

REPUBLIC OF SOUTH AFRICA

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**GENERAL LAWS  
(ANTI-MONEY LAUNDERING  
AND COMBATING TERRORISM  
FINANCING) AMENDMENT BILL**

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*(As amended by the Standing Committee on Finance (National Assembly))  
(The English text is the official text of the Bill)*

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(MINISTER OF FINANCE)

**[B 18B—2022]**

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“politically exposed persons”, as distinct from “politically influential persons”, who will be dealt with in a new Schedule 3C; by amending certain provisions relating to resolutions of the Security Council of the United Nations; by amending the powers of access by authorised representatives to records of accountable institutions; by enabling the Centre to renew a direction not to proceed with a transaction; by providing for the safeguarding of information; by amending the provisions relating to the disclosure of information to the Centre and access to information by the Centre; by empowering the Minister to prescribe appropriate requirements relating to the access to personal information to ensure that adequate safeguards are in place as required by section 6(1)(c) of the Protection of Personal Information Act, 2013; by amending certain provisions relating to the risk management and compliance programme; by amending the offences provisions to empower the imposition of an administrative sanction; by amending the provision relating to the amendment by the Minister of Schedule 2; by amending Schedules 2, 3A and 3B, and by inserting a new Schedule 3C; and by substituting the index for an arrangement of sections;

- the Companies Act, 2008, by inserting definitions of “affected company” and “beneficial owner”; by providing for a comprehensive mechanism through which the Companies and Intellectual Property Commission can keep accurate and updated beneficial ownership information; by requiring a company to keep a record of a natural person who owns or controls the company in terms of the definition of “beneficial owner”, and by providing for specified timelines within which the company must record any changes in this information; by requiring a company to file a record of any natural person who owns or controls the company in terms the definition of “beneficial owner”, with the Commission; and by specifying that persons who are convicted of offences relating to money laundering, terrorist financing, or proliferation financing activities or are subject to a resolution of the UN Security Council are prohibited from registering as company directors; and
- the Financial Sector Regulation Act, 2017, by providing that a financial institution, key person, representative or contractor to which a regulator’s directive in terms of Part 2 of Chapter 10 has been issued must comply with the directive; by inserting a new Chapter dealing with beneficial owners into the Act, which provides a definition of “beneficial owner”, and empowers standards and regulator’s directives to be made in relation to beneficial owners;

and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

#### Amendment of section 1 of Act 57 of 1988

1. Section 1 of the Trust Property Control Act, 1988, is hereby amended—
  - (a) by the insertion before the definition of “banking institution” of the following definition: 5  
“**accountable institution**’ has the meaning defined in section 1(1) and Schedule 1 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);”; and
  - (b) by the insertion after the definition of “banking institution” of the following definition: 10  
“**beneficial owner**’, in respect of the provisions of a trust instrument, means—

(a) a natural person who directly or indirectly ultimately owns the relevant trust property;	15
(b) a natural person who exercises effective control of the administration of the trust arrangements that are established pursuant to a trust instrument;	
(c) (i) each founder of the trust; or	
(ii) if a founder of the trust is a legal person, a person acting on behalf of a partnership or in pursuance of the provisions of a	20

- trust instrument, the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person or partnership or the relevant trust property or trust arrangements pursuant to that trust instrument;
- (d) (i) each trustee of the trust; or 5
  - (ii) if a trustee of the trust is a legal person or a person acting on behalf of a partnership, the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person or partnership; and
  - (e) (i) each beneficiary referred to by name in the trust instrument or other founding instrument in terms of which the trust is created; or 10
  - (ii) if a beneficiary referred to by name in the trust instrument is a legal person, a partnership or a person acting on behalf of a partnership or a person acting in pursuance of the provisions of a trust instrument, the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person or partnership or the relevant trust property or trust arrangements pursuant to that trust instrument;”. 15

**Amendment of section 6 of Act 57 of 1988** 20

2. Section 6 of the Trust Property Control Act, 1988, is hereby amended by the insertion after subsection (1) of the following subsection:

- “(1A) A person is disqualified from being authorized as a trustee if the person—
- (a) is an unrehabilitated insolvent;
  - (b) has been prohibited by a court to be a director of a company, or declared by a court to be delinquent in terms of section 162 of the Companies Act, 2008 (Act No. 71 of 2008), or section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984); 25
  - (c) is prohibited in terms of any law to be a director of a company;
  - (d) has been removed from an office of trust, on the grounds of misconduct involving dishonesty; 30
  - (e) has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount in terms of section 69 of the Companies Act, 2008, for theft, fraud, forgery, perjury or an offence— 35
    - (i) involving fraud, misrepresentation or dishonesty, or money laundering, terrorist financing or proliferation financing activities as those terms are defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);
    - (ii) in connection with the promotion, formation or management of a company, or in connection with any act contemplated in section 69(2) or (5) of the Companies Act, 2008; or 40
    - (iii) under this Act, the Companies Act, 2008, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, 1998 (Act No. 89 of 1998), the Financial Intelligence Centre Act, 2001, the Financial Markets Act, 2012 (Act No. 19 of 2012), Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004), or the Tax Administration Act, 2011 (Act No. 28 of 2011); 50
  - (f) is subject to a resolution adopted by the Security Council of the United Nations when acting under Chapter VII of the Charter of the United Nations, providing for financial sanctions which entail the identification of persons or entities against whom member states of the United Nations must take the actions specified in the resolution; or 55
  - (g) is an unemancipated minor, or is under a similar legal disability.
- (1B) A disqualification in terms of subsection (1A)(d) or (e) ends at the later of—
- (a) five years after the date of removal from office, or the completion of the sentence imposed for the relevant offence, as the case may be; or 60

- (b) one or more extensions, as determined by a court from time to time, on application by the Master in terms of subsection (1C).
- (1C) A disqualification in terms of subsection (1A)(f) ends when the Security Council of the United Nations takes a decision to no longer apply that resolution to a person contemplated in that subsection. 5
- (1D) At any time before the expiry of a person’s disqualification in terms of subsection (1A)(d) or (e)—
- (a) the Master may apply to a court for an extension contemplated in subsection (1B)(b); and
- (b) the court may extend the disqualification for no more than five years at a time, if the court is satisfied that an extension is necessary to protect the public, having regard to the conduct of the disqualified person up to the time of the application. 10
- (1E) A court may exempt a person from the application of any provision of subsection (1A)(a), (c), (d) or (e). 15
- (1F) The Registrar of the Court must, upon—
- (a) the issue of a sequestration order;
- (b) the issue of an order for the removal of a person from any office of trust on the grounds of misconduct involving dishonesty; or
- (c) a conviction for an offence referred to in subsection (1A)(e), 20
- send a copy of the relevant order or particulars of the conviction, as the case may be, to the Master.
- (1G) The Master must notify each trust which has as a trustee to whom the order or conviction relates, of the order or conviction.
- (1H) (a) The Master must establish and maintain in the prescribed manner a public register of persons who are disqualified from serving as a trustee, in terms of an order of a court pursuant to this Act or any other law. 25
- (b) The prescribed requirements referred to in paragraph (a) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).” 30

#### **Amendment of section 8 of Act 57 of 1998**

3. The following section is hereby substituted for section 8 of the Trust Property Control Act, 1998:

#### **“Foreign trustees 35**

8. When a person who was appointed outside the Republic as trustee has to administer or dispose of trust property in the Republic, the provisions of this Act shall apply to such trustee in respect of such trust property and such person shall act in that capacity only if authorized thereto in writing by the Master [may authorize such trustee] under section 6 [to act as trustee in respect of that property].” 40

#### **Amendment of section 10 of Act 57 of 1988**

4. Section 10 of the Trust Property Control Act, 1988, is hereby amended by the addition of the following subsection, the existing provision becoming subsection (1): 45

“(2) A trustee must disclose their position as trustee to any accountable institution with which the trustee engages in that capacity, and must make it known to the accountable institution that the relevant transaction or business relationship relates to trust property.”

