



TUGENDHAFT WAPNICK BANCHETTI
AND PARTNERS

MS SUSAN COMRIE

Our Ref: R Kantor/In

Your Ref:

Email: susanc@amabhungane.org

Date: 04 July 2018

Dear Madam

RE: MESSRS SHAW AND TICHAUER

1. We have now had an opportunity to more fully consult with our clients and canvass with them the issues and matters that have arisen. There can be no suggestion of any wrongdoing on the part of our clients, which is the unfortunate aspersion contained in your letter of 28 June 2018. That this is so emerges unequivocally from what is set out herein below.
2. We commence by delineating the positions occupied by Mr Tichauer and Mr Shaw and describe the professional practices of Legal Frontiers Close Corporation (**Legal Frontiers**) and Tichauer & Bloch CA (SA) (**Tichauer & Bloch**). We then turn to their involvement with Business Expansion Structured Products (Proprietary) Limited (**BEX**). Finally we address your additional questions to the extent required.
3. Mr Tichauer is a registered auditor, who holds a members interest in Legal Frontiers and is a partner of Tichauer & Bloch. Mr Shaw is likewise in professional practice as a registered auditor with Mr Tichauer, but is neither a member nor an employee of Legal Frontiers.

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4. Legal Frontiers renders company secretarial services. Tichauer & Bloch is an auditing practice, providing professional accounting and auditing services. The two entities offer different but complimentary services.
5. As part of its stock-in-trade, Legal Frontiers maintains a number of shelf-companies, which it makes available to clients at request and on short notice. The process involves Legal Frontiers – (i) registering and incorporating new private companies with CIPC; (ii) appointing its representative as director and shareholder for each such shelf-company; and (iii) attending to the annual filing of the necessary statutory returns. Bank accounts are established prior to the company being disposed of and where at that time the signatory is a representative of Legal Frontiers. The primary purpose of establishing a bank account at that stage is to facilitate the procuring of a VAT registration. There is nothing irregular in the process as set out foregoing, which is common in any number of company secretarial firms in the Republic.
6. It is from the aforesaid repository of shelf-companies that BEX was drawn. A name change was effected at CIPC on 19 May 2015 (from Vaxiware to Business Expansion Structured Products) and the Securities Register updated to reflect the new shareholder as being Mr Tasfique Hasware, and who was to be appointed as its director. Pending such appointment, Mr Shaw was asked to sit as an alternate director.
7. Returning to the narrative, Mr Shaw, representing BEX, concluded a Business Development Services Agreement (**agreement**) with CNR Rolling Stock South Africa (Proprietary) Limited (**CNR**) on 25 April 2015. We are constrained to point out that Mr Shaw was at no time engaged in the day to day business or operations of BEX, and when concluding the said agreement on behalf of BEX, did so on the strength of a resolution duly passed by Hasware, as the sole shareholder and a director of BEX, expressly authorising him to do so.
8. Mr Shaw did not participate, in any way, in the negotiation, preparation, settling or implementation of the agreement. There was nothing on the face of the agreement to suggest that the transactions therein contemplated were sinister or uncommercial and nothing signalling that the agreement was tainted by any irregularity or unlawfulness, should this at any stage be established to be the case.

9. As was previously pointed out, the banking account established in respect of BEX was opened at the time of incorporation of this shelf-company during 2011 (in addition there was a call account opened during 2015). At the time that Mr Shaw occupied the position of alternate director of BEX, he was also reflected as the authorised signatory on its banking account. We wish to make it absolutely clear however that neither Mr Shaw, Mr Tichauer, Legal Frontiers nor Tichauer & Bloch processed, executed or approved any payments for or on behalf of BEX to any service provider or third party, in respect of the CNR project or indeed any other project. The only payments ever effected by Mr Shaw were to Tichauer & Bloch in discharge of its approved fees and those of BEX's bookkeeper.
10. As we have said, Tichauer & Bloch renders accounting services and to that end was furnished with invoices from various service providers in respect of work undertaken by BEX in execution of the CNR project. Presentation of these invoices to Tichauer & Bloch was for the purpose of drawing BEX's books of account and the submission to SARS of statutory VAT returns, which were functions it was mandated to perform. Receipt of these invoices was not however for purposes of payment. We reiterate that no payment to any service provider was ever affected at any time by any of the persons listed in paragraph 9 above.
11. From what has been set out foregoing, you will on reflection appreciate that neither Mr Shaw, Mr Tichauer, Legal Frontiers nor Tichauer & Bloch were participant in or had any reason to believe that there was any unlawful scheme. There was no mischief on their part and any suggestion to the contrary would be scurrilous, devoid of any truth and highly defamatory of these persons.
12. Against the aforesaid backdrop, we turn to address certain of the further questions enumerated in your letter of 28 June 2018 (addressed to our clients' erstwhile attorney, Messrs Billy Gundelfinger), that call for a response.
13. At (unnumbered) paragraph 2 of your letter, you assert that there are "*several problems with the chronology of the events provided by your clients as it relates to the authorisation purportedly signed by Mr Hasware*":

