

24 June 2010

Our Ref: J Augustyn/Im/359

Mr. J.I. de Wet  
Barko Financial Services (Pty) Ltd  
59 Burger Street  
LYDENBURG  
1120

Dear Mr. De Wet

**COMPLIANCE NOTICE: BARKO FINANCIAL SERVICES (PTY) LTD**

1. In terms of section 55 of the National Credit Act, 34 of 2005 (“the Act”) find attached hereto a Compliance Notice, for your urgent attention and compliance.
2. The National Credit Regulator (“NCR”) conducted an investigation into your business practices. The investigation revealed that you contravened certain provisions of the Act and Regulations as indicated in section A of the Compliance Notice.
3. We therefore require that you take the steps as set out in section B of the Compliance Notice, in order to address the areas of non-compliance.
4. We draw your attention to the consequences of non adherence to this Compliance Notice.

5. Should you have any queries in this regard, kindly contact Adv Jan Augustyn of the Investigations and Prosecution Department at 011-554 2662.

Yours faithfully

  
Gabriel Davel  
**Chief Executive Officer**

**NOTICE TO COMPLY IN TERMS OF SECTION 55(1) OF THE NATIONAL CREDIT ACT, 34 OF 2005 ("the Act")**

NCR Form 13

**Name of Registrant**

Barko Financial Services (Pty) Ltd ("Barko")  
1999/022139/07

**Address**

59 Burger Street  
LYDENBURG  
1120

**Registration**

NCR Registration Number: NCRCP 1764

**A. In terms of section 55(1)(a) and (3) of the Act your attention is drawn to the fact that you have failed to comply with the provisions of the Act, in that:**

1. Barko requires consumers to enter into an agreement in terms of which consumers are required to pay a fee to NuPayment Solutions (Pty) Ltd ("NuPay") which is,
  - (i) not listed as a permissible charge under a credit agreement, in contravention of section 100(1)(a) read with section 101(1) of the Act of the Act, and/or
  - (ii) exceeds the maximum service fee of R50.00 that may be charged, in contravention of section 100(1)(b) read with sections 101(1)(c) and 105(1)(b) and regulation 44 of the Act, and/or
  - (iii) not a permissible fee, charge, commission, expense or other amount as contemplated in section 100(1)(d) of the Act.
  
2. Barko requires or induces consumers to enter into credit agreements which contain a provision in terms of which an additional monetary liability, not permitted by the Act, is imposed on the consumer which is unlawful, in contravention of section 90(1) read with section 90(2)(a) and (b) of the Act, in that
  - (i) their general purpose or effect is to defeat the purposes or policies of the Act;

- (ii) they purport to set aside or override the effect of provisions of the Act;
  - (iii) they purport to waive or deprive a consumer a right set out in the Act;
  - (iv) they authorise the credit provider to do anything unlawful in terms of the Act.
3. Barko requires or induces consumers to enter into supplementary agreements or sign a document that contains a provision that would be unlawful if it were included in the agreement or Barko permits NuPay to require or induce consumers, to enter into such agreements in contravention of section 91(a) or (c), read with sections 90(1), (2)(a) and (b) of the Act.

**B. In terms of Section 55(3)(d) of the Act, you are required to take the following steps to address the non compliance with the Act:**

1. With immediate effect, cease requiring consumers to pay the NuPay service provider fee;
2. Within 30 business days of the date of this notice, reimburse all consumers who have been required to pay the NuPay service provider fee;
3. Within 45 business days of the date of this notice furnish the NCR with a written affidavit, by Jacobus Ignatius De Wet, to the effect that such amounts were refunded, attaching a list of the names and the amounts of refunds made;
4. Within 60 business days of the date of this notice, require that the auditor of Barko furnish the NCR with a certificate providing assurance, and setting out the procedures underlying such assurance that:
  - (i) the practice of charging service provider's fees has been terminated and the date of such termination;
  - (ii) the calculation of the service provider fees which were unlawfully imposed is correct, and
  - (iii) such service provider fees have been repaid by Barko.

**C. As required in terms of Section 55(3)(e), we would like to bring to your attention that the following orders may be made and penalties imposed if the required steps are not taken to rectify the areas of non compliance:**

1. In terms of section 55(6)(b) the National Credit Regulator may refer this matter to the National Consumer Tribunal, which in terms of sections 150 and 151 of the Act may make orders with respect to or impose penalties for each act of non compliance, including:
  - a. declaring any conduct to be prohibited;

- b. interdicting any such prohibited conduct;
- c. suspending or canceling your registration;
- d. requiring repayment to consumers of any excess amounts charged;
- e. making any other appropriate order;
- f. imposing an administrative fine not exceeding the greater of 10% of your annual turnover during the preceding financial year, or R1 000 000.00 (One Million Rand).

2. The National Credit Regulator may further refer certain matters to the National Prosecuting Authority, which may result in criminal prosecution.

**D. We wish to bring to your attention that in terms of section 55(4) of the Act, this compliance notice remains in force until it is either**

- 1. set aside by the National Consumer Tribunal, or a court upon an appeal or review of a Tribunal decision concerning the notice, or
- 2. the National Credit Regulator issues a compliance certificate.

**You may object to this Notice in terms of Section 56 of the Act and may request the National Consumer Tribunal to review this Notice, within 15 business days after receiving this Notice.**

Signed at Midrand on this 24<sup>th</sup> day of June 2010.



**Gabriel Davel**  
Chief Executive Officer  
National Credit Regulator