#### **Amendment of section 11 of Act 57 of 1988**

5. Section 11 of the Trust Property Control Act, 1988, is hereby amended in 50 subsection (1)—

(a) by the substitution in paragraph (d) for the full stop of “; and”; and

(b) by the insertion after paragraph (d) of the following paragraph and subsection:

“(e) record the prescribed details relating to accountable institu- 55  
tions which the trustee uses as agents to perform any of the

trustee's functions relating to trust property, and from which the trustee obtains any services in respect of the trustee's functions relating to trust property.

(1A) The prescribed requirements referred to in paragraph (e) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001)."

#### Insertion of section 11A in Act 57 of 1988

6. The following section is hereby inserted after section 11 of the Trust Property Control Act, 1988:

##### "Beneficial ownership

**11A.** (1) A trustee must—

- (a) establish and record the beneficial ownership of the trust;
- (b) keep a record of the prescribed information relating to the beneficial owners of the trust;
- (c) lodge a register of the prescribed information on the beneficial owners of the trust with the Master's Office; and
- (d) ensure that the prescribed information referred to in paragraphs (a) to (c) is kept up to date.

(2) The Master must keep a register in the prescribed form containing prescribed information about the beneficial ownership of trusts.

(3) A trustee must make the information contained in the register referred to in subsection (1)(c), and the Master must make the information in the register referred to in subsection (2), available to any person as prescribed.

(4) The prescribed requirements referred to in this section must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001)."

#### Amendment of section 19 of Act 57 of 1988

7. The following section is hereby substituted for section 19 of the Trust Property Control Act, 1988:

##### "Failure by trustee to account or perform duties

**19.** (1) If any trustee fails to comply with a request by the Master in terms of section 16 or to perform any duty imposed upon him the trustee by this Act, the trust instrument or by any other law, the Master or any person having an interest in the trust property may apply to the court for an order directing the trustee to comply with such the Master's request or to perform such the duty.

(2) A trustee who fails to comply with an obligation referred to in section 10(2), 11(1)(e) or 11A(1), commits an offence and on conviction is liable to a fine not exceeding R10 million, or imprisonment for a period not exceeding five years, or to both such fine and imprisonment."

#### Amendment of section 20 of Act 57 of 1988

8. Section 20 of the Trust Property Control Act, 1988, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) A trustee may at any time be removed from office by the Master—

- (a) if **he has been convicted in the Republic or elsewhere of any offence of which dishonesty is an element or of any other offence for which he has been sentenced to imprisonment without the option of a fine** the person becomes disqualified to be authorised as a trustee in terms of section 6(1A); or
- (b) if the trustee fails to give security or additional security, as the case may be, to the satisfaction of the Master within two months after having been requested

- [**thereto**] to do so by the Master, or within [**such**] a further period [**as**] that is allowed by the Master; or
- (c) if [**his**] the trustee's estate is sequestrated or liquidated or placed under judicial management; or
  - (d) if [**he**] the trustee has been declared by a competent court to be mentally ill or incapable of managing [**his**] their own affairs or if [**he**] the trustee is by virtue of the [**Mental Health Act, 1973 (Act No. 18 of 1973)**] Mental Health Care Act, 2002 (Act No. 17 of 2002), detained as a patient in an institution or as a State patient; or
  - (e) if [**he**] the trustee fails to perform satisfactorily any duty imposed upon [**him**] the trustee by or under this Act or to comply with the requirements of this Act or any lawful request of the Master.".

#### **Amendment of section 2 of Act 71 of 1997**

**9.** Section 2 of the Nonprofit Organisations Act, 1997, is hereby amended by the substitution for paragraphs (b) and (c) of the following paragraphs: 15

- "(b) establishing an administrative and regulatory framework within which registered nonprofit organisations [**can**] must conduct their affairs;
- (c) [**encouraging**] requiring registered nonprofit organisations to maintain adequate standards of governance, transparency and accountability and to improve those standards." 20

#### **Amendment of section 5 of Act 71 of 1997**

**10.** Section 5 of the Nonprofit Organisations Act, 1997, is hereby amended by the addition of the following subsection, the existing provision becoming subsection (1):

- "(2) In order to promote the achievement of the objects of this Act and to perform its functions and duties, the Directorate may collaborate, co-operate, co-ordinate and enter into arrangements with other organs of state, which may include— 25
- (a) measures to co-ordinate their approach to performing their functions in terms of legislation;
  - (b) entering into a memorandum of understanding, which, among other matters, may provide for— 30
    - (i) the sharing of information between the parties, including—
      - (aa) the types of information to be furnished by each party; or
      - (bb) measures to protect the confidentiality of the information, including limiting access to specified persons or incumbents of specified positions, subject to the provisions of applicable legislation; 35
    - (ii) collaboration, co-operation between the parties, and assisting each other in the performance of their respective duties in terms of legislation, including through the provision of advice and support; and 40
    - (iii) the delegation by the Directorate to another organ of state of specified administrative functions." 40

#### **Amendment of section 12 of Act 71 of 1997**

**11.** Section 12 of the Nonprofit Organisations Act, 1997, is hereby amended— 45

- (a) by the substitution for subsection (1) of the following subsection:

- "(1) (a) A nonprofit organisation referred to in paragraph (b) must apply, and any other nonprofit organisation that is not an organ of state may apply, to the director for registration, subject to paragraph (c), and in accordance with the requirements and procedure contemplated in sections 13, 14 and 15. 50
- (b) A nonprofit organisation must be registered under this Act if it—
    - (i) makes donations to individuals or organisations outside of the Republic's borders; or
    - (ii) provides humanitarian, charitable, religious, educational or cultural services outside of the Republic's borders. 55

(c) A nonprofit organisation referred to in paragraph (b) that is operating but is not registered in terms of this Act on the date of commencement of this provision, must apply to register within the period determined by the Minister by notice in the *Gazette*.

(d) A registered nonprofit organisation, and nonprofit organisation referred to in paragraph (b) whether it is in fact registered in terms of the Act or not, must comply with the requirements of this Act.”;

(b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“Unless the laws in terms of which a nonprofit organisation is established or incorporated make provision for the matters in this subsection, the constitution of a nonprofit organisation that is required in terms of subsection (1)(b) or intends to register must—”; and

(c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“The constitution of a nonprofit organisation that is required in terms of subsection (1)(b) or that intends to register may make provision for matters relevant to conducting its affairs, including matters that—”; and

(d) by the insertion after subsection (3) of the following subsection:

“(4) The director when considering an application for registration in terms of section 13, after having received amendments to the constitution in terms of section 19, or at any other time, may only require a nonprofit organisation to make an alteration to its constitution to ensure that the constitution addresses the matters referred to in subsection (2).”

#### **Amendment of section 13 of Act 71 of 1997**

**12.** Section 13 of the Nonprofit Organisations Act, 1997, is hereby amended—

(a) by the substitution in subsection (1) for the wording preceding paragraph (a) of the following wording:

“(1) A nonprofit organisation [**may apply**] applies for registration by submitting to the director—”;

(b) by the insertion after subsection (6) of the following paragraphs:

“(7) The director may only refuse to register a nonprofit organisation on the grounds that the applicant has not complied with the requirements for registration in section 12 or has not complied with a notice issued in terms of subsection (3), as referred to in subsection (6).

(8) A nonprofit organisation that has submitted an application for registration is deemed to be registered unless and until the director has given notice to the applicant in terms of subsection (3) and the process envisaged in subsections (4) to (6) has been completed.”.

#### **Amendment of section 18 of Act 71 of 1997**

**13.** Section 18 of the Nonprofit Organisations Act, 1997, is hereby amended—

(a) by the insertion in subsection (1) after paragraph (b) of the following paragraph:

“(bA) prescribed information about the office-bearers, control structure, governance, management, administration and operations of registered nonprofit organisations;”; and

(b) by the insertion after subsection (1) of the following subsections:

“(1A) The prescribed requirements referred to in paragraph (bA) of subsection (1) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).

(1B) A registered nonprofit organisation must ensure that the information referred to in subsection (1)(bA) that must be provided to the director is kept up to date.”.