- 13.1. Firstly, there is nothing “purported” about the authorisations signed by Mr Hasware. Factually the said authorisations were indeed signed by him.
 - 13.2. Secondly, the name change of the shelf-company from Vaxiware to Business Expansion Structured Products was executed in the circumstances described in paragraph 6 above.
 - 13.3. Thirdly, there was no “backdating” of Mr Shaw’s appointment as director of BEX from 29 April 2015 to 15 April 2015. Seemingly you have only had reference to the CIPC Disclosure Certificate reflecting a change on 29 April 2015, by the addition of Mr Shaw as director. Had you had regard, as you ought to have had, to the Form COR39 lodged with CIPC, you would have seen, *ex facie* the document, that the Form COR39 was filed with CIPC on 16 April 2015. The intervening fortnight was when the change was processed by CIPC.
 - 13.4. Fourthly and in like fashion, while Mr Hasware’s directorship of BEX was only reflected by CIPC on 29 March 2017, this did not preclude him from *de facto* occupying the position of director in the preceding period. Accordingly, the resolution authorising Mr Shaw to conclude the agreement, signed by Mr Hasware *qua de facto* director and registered shareholder of BEX, was valid and binding in all respects.
14. The circumstances concerning Mr Shaw’s signature of the agreement on 25 April 2015 are described in paragraphs 7 and 8 above. As we were at pains to point out, Mr Shaw was not involved in the day-to-day business or operations of BEX and had no knowledge of its specialisation or otherwise in business enterprise optimisation. It is unclear on what basis you suggest that this recodal in the agreement was either false or constituted a misrepresentation. In like fashion Mr Shaw did not have regard to the purported business address of BEX (reflected in the agreement as Crescent Drive, Melrose Arch), nor would he have occasion to do so.
 15. As we have made clear, Mr Shaw was not authorised and as a fact caused no payments to be made to ICM. Similarly, no payments were executed by Mr Shaw in favour of what you refer to as “the four letterbox companies”. If, as you say

"at least three of the companies have a history of laundering what appear to be kickbacks from state owned companies for the benefit of Mr Essa and the Gupta family", Mr Shaw has no factual knowledge of this alleged illicit conduct.

16. Finally, Tichauer & Bloch did not audit BEX's accounts. Its mandate was to prepare financial statements. Given the absence of any cause to suspect wrongdoing within the affairs of BEX, no obligation, whatsoever, arose for our clients to make any report (if one indeed existed) in terms of the provisions of Section 34 of the Prevention and Combating of the Corrupt Activities Act.
17. From what is set out foregoing, you will on reflection appreciate many of the questions that you pose were predicated upon a misapprehension of the factual position and on the basis of supposition, speculation and conjecture, not evidence. It appears to our clients that they are being tainted by association, which is unwarranted and unjustified.
18. Our clients, as you will no doubt know, are bound by duties of confidentiality, which precludes them from furnishing you with the surfeit of documentation that you seek (but which our clients will happily furnish against consent by those parties with whom the privilege vests). In like fashion, it would be improper for our clients to engage with you any further in matters and issues that infringe upon their duty of confidentiality.
19. We trust that this clarifies the position and take it that you will provide this office with notice of any publication you wish to make of or concerning our clients, Legal Frontiers or Tichauer & Bloch. Moreover, we trust that you will make it clear in any such further publication relating to this topic that our clients, Legal Frontiers and Tichauer & Bloch, were unaware of and had nothing whatsoever to do with any purported unlawful conduct, machination or scheme.

Yours faithfully

TWB – TUGENDHAFT WAPNICK BANCHETTI AND PARTNERS