BDO South Africa Incorporated, a South African personal liability company, is a member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms.

4. We would believe that in order to equally protect the rights of the person or firm and its' premises, it should be added, to said section, that request should be made by the official, in writing, setting out the reasons for its' request in order to investigate and should be sent with reasonable notice before entry is required, and only in the event of the person refusing such consent unreasonably and obstructively will the Regulatory Body be provided the right to seek legal process in the form of a High Court application ordering the legal entry, investigation and/or seizure.
5. In terms of section 24B there only needs to be proven by the official, with information under oath or affirmation, that either a contravention of the Auditing Professions Act, 2005 ("this Act") has occurred or may be occurring or may be about to occur and entry and investigation of the premises are likely to yield information pertaining to the contravention.
6. The Regulator could easily manipulate the justice system by choosing a creature of statute to grant a warrant on a premonition, as long as the requirements of Section 24B are fulfilled, which would not be very difficult given the language of the Section as it stands now.
7. We would like to provide commentary herein in that the abovementioned section could possibly allow for unjustified warrants being obtained by the officials as there is very little substantive reasons and material evidence required in order to obtain said warrant. We further provide commentary that an application to the High Court should replace the warrant and furthermore to the application, that material evidence and prima facie proof, in terms of the contravention or possible contravention and that entry and investigation of the premises is likely to yield information pertaining to the contravention, is proven.
8. The Regulatory Body would be mistaken to believe that any auditing firm would easily be able to destroy or dispose of any information in their possession as there are so many Information Technology security systems in place for various legislative reasons and numerous levels of back up's on all electronic devices, in order to remove trace of destroyed or disposed information would prove to be impossible.
9. Moreover we believe that in order to protect the rights mentioned in Section 24A (3) (a) (i) - (iv) the firm should be entitled to legal representative/s being present before any such entry by any Regulatory Body official may take place. Our commentary is that provision should be made for this in the Bill.

Should you have any queries to the commentary made above, please do not hesitate to contact me via email at mstewart@bdo.co.za

Yours sincerely



MARK STEWART
Chief Executive Officer
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