**Amendment of section 24 of Act 71 of 1997, as amended by section 3 of Act 17 of 2000**

14. Section 24 of the Nonprofit Organisations Act, 1997, is hereby amended—
- (a) by the deletion in paragraph (b) of subsection (1) of “and”;
  - (b) by the substitution in paragraph (c) of subsection (1) for the full stop of “; and”;
  - (c) by the addition to subsection (1) of the following paragraph:  
“(d) prescribed information about the office-bearers, control structure, governance, management, administration and operations of registered nonprofit organisations.”; and
  - (d) by the addition of the following subsections:  
“(4) A registered nonprofit organisation must make the information referred to in section 18(1)(bA), and the director must provide access to the information in the register referred to in subsection (1)(d), available to any person as prescribed.  
(5) The prescribed requirements referred to in subsections (1)(d) and (4) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).”.

**Insertion of Chapter 3A in Act 71 of 1997**

15. The Nonprofit Organisations Act, 1997, is hereby amended by the insertion after Chapter 3 of the following Chapter:

**“CHAPTER 3A**

**OFFICE-BEARERS OF NONPROFIT ORGANISATIONS**

**Disqualification and removal of office-bearers**

- 25A.** (1) A person is disqualified from being an office-bearer of a registered nonprofit organisation if the person—
- (a) is an unrehabilitated insolvent;
  - (b) has been prohibited by a court to be a director of a company, or has been declared by a court to be delinquent in terms of section 162 of the Companies Act, 2008 (Act No. 71 of 2008), or section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984);
  - (c) is prohibited in terms of any law to be a director of a company;
  - (d) has been removed from an office of trust, on the grounds of misconduct involving dishonesty;
  - (e) has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the amount prescribed in terms of section 69 of the Companies Act, 2008, for theft, fraud, forgery, perjury or an offence—
    - (i) involving fraud, misrepresentation or dishonesty, or money laundering, terrorist financing or proliferation financing activities as those terms are defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);”.
    - (ii) in connection with the promotion, formation or management of a company, or in connection with any act contemplated in in section 69(2) or (5) of the Companies Act, 2008; or
    - (iii) under this Act, the Companies Act, 2008, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, 1998 (Act No. 89 of 1998), the Financial Intelligence Centre Act, 2001, the Financial Markets Act, 2012 (Act No. 19 of 2012), Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004), or the Tax Administration Act, 2011 (Act No. 28 of 2011);

- (f) is subject to a resolution adopted by the Security Council of the United Nations when acting under Chapter VII of the Charter of the United Nations, providing for financial sanctions which entail the identification of persons or entities against whom member states of the United Nations must take the actions specified in the resolution contemplated in that subsection; or 5
- (g) is an unemancipated minor, or is under a similar legal disability.  
(2) A person who is disqualified, as set out in this section, may not—
- (a) be appointed or elected as an office-bearer of a registered nonprofit organisation, or consent to being appointed or elected as an office-bearer; or 10
- (b) act as an office-bearer of a registered nonprofit organisation.  
(3) A disqualification in terms of subsection (1)(d) or (e) ends at the later of—
- (a) five years after the date of removal from office, or the completion of the sentence imposed for the relevant offence, as the case may be; or 15
- (b) one or more extensions, as determined by a court from time to time, on application by the Directorate in terms of subsection (4).  
(4) A disqualification in terms of subsection (1)(f) ends when the Security Council of the United Nations takes a decision to no longer apply that resolution to a person contemplated in that subsection.”. 20
- (5) At any time before the expiry of a person’s disqualification in terms of subsection (1)(d) or (e)—
- (a) the Directorate may apply to a court for an extension contemplated in subsection (3)(b); and 25
- (b) the court may extend the disqualification for no more than five years at a time, if the court is satisfied that an extension is necessary to protect the public, having regard to the conduct of the disqualified person up to the time of the application.
- (6) A court may exempt a person from the application of any provision of subsection (1)(a), (c) or (e). 30
- (7) The Registrar of the Court must, upon—
- (a) the issue of a sequestration order; 35
- (b) the issue of an order for the removal of a person from any office of trust on the grounds of misconduct involving dishonesty; or
- (c) a conviction for an offence referred to in subsection (1)(e), send a copy of the relevant order or particulars of the conviction, as the case may be, to the Directorate.
- (8) The Directorate must notify each registered nonprofit organisation which has an office-bearer to whom the order or conviction relates, of the order or conviction. 40
- (9) (a) The Directorate must establish and maintain in the prescribed manner a public register of persons who are disqualified from serving as an office-bearer, in terms of an order of a court pursuant to this Act or any other law. 45
- (b) The prescribed requirements referred to paragraph (a) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).
- (10) A registered nonprofit organisation may not knowingly permit a disqualified person to serve or act as an office-bearer. 50
- (11) A person who becomes ineligible or disqualified while serving as an office-bearer of a registered nonprofit organisation ceases to be entitled to continue to act as an office-bearer immediately.
- (12) An office-bearer of a registered nonprofit organisation may at any time be removed from office by the director if— 55
- (a) the person becomes disqualified to be an office-bearer in terms of subsection (1);
- (b) the office-bearer’s estate is sequestrated or liquidated or placed under judicial management; or 60
- (c) the office-bearer fails to perform satisfactorily any duty imposed upon the office-bearer by or under this Act or to comply with the requirements of this Act or any lawful request of the director.”.

**Amendment of section 21 of Act 71 of 1997**

16. Section 21 of the Nonprofit Organisations Act, 1997, is hereby amended by the insertion after subsection (3) of the following subsection:

“(4) The director may only cancel the registration of a non-profit organisation as contemplated in section 20 and this section.”

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**Amendment of section 29 of Act 71 of 1997**

17. Section 29 of the Nonprofit Organisations Act, 1997, is hereby amended—

(a) by the substitution for the heading of the section of the following heading:

**“Offences and contraventions”**; and

(b) by the insertion after subsection (3) of the following subsection:

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“(4) The following contraventions of this Act by a nonprofit organisation are subject to a prescribed administrative sanction:

(a) a registered nonprofit organisation that fails to perform any duty imposed or comply with a requirement in terms of section 12 or 18(1)(bA); and

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(b) a nonprofit organisation that is required to register in terms of section 12(1)(b) but fails to do so.”

**Amendment of section 1 of Act 38 of 2001, as amended by section 27 of Act 33 of 2004, section 1 of Act 11 of 2008, section 53 of Act 11 of 2013 and section 1 of Act 1 of 2017**

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18. Section 1(1) of the Financial Intelligence Centre Act, 2001, is hereby amended—

(a) by the deletion in paragraph (h) of the definition of “authorised officer” of “or”;

(b) by substitution in the definition of “authorised officer” for paragraph (i) of the following paragraph:

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“(i) an investigative division in [an organ of state] a national department authorised by the head of [the organ of state] that national department to act under this Act; or”;

(c) by the addition in the definition of “authorised officer” after paragraph (i) of the following paragraph:

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“(j) an investigative division of the Auditor-General authorised by the Auditor-General to act under this Act;”;

(d) by the substitution for the definition of “beneficial owner” of the following definition:

**“‘beneficial owner’—**

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(a) means a natural person who directly or indirectly—  
(i) ultimately owns or exercises effective control of—  
(aa) a client of an accountable institution; or  
(bb) a legal person, partnership or trust that owns or exercises effective control of, as the case may be, a client of an accountable institution; or

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(ii) exercises control of a client of an accountable institution on whose behalf a transaction is being conducted; and

(b) includes—

(i) in respect of legal persons, each natural person contemplated in section 21B(2)(a);

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(ii) in respect of a partnership, each natural person contemplated in section 21B(3)(b); and

(iii) in respect of a trust, each natural person contemplated in section 21B(4)(c), (d) and (e);”

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(e) by the substitution for the definition of “domestic prominent influential person” of the following definition:

**“‘domestic [prominent influential] politically exposed person’ means a person referred to in Schedule 3A;”**;

(f) by the substitution for the definition of “foreign prominent public official” of the following definition:

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**“‘foreign [prominent public official] politically exposed person’ means a person referred to in Schedule 3B;”**;

- (g) by the substitution for the definition of “investigative division in an organ of state” of the following definition:  
“**‘investigative division in [an organ of state] a national department’** means an investigative [**division or**] component in [**an organ of state in the Republic**] a national department listed in Schedule 1 to the Public Service Act, 1994 (Act No. 103 of 1994), having a function by law to investigate unlawful activity within [**the organ of state**] that national department or in another organ of state;”;
- (h) by the insertion after the definition of “investigative division in an organ of state” of the following definition:  
“**‘investigative division of the Auditor-General’** means the investigative component of the Auditor-General having the function by law to investigate material irregularities in accordance with the Public Audit Act, 2004 (Act No. 25 of 2004);”; and
- (i) by the insertion after the definition of “proceeds of unlawful activities” of the following definitions:  
“**‘proliferation financing’** or **‘proliferation financing activity’** means an activity which has or is likely to have the effect of providing property, a financial or other service or economic support to a non-State actor, that may be used to finance the manufacture, acquisition, possessing, development, transport, transfer or use of nuclear, chemical or biological weapons and their means of delivery, and includes any activity which constitutes an offence in terms of section 49A;  
**‘prominent influential person’** means a person referred to in Schedule 3C;”.

**Amendment of section 3 of Act 38 of 2001, as amended by section 27 of Act 33 of 2004, section 2 of Act 11 of 2008 and section 2 of Act 1 of 2017**

- 19.** Section 3 of the Financial Intelligence Centre Act, 2001, is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:  
“(1) The principal objective of the Centre is to assist in the—  
(a) identification of the proceeds of unlawful activities;  
(aA) identification of persons involved in money laundering activities, offences relating to the financing of terrorist and related activities and proliferation financing activities;  
(b) combating of money laundering activities [**and**], the financing of terrorist and related activities and proliferation financing activities;  
and  
(c) implementation of financial sanctions pursuant to resolutions adopted by the Security Council of the United Nations, under Chapter VII of the Charter of the United Nations.”;
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:  
“to make information [**collected by**] it collects and produces available to—”;
- (c) by the substitution in paragraph (a) of subsection (2) for subparagraphs (ix) and (x) of the following subparagraphs:  
“(ix) an investigative division in [**an organ of state**] a national department; [**or**]  
(x) a supervisory body[.]; or  
(xi) the investigative division of the Auditor-General.”;
- (d) by the substitution in subsection (2) for item (aa) of the following item:  
“(aa) to administer measures requiring [**accountable institutions**] persons to freeze property and transactions pursuant to financial sanctions that may arise from resolutions adopted by the Security Council of the United Nations [**referred to in a notice**] contemplated in section 26A;”; and

- (e) by the insertion in subsection (2) after item (aa) of the following item:  
“(aaA) to produce forensic evidence, based on the application of specialised scientific methods and techniques, pertaining to the flow of financial transactions and the links between persons, and between persons and property, based on the flow of financial transactions;”.

**Amendment of section 4 of Act 38 of 2001, as amended by section 4 of Act 11 of 2008 and section 3 of Act 1 of 2017**

20. Section 4 of the Financial Intelligence Centre Act, 2001, is hereby amended—
- (a) by the substitution in paragraph (b) for subparagraphs (ix) and (x) of the following subparagraphs:  
“(ix) an investigative division in **[an organ of state]** a national department; [or]  
(x) a supervisory body; or  
(xi) the investigative division of the Auditor-General;”;
- (b) by the substitution for paragraph (cA) of the following paragraph:  
“(cA) provide information and guidance to **[accountable institutions] persons** that will assist **[accountable institutions]** in meeting requirements to freeze property and transactions pursuant to resolutions adopted by the Security Council of the United Nations **[referred to in a notice]** contemplated in section 26A;”;
- (c) by the substitution for paragraph (e) of the following paragraph:  
“(e) annually review the implementation of this Act and submit a report **[thereon]** that includes information that is necessary to demonstrate the implementation of the Act, to the Minister;”;
- (d) by the substitution for paragraph (g) of the following paragraph:  
“(g) supervise and enforce compliance with this Act or any directive made in terms of this Act by accountable institutions, reporting institutions and other persons to whom the provisions of this Act apply that—  
(i) are not **[regulated or]** supervised by a supervisory body in terms of this Act **[or any other law]**;  
(ii) are **[regulated or]** supervised by a supervisory body in terms of this Act **[or any other law]**, if that supervisory body fails to enforce compliance despite any recommendation of the Centre made in terms of section 44(b).”.

**Amendment of section 5 of Act 38 of 2001**

21. Section 5 of the Financial Intelligence Centre Act, 2001, is hereby amended—
- (a) by the insertion in subsection (1) after paragraph (h) of the following paragraph:  
“(hA) enter into public private partnerships for the purposes of achieving any of the objectives of the Centre in section 3;”;
- (b) by the insertion after subsection (1) of the following subsection:  
“(2) The Centre may, for the purposes of this Act and to perform its functions effectively—  
(a) request information from any organ of state;  
(b) request access to any database held by any organ of state; or  
(c) have access to information contained in a register that is kept by an organ of state in the execution of a statutory function of that organ of state.”.

**Amendment of section 21B of Act 38 of 2001, as inserted by section 10 of Act 1 of 2017**

22. Section 21B of the Financial Intelligence Centre Act, 2001, is hereby amended—
- (a) by the substitution in paragraph (a) of subsection (2) for subparagraph (ii) of the following subparagraph:  
“(ii) if in doubt whether a natural person contemplated in subparagraph (i) is the beneficial owner of the legal person or no natural

person has a controlling ownership interest in the legal person, determining the identity of each natural person who exercises control of that legal person through other means, including through his or her ownership or control of other legal persons, partnerships or trusts; or”; and 5

(b) by the substitution for subsections (3) and (4) of the following subsections:

“(3) If a **[natural]** person, in entering into a single transaction or establishing a business relationship as contemplated in section 21, is acting on behalf of a partnership **[between natural persons]**, an accountable institution must, in addition to the steps required under sections 21 and 21A and in accordance with its Risk Management and Compliance Programme— 10

(a) establish the identifying name of the partnership, if applicable;

(b) establish the identity of—

(i) every partner, including every member of a partnership en commandite, an anonymous partnership or any similar partnership; 15

(ii) if a partner in the partnership is a legal person or a natural person acting on behalf of a partnership or in pursuance of the provisions of a trust agreement, the beneficial owner of that legal person, partnership or trust; 20

**[(c)]** (iii) **[establish the identity of]** the natural person who exercises executive control over the partnership; and

**[(d)]** (iv) **[establish the identity of]** each natural person who purports to be authorised to enter into a single transaction or establish a business relationship with the accountable institution on behalf of the partnership; and 25

**[(e)]** (c) take reasonable steps to verify— 30

(i) the particulars obtained in paragraph (a); and

**[(f)]** (ii) **[take reasonable steps to verify]** the identities of the natural persons referred to in **[paragraphs]** paragraph (b) **[to (d)]** so that the accountable institution is satisfied that it knows the identities of the natural persons concerned. 35

(4) If a **[natural]** person, in entering into a single transaction or establishing a business relationship as contemplated in section 21, is acting in pursuance of the provisions of a trust agreement **[between natural persons]**, an accountable institution must, in addition to the steps required under sections 21 and 21A and in accordance with its Risk Management and Compliance Programme— 40

(a) establish the identifying name and number of the trust, if applicable; 45

(b) establish the address of the Master of the High Court where the trust is registered, if applicable;

(c) in respect of the founders of the trust, establish the identity of—

(i) **[the] each** founder; and

(ii) if a founder of the trust is a legal person or a person acting on behalf of a partnership or in pursuance of the provisions of a trust agreement, the beneficial owner of that legal person, partnership or trust; 50

(d) in respect of the trustees of the trust, establish the identity of—

(i) each trustee; 55

(iA) if a trustee is a legal person or a person acting on behalf of a partnership, the beneficial owner of that legal person or partnership; and

(ii) each natural person who purports to be authorised to enter into a single transaction or establish a business relationship with the accountable institution on behalf of the trust, whether such a person is appointed as a trustee of the trust or not; 60

(e) in respect of the beneficiaries of the trust, establish—

(i) the identity of each beneficiary referred to by name in the trust **[deed] instrument** or other founding instrument in terms of which the trust is created; 65

- (iA) if a beneficiary referred to by name in the trust instrument is a legal person or a person acting on behalf of a partnership or in pursuance of the provisions of a trust agreement, the beneficial owner of that legal person, partnership or trust;  
[or] and 5
- (ii) if beneficiaries are not referred to by name in the trust **[deed]** instrument or other founding instrument in terms of which the trust is created, the particulars of how the beneficiaries of the trust are determined;
- (f) take reasonable steps to verify the particulars obtained in paragraphs (a), (b) and (e)(ii); and 10
- (g) take reasonable steps to verify the identities of the natural persons referred to in paragraphs (c), (d) **[and]**, (e)(i) and (iA) so that the accountable institution is satisfied that it knows the identities of the natural persons concerned.”. 15

**Amendment of section 21C of Act 38 of 2001, as inserted by section 10 of Act 1 of 2017**

23. Section 21C of the Financial Intelligence Centre Act, 2001, is hereby amended by the addition of the following subsection, the existing provision becoming subsection (1):  
“(2) If an accountable institution suspects that a transaction or activity is suspicious or unusual as contemplated in section 29, and the institution reasonably believes that performing the customer due diligence requirements in terms of this section will disclose to the client that a report will be made in terms of section 29, it may discontinue the customer due diligence process and consider making a report under section 29.” 20 25

**Substitution of section 21D of Act 38 of 2001, as inserted by section 10 of Act 1 of 2017**

24. The following section is hereby substituted for section 21D of the Financial Intelligence Centre Act, 2001:

**“Doubts about veracity of previously obtained information and when reporting suspicious and unusual transactions** 30

**21D.** When an accountable institution, subsequent to entering into a single transaction or establishing a business relationship[,] —  
(a) doubts the veracity or adequacy of previously obtained information which the institution is required to verify as contemplated in sections 21 and 21B; or 35  
(b) makes a suspicious or unusual transaction report in terms of section 29,  
the institution must repeat the steps contemplated in sections 21 and 21B in accordance with its Risk Management and Compliance Programme and to the extent that is necessary to confirm the information **[in question]** previously obtained.”. 40

**Amendment of section 21F of Act 38 of 2001, as inserted by section 10 of Act 1 of 2017**

25. Section 21F of the Financial Intelligence Centre Act, 2001, is hereby amended— 45  
(a) by the substitution for the heading of the following heading:  
    **“Foreign [prominent public official] politically exposed person”**; and  
(b) by the substitution for the words preceding paragraph (a) of the following words:  
    **“If an accountable institution determines in accordance with its Risk Management and Compliance Programme that a prospective client with whom it engages to establish a business relationship, or the beneficial owner of that prospective client, is a foreign [prominent public official] politically exposed person, the institution must—”.** 50 55

**Amendment of section 21G of Act 38 of 2001, as inserted by section 10 of Act 1 of 2017**

26. Section 21G of the Financial Intelligence Centre Act, 2001, is hereby amended—
- (a) by the substitution for the heading of the following heading:  
“**Domestic [prominent influential] politically exposed person and prominent influential person**”; and 5
  - (b) by the substitution for the words preceding paragraph (a) of the following words:  
“If an accountable institution determines that a prospective client with whom it engages to establish a business relationship, or the beneficial owner of that prospective client, is a domestic **[prominent influential] politically exposed person or a prominent influential person** and that, in accordance with its Risk Management and Compliance Programme, the prospective business relationship entails higher risk, the institution must—”. 10 15

**Amendment of section 21H of Act 38 of 2001, as inserted by section 10 of Act 1 of 2017**

27. Section 21H of the Financial Intelligence Centre Act, 2001, is hereby amended by the substitution for subsection (1) of the following subsection: 20
- “(1) Sections 21F and 21G apply to immediate family members and known close associates of **[a person in]** a foreign or domestic **[prominent position] politically exposed person or a prominent influential person**, as the case may be.”.

**Substitution of section 26A of Act 38 of 2001, as inserted by section 17 of Act 1 of 2017** 25

28. The following section is hereby substituted for section 26A of the Financial Intelligence Centre Act, 2001:

**“Notification of persons and entities identified by Security Council of the United Nations**

**26A. (1) [Upon the adoption of a] A resolution adopted by the Security Council of the United Nations when acting under Chapter VII of the Charter of the United Nations, providing for financial sanctions which entail the identification of persons or entities against whom member states of the United Nations must take the actions specified in the resolution, [the Minister must announce the adoption of the resolution by notice in the Gazette and other appropriate means of publication] has immediate effect for the purposes of this Act upon its adoption by the Security Council of the United Nations.** 30 35

(1A) A resolution contemplated in subsection (1) ceases to be in effect upon a decision of the Security Council of the United Nations to no longer apply that resolution. 40

(2) This section does not apply to resolutions of the Security Council of the United Nations contemplated in section 25 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004). 45

(3) **[Following a notice contemplated in subsection (1) the]** The Director must, **[from time to time and]** by appropriate means of publication, give notice of—

(Aa) the adoption of a resolution by the Security Council of the United Nations contemplated in subsection (1); 50

(a) persons and entities being identified from time to time by the Security Council of the United Nations pursuant to a resolution contemplated in subsection (1); **[and]**

(b) a decision of the Security Council of the United Nations to no longer apply a resolution contemplated in subsection (1A) to previously identified persons or entities; and 55

(c) a decision of the Security Council of the United Nations to no longer apply a resolution contemplated in subsection (1A).

[(4) The Minister may revoke a notice contemplated in subsection (1) if the Minister is satisfied that the notice is no longer necessary to give effect to financial sanctions in terms of a resolution contemplated in subsection (1).]” 5

**Amendment of section 26B of Act 38 of 2001, as inserted by section 17 of Act 1 of 2017**

29. Section 26B of the Financial Intelligence Centre Act, 2001, is hereby amended—

(a) by the substitution for the words following paragraph (e) of the following words: 10

“intending that the property, financial or other service or economic support, as the case may be, be used, or while the person knows or ought reasonably to have known or suspected that the property, service or support concerned will be used, directly or indirectly, in whole or in part, for the benefit of, or on behalf of, or at the direction of, or under the control of a person or an entity identified pursuant to a resolution of the Security Council of the United Nations contemplated in [a notice referred to in] section 26A(1).”; 15

(b) by the substitution for subsection (2) of the following subsection: 20

“(2) No person may, directly or indirectly, in whole or in part, and by any means or method deal with, enter into or facilitate any transaction or perform any other act in connection with property which such person knows or ought reasonably to have known or suspected to have been acquired, 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 an entity— 25

(a) identified pursuant to a resolution of the Security Council of the United Nations contemplated in [a notice referred to in] section 26A(1); or 30

(b) acting on behalf of or at the direction of a person or entity contemplated in paragraph (a).”; and

(c) by the substitution in subsection (3) for paragraph (a) of the following paragraph: 35

“(a) making it possible for a person or an entity identified pursuant to a resolution of the Security Council of the United Nations contemplated in [a notice referred to in] section 26A(1) to retain or control the property.”.

**Amendment of section 26C of Act 38 of 2001, as inserted by section 17 of Act 1 of 2017** 40

30. Section 26C of the Financial Intelligence Centre Act, 2001, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Minister may, in writing and on the conditions as he or she considers appropriate and in accordance with a resolution of the Security Council of the United Nations contemplated in [a notice referred to in] section 26A(1), permit a person to conduct financial services or deal with property referred to in section 26B in the circumstances referred to in subsection (2).”.

 45

**Amendment of section 27A of Act 38 of 2001, as inserted by section 19 of Act 1 of 2017**

31. Section 27A of the Financial Intelligence Centre Act, 2001, is hereby amended— 50

(a) by the substitution for the heading of the following heading:

“**Powers of access by authorised representative to records [in respect of reports required to be submitted to Centre] of accountable institutions**”; and

(b) by the substitution for subsection (3) of the following subsection: 55

“(3) A warrant may only be issued if it appears to the judge, magistrate or regional magistrate from information on oath or affirmation that there

are reasonable grounds to believe that the records referred to in subsection (1) may assist the Centre to identify the proceeds of unlawful activities or to combat money laundering activities, [or] the financing of terrorist and related activities or proliferation financing activities.”.

**Amendment of section 28A of Act 38 of 2001, as amended by section 20(c) of Act 1 of 2017** 5

32. Section 28A of the Financial Intelligence Centre Act, 2001, is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) a person or an entity identified pursuant to a resolution of the Security Council of the United Nations contemplated in **[a notice referred to in]** section 26A(1).” 10

**Amendment of section 34 of Act 38 of 2001, as amended by section 27(1) of Act 33 of 2004, section 9 of Act 11 of 2008 and section 23 of Act 1 of 2017**

33. Section 34 of the Financial Intelligence Centre Act, 2001, is hereby amended by the substitution in paragraph (a) of subsection (1) for subparagraph (ii) of the following subparagraph: 15

“(ii) property owned or controlled by or on behalf of, or at the direction of a person or entity identified pursuant to a resolution of the Security Council of the United Nations contemplated in **[a notice referred to in]** section 26A(1); or” 20

**Amendment of section 35 of Act 38 of 2001, as amended by section 27(1) of Act 33 of 2004 and section 24 of Act 1 of 2017**

34. Section 35 of the Financial Intelligence Centre Act, 2001, is hereby amended—

(a) by the substitution in paragraph (a) of subsection (1) for subparagraph (iii) of the following subparagraph: 25

“(iii) property owned or controlled by or on behalf of, or at the direction of a person or entity identified pursuant to a resolution of the Security Council of the United Nations contemplated in **[a notice referred to in]** section 26A(1);” and

(b) by the substitution in paragraph (b) of subsection (1) for subparagraph (iii) of the following subparagraph: 30

“(iii) property owned or controlled by or on behalf of, or at the direction of a person or entity identified pursuant to a resolution of the Security Council of the United Nations contemplated in **[a notice referred to in]** section 26A(1);” 35

**Amendment of section 36 of Act 38 of 2001, as amended by section 10 of Act 11 of 2008**

35. Section 36 of the Financial Intelligence Centre Act, 2001, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The Commissioner for the South African Revenue Service and the chief executive officer of a supervisory body may make such reasonable procedural arrangements and impose such reasonable safeguards regarding the furnishing of information referred to in section 5(2) and subsections (1) and (2) of this section as the Commissioner or such officer considers appropriate to maintain the confidentiality, if any, of that information.” 40 45

**Amendment of section 37 of Act 38 of 2001, as amended by section 11 of Act 11 of 2008**

36. Section 37 of the Financial Intelligence Centre Act, 2001, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to subsection (2), no duty of secrecy or confidentiality or any other restriction on the disclosure of information, whether imposed by legislation or arising from the common law or agreement, affects compliance by an accountable 50

institution, supervisory body, reporting institution[, **the South African Revenue Service**] or any other person with a provision of this Part, Part 4 and Chapter 4.”.

**Amendment of section 40 of Act 38 of 2001, as amended by section 27 of Act 33 of 2004, section 13 of Act 11 of 2008 and section 25 of Act 1 of 2017**

37. Section 40 of the Financial Intelligence Centre Act, 2001, is hereby amended— 5
- (a) by the substitution in subsection (1) for paragraph (aF) of the following paragraph:  
“(aF) an investigative division in [**an organ of state**] a national department.”;
  - (b) by the substitution in subsection (1) for paragraph (aG) of the following paragraph:  
“(aG) the Public Protector; [**or**]”;
  - (c) by the substitution in subsection (1) for paragraph (aH) of the following paragraph:  
“(aH) the South African Revenue Service; or”;
  - (d) by the insertion in subsection (1) of the following paragraph after paragraph (aH):  
“(aI) the investigative division of the Auditor-General.”; and
  - (e) by the substitution in subsection (1A) for the words preceding paragraph (a) of the following words: 20  
“(1A) Information contemplated in subsection (1) may only be made available to an entity referred to in subsection (1)(a), (aa), (aB), (aC), (aD), (aE), (aF), (aG), [**or**] (aH) or (aI)—”.

**Amendment of section 41A of Act 38 of 2001, as inserted by section 26 of Act 1 of 2017** 25

38. Section 41A of the Financial Intelligence Centre Act, 2001, is hereby amended by the insertion after subsection (2) of the following subsection:
- “(3) The Minister may prescribe requirements for the protection of personal information to facilitate the sharing of information between accountable institutions when the sharing of information is necessary for the purposes of carrying out the provisions of section 29, to ensure that adequate safeguards are in place as required by section 6(1)(c) of the Protection of Personal Information Act, 2013.”.

**Amendment of section 42 of Act 38 of 2001, as amended by section 27 of Act 1 of 2017**

39. Section 42 of the Financial Intelligence Centre Act, 2001, is hereby amended— 35
- (a) by the substitution for subsection (1) of the following subsection:  
“(1) An accountable institution must develop, document, maintain and implement a programme for anti-money laundering, [**and**] counter-terrorist financing and proliferation financing risk management and compliance.”;
  - (b) by the substitution in paragraph (a) of subsection (2) for the words following subparagraph (v) of the following words:  
“the risk that the provision by the accountable institution of new and existing products or services may involve or facilitate money laundering activities [**or**], the financing of terrorist and related activities or proliferation financing activities.”;
  - (c) by the substitution in subsection (2) for paragraph (i) of the following paragraph:  
“(i) provide for the manner in which and the process by which the institution will confirm information relating to a client when the institution has doubts about the veracity of previously obtained information and when reporting suspicious and unusual transactions in accordance with section 21D.”;
  - (d) by the substitution in subsection (2) for paragraph (l) of the following paragraph: 55  
“(l) provide for the manner in which and the processes by which the accountable institution determines whether a prospective client or

- an existing client is a foreign [prominent public official] or a domestic politically exposed person or a prominent influential person;”;
- (e) by the substitution in subsection (2) for paragraph (m) of the following paragraph: 5  
“(m) provide for the manner in which and the processes by which the accountable institution conducts enhanced due diligence [is conducted] for higher-risk single transactions and business relationships and when simplified customer due diligence might be permitted in the institution;”;
- (f) by the substitution in subsection (2) for paragraph (q) of the following paragraph: 10  
“(q) provide for the manner in which—  
(i) the Risk Management and Compliance Programme is implemented in branches, subsidiaries or other operations of the institution in foreign countries so as to enable the institution to comply with its obligations under this Act; 15  
(ii) the institution will determine if the host country of a foreign branch, [or] subsidiary or other operation permits the implementation of measures required under this Act; [and] 20  
(iii) the institution will inform the Centre and supervisory body concerned if the host country contemplated in subparagraph (ii) does not permit the implementation of measures required under this Act; and  
(iv) taking into consideration the level of risk of the host country, the institution will apply appropriate additional measures to manage the risks if the host country does not permit the implementation of measures required under this Act;”;
- (g) by the insertion in subsection (2) of the following paragraph after paragraph (q): 30  
“(qA) provide for the manner in which and the processes by which group-wide programmes of an accountable institution for all its branches and majority-owned subsidiaries situated in the Republic is implemented so as to enable the institution to— 35  
(i) comply with its obligations under this Act;  
(ii) exchange information with its branches or subsidiaries relating to the customer due diligence requirements in terms of this Act;  
(iii) exchange information with its branches or subsidiaries relating to the analysis of transactions or activities which the institution suspects to be suspicious or unusual as contemplated in section 29; and 40  
(iv) have adequate safeguards to protect the confidentiality of information exchanged in accordance with this paragraph and this Act.”. 45

**Amendment of section 49A of Act 38 of 2001, as inserted by section 39 of Act 1 of 2007**

40. Section 49A of the Financial Intelligence Centre Act, 2001, is hereby amended by the addition of the following subsection, the existing provision becoming subsection (1):  
“(2) An accountable institution, reporting institution or any other person that fails to comply with a provision of section 26B is non-compliant and is subject to an administrative sanction.”. 50

**Amendment of section 50 of Act 38 of 2001, as amended by section 40 of Act 1 of 2017**

41. Section 50 of the Financial Intelligence Centre Act, 2001, is hereby amended by the addition of the following subsection, the existing provision becoming subsection (1):  
“(2) An accountable institution, reporting institution or any other person that fails to inform the Centre in accordance with section 27 is non-compliant and is subject to an administrative sanction.”. 55

**Amendment of section 52 of Act 38 of 2001**

42. Section 52 of the Financial Intelligence Centre Act, 2001, is hereby amended by the addition of the following subsections after subsection (2):

“(3) An accountable institution, reporting institution or any other person that fails, within the prescribed period, to report to the Centre the prescribed information in respect of a suspicious or unusual transaction or series of transactions or enquiry in accordance with section 29(1) or (2), is non-compliant and is subject to an administrative sanction.

(4) An accountable institution, reporting institution or any other person that reasonably ought to have known or suspected that any of the facts referred to in section 29(1)(a), (b) or (c) or section 29(2) exists, and who negligently fails to report the prescribed information in respect of a suspicious or unusual transaction or series of transactions or enquiry, is non-compliant and is subject to an administrative sanction.”.

**Substitution of section 57 of Act 38 of 2001, as amended by section 20 of Act 11 of 2008**

43. The following section is hereby substituted for section 57 of the Financial Intelligence Centre Act, 2001:

**“Failure to comply with request**

57. (1) An accountable institution, reporting institution or any other person that fails to comply with a request made by—

(a) the Centre [**or an investigating authority acting under the authority of an authorised officer**] in terms of section 32(2); or

(b) a supervisory body in terms of section 45(1B)(d),  
is guilty of an offence.

(2) An accountable institution, reporting institution or any other person that fails to comply with a request made by—

(a) the Centre in terms of section 32(2); or

(b) a supervisory body in terms of section 45(1B)(d),  
is non-compliant and is subject to an administrative sanction.”.

**Amendment of section 59 of Act 38 of 2001**

44. Section 59 of the Financial Intelligence Centre Act, 2001, is hereby amended by the addition of the following subsection, the existing provision becoming subsection (1):

“(2) An accountable institution that fails to comply with an order by a judge in accordance with section 35 is non-compliant and is subject to an administrative sanction.”.

**Amendment of section 64 of Act 38 of 2001**

45. Section 64 of the Financial Intelligence Centre Act, 2001, is hereby amended by the addition of the following subsection, the existing provision becoming subsection (1):

“(2) An accountable institution, reporting institution or any other person that conducts, or causes to be conducted, two or more transactions with the purpose, in whole or in part, of avoiding giving rise to a reporting duty under this Act is non-compliant and is subject to an administrative sanction.”.

**Amendment of section 75 of Act 38 of 2001, as amended by section 54 of Act 1 of 2017**

46. Section 75 of the Financial Intelligence Centre Act, 2001, is hereby amended by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs:

“(a) add to the list any entity or functionary which **[performs supervisory or regulatory functions]** will be responsible for supervising and enforcing compliance with this Act or any order, determination or directive made in terms of this Act in relation to any category of accountable institutions;

- (b) delete any supervisory body from the list if the Minister reasonably believes that supervisory body is not satisfactorily performing or no longer performs supervisory or **[regulatory]** enforcement functions in terms of this Act in relation to any category of accountable institutions; or”.

**Amendment of section 79A of Act 38 of 2001, as amended by section 58 of Act 1 of 2017** 5

47. Section 79A of the Financial Intelligence Centre Act, 2001, is hereby amended—

- (a) by the substitution for the heading of the following heading:  
“**Amendment of list of domestic [prominent influential] politically exposed persons;**”; and 10
- (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:  
“The Minister may, by notice in the *Gazette*, amend the list of domestic **[prominent influential] politically exposed** persons in Schedule 3A to—”. 15

**Amendment of section 79B of Act 38 of 2001, as amended by section 58 of Act 1 of 2017**

48. Section 79B of the Financial Intelligence Centre Act, 2001, is hereby is hereby amended—

- (a) by the substitution for the heading of the following heading: 20  
“**Amendment of list of foreign [prominent public officials] politically exposed persons;**”; and
- (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:  
“The Minister may, by notice in the *Gazette*, amend the list of foreign **[prominent public officials] politically exposed persons** in Schedule 3B to—”. 25

**Insertion of section 79C in Act 38 of 2001**

49. The following section is hereby inserted after section 79B of the Financial Intelligence Centre Act, 2001: 30

**“Amendment of list of prominent influential persons**

**79C.** (1) The Minister may, by notice in the *Gazette*, amend the list of prominent influential persons in Schedule 3C to—

- (a) add to the list any person or category of persons; 35  
(b) delete any person or category of persons from the list; or  
(c) make technical changes to the list.

(2) Before the Minister amends Schedule 3C in terms of subsection (1), the Minister must—

- (a) in the *Gazette*, give notice where a draft of the amendments will be available and invite submissions; and 40  
(b) consider submissions received.

(3) Any addition to or deletion from the list of persons in Schedule 3C in terms of subsection (1) must, before publication in the *Gazette*, be submitted to Parliament for its approval.”.

**Amendment of Schedule 2 to Act 38 of 2001, as amended by Government Notice No. 1105 of 2010** 45

50. Schedule 2 to the Financial Intelligence Centre Act, 2001, is hereby amended by the deletion of items 4 and 9.

**Amendment of Schedule 3A to Act 38 of 2001, as inserted by section 59 of Act 1 of 2017**

51. Schedule 3A to the Financial Intelligence Centre Act, 2001, is hereby amended—
- (a) by the substitution for the heading of the following heading:  
“**DOMESTIC [PROMINENT INFLUENTIAL] POLITICALLY EXPOSED PERSON**”; and
  - (b) by the substitution for the words preceding paragraph (a) of the following words:  
“A domestic [**prominent influential**] politically exposed person is an individual who [**holds, including in an acting position for a period exceeding six months, or has held at any time in the preceding 12 months, in the Republic**]—”;
  - (c) by the substitution in paragraph (a) for the words preceding subparagraph (i) of the following words:  
“holds, including in an acting position for a period exceeding six months, or has held a prominent public function in the Republic, including that of—”;
  - (d) by the substitution in paragraph (a) for subparagraph (xiv) of the following subparagraph:  
“(xiv) an officer of the South African National Defence Force above the rank of major-general; or”;
  - (e) by the deletion of paragraph (b); and
  - (f) by the substitution for paragraph (c) of the following paragraph:  
“(c) holds, including in an acting position for a period exceeding six months, or has held the position of head, or other executive directly accountable to that head, of an international organisation [based in the Republic].”.

**Amendment of Schedule 3B to Act 38 of 2001, as inserted by section 59 of Act 1 of 2017**

52. Schedule 3B to the Financial Intelligence Centre Act, 2001, is hereby amended—
- (a) by the substitution for the heading of the following heading:  
“**FOREIGN [PROMINENT PUBLIC OFFICIAL] POLITICALLY EXPOSED PERSON**”; and
  - (b) by the substitution for the words preceding paragraph (a) of the following words:  
“A foreign [**prominent public official**] politically exposed person is an individual who holds, or has held [**at any time in the preceding 12 months**], in any foreign country a prominent public function including that of a—”.

**Insertion of Schedule 3C in Act 38 of 2001**

53. The following schedule is hereby inserted after Schedule 3B to the Financial Intelligence Centre Act, 2001:

**“Schedule 3C**

**PROMINENT INFLUENTIAL PERSON**

A prominent influential person is an individual who holds, or has held at any time in the preceding 12 months, the position of—

- (a) chairperson of the board of directors;
- (b) chairperson of the audit committee;
- (c) executive officer; or
- (d) chief financial officer,

of a company, as defined in the Companies Act, 2008 (Act No. 71 of 2008), if the company provides goods or services to an organ of state and the annual transactional value of the goods or services or both exceeds an amount determined by the Minister by notice in the *Gazette*.”.

**Substitution of Index of Act 38 of 2001**

**54.** The Index of the Financial Intelligence Centre Act, 2001, is hereby substituted by the following:

<b>“ARRANGEMENT OF SECTIONS</b>		
1.	Definitions	5
1A.	Application of Act when in conflict with other laws	
CHAPTER 1		
FINANCIAL INTELLIGENCE CENTRE		
2.	Establishment	
3.	Objectives	10
4.	Functions	
5.	General powers	
6.	Appointment of Director	
7.	Removal from office	
8.	Acting Director	15
9.	Proof of appointment	
10.	Responsibilities of Director	
11.	Staff	
12.	Security screening of staff of Centre other than Director	
13.	Security screening of Director of Centre	20
14.	Funds and financial year of Centre	
15.	Audit	
16.	Delegation	
CHAPTER 2		
17.	...	25
18.	...	
19.	...	
20.	...	
CHAPTER 3		
CONTROL MEASURES FOR MONEY LAUNDERING AND FINANCING OF	30	
TERRORIST AND RELATED ACTIVITIES		
MONEY LAUNDERING, FINANCING OF TERRORIST AND RELATED		
ACTIVITIES AND FINANCIAL SANCTIONS CONTROL MEASURES		
PART 1		
<i>Customer due diligence</i>		35
20A.	Anonymous clients and clients acting under false or fictitious names	
21.	Identification of clients and other persons	
21A.	Understanding and obtaining information on business relationship	
21B.	Additional due diligence measures relating to legal persons, trusts and partnerships	40
21C.	Ongoing due diligence	
21D.	Doubts about veracity of previously obtained information and when reporting suspicious and unusual transactions	
21E.	Inability to conduct customer due diligence	
21F.	Foreign politically exposed person	45
21G.	Domestic politically exposed person and prominent influential person	
21H.	Family members and known close associates	
PART 2		
<i>Duty to keep record</i>		
22.	Obligation to keep customer due diligence records	50
22A.	Obligation to keep transaction records	
23.	Period for which records must be kept	
24.	Records may be kept in electronic form and by third parties	
25.	Admissibility of records	
26.	...	55

PART 2A

*Financial sanctions*

- 26A. Notification of persons and entities identified by Security Council of the United Nations  
26B. Prohibitions relating to persons and entities identified by Security Council of the United Nations 5  
26C. Permitted financial services and dealing with property

PART 3

*Reporting duties and access to information*

27. Accountable institutions, reporting institutions and persons subject to reporting obligations to advise Centre of clients 10  
27A. Powers of access by authorised representative to records of accountable institutions  
28. Cash transactions above prescribed limit  
28A. Property associated with terrorist and related activities and financial sanctions pursuant to Resolutions of United Nations Security Council 15  
29. Suspicious and unusual transactions  
30. Conveyance of cash to or from Republic  
31. Electronic transfers of money to or from Republic  
32. Reporting procedures and furnishing of additional information 20  
33. Continuation of transactions  
34. Intervention by Centre  
35. Monitoring orders  
36. Information held by supervisory bodies and South African Revenue Service  
37. Reporting duty and obligations to provide information not affected by confidentiality rules 25  
38. Protection of persons making reports  
39. Admissibility as evidence of reports made to Centre  
40. Access to information held by Centre  
41. Protection of confidential information 30  
41A. Protection of personal information

PART 4

*Measures to promote compliance by accountable institutions*

42. Risk Management and Compliance Programme  
42A. Governance of anti-money laundering, counter terrorist financing and financial sanction obligations compliance 35  
42B. Consultation process for issuing guidance  
43. Training relating to anti-money laundering, counter terrorist financing and financial sanction obligations compliance  
43A. Directives 40  
43B. Registration by accountable institution and reporting institution

PART 5

*Referral and supervision*

44. Referral of suspected offences to investigating authorities and other public bodies 45  
45. Responsibility for supervision of accountable institutions

CHAPTER 4

COMPLIANCE AND ENFORCEMENT

- 45A. Appointment of inspectors  
45B. Inspections 50  
45C. Administrative sanctions  
45D. Appeal  
45E. Establishment of appeal board  
45F. Application to court  
46. Failure to identify persons 55  
46A. Failure to comply with duty in regard to customer due diligence  
47. Failure to keep records

48.	Destroying or tampering with records	
49.	Failure to give assistance	
49A.	Contravention of prohibitions relating to persons and entities identified by Security Council of United Nations	
50.	Failure to advise Centre of client	5
51.	Failure to report cash transactions	
51A.	Failure to report property associated with terrorist and related activities and financial sanctions pursuant to Resolutions of United Nations Security Council	
52.	Failure to report suspicious or unusual transactions	
53.	Unauthorised disclosure	10
54.	Failure to report conveyance of cash or bearer negotiable instrument into or out of Republic	
55.	Failure to send report to Centre	
56.	Failure to report electronic transfers	
57.	Failure to comply with request	15
58.	Failure to comply with direction of Centre	
59.	Failure to comply with monitoring order	
60.	Misuse of information	
61.	Failure to comply with duty in respect of Risk Management and Compliance Programme	20
61A.	Failure to register with Centre	
61B.	Failure to comply with duty in regard to governance	
62.	Failure to provide training	
62A.	Offences relating to inspection	
62B.	Hindering or obstructing appeal board	25
62C.	Failure to attend when summoned	
62D.	Failure to answer fully or truthfully	
62F.	Failure to comply with directives of Centre or supervisory body	
63.	Obstructing of official in performance of functions	
64.	Conducting transactions to avoid reporting duties	30
65.	...	
66.	...	
67.	...	
68.	Penalties	
69.	Defences	35
70.	Search, seizure and forfeiture	
71.	Jurisdiction of courts	

## CHAPTER 5

### MISCELLANEOUS

72.	Act not to limit powers of investigating authorities or supervisory bodies	40
73.	Amendment of list of accountable institutions	
74.	Exemptions for accountable institutions	
75.	Amendment of list of supervisory bodies	
76.	Amendment of list of reporting institutions	
77.	Regulations	45
77A.	Arrangements for consultations with stakeholders	
78.	Indemnity	
79.	Amendment of laws	
79A.	Amendment of list of domestic politically exposed persons	
79B.	Amendment of list of foreign politically exposed persons	50
80.	Status of footnotes	
81.	Transitional arrangements	
82.	Short title and commencement	
Schedule 1	List of accountable institutions	
Schedule 2	List of supervisory bodies	55
Schedule 3	List of reporting institutions	
Schedule 3A	Domestic Politically Exposed Person	
Schedule 3B	Foreign Politically Exposed Person	
Schedule 3C	Prominent Influential Person	
Schedule 4	Amendment of sections of Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998)	60

Amendment of Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)".

**Amendment of section 1 of Act 71 of 2008, as amended by section 1(1) of Act 3 of 2011 and section 111 of Act 19 of 2012**

55. Section 1 of the Companies Act, 2008, is hereby amended— 5
- (a) by the insertion after the definition of “advertisement” of the following definition:
- “**affected company**” means a regulated company as set out in section 117(1)(i) and a private company that is controlled by or a subsidiary of a regulated company as a result of any circumstances contemplated in section 2(2)(a) or 3(1)(a);” and 10
- (b) by the insertion after the definition of “beneficial interest” of the following definition:
- “**beneficial owner**”, in respect of a company, means an individual who, directly or indirectly, ultimately owns that company or exercises effective control of that company, including through— 15
- (a) the holding of beneficial interests in the securities of that company;
- (b) the exercise of, or control of the exercise of the voting rights associated with securities of that company;
- (c) the exercise of, or control of the exercise of the right to appoint or remove members of the board of directors of that company; 20
- (d) the holding of beneficial interests in the securities, or the ability to exercise control, including through a chain of ownership or control, of a holding company of that company;
- (e) the ability to exercise control, including through a chain of ownership or control, of— 25
- (i) a juristic person other than a holding company of that company;
- (ii) a body of persons corporate or unincorporate; 30
- (iii) a person acting on behalf of a partnership;
- (iv) a person acting in pursuance of the provisions of a trust agreement; or
- (f) the ability to otherwise materially influence the management of that company.”.

**Amendment of section 33 of Act 71 of 2008, as amended by section 23 of Act 3 of 2011** 35

56. Section 33 of the Companies Act, 2008, is hereby amended—
- (a) by the deletion in paragraph (a) of subsection (1) of “and”;
- (b) by the insertion after paragraph (a) of subsection (1) of the following paragraphs: 40
- “(aA) a copy of the company’s securities register as required in terms of section 50;
- (aB) a copy of the register of the disclosure of beneficial interest as required in terms of section 56(7)(aA); and”; and
- (c) by the insertion after subsection (1) of the following subsection: 45
- “(1A) (a) The Commission must make the annual return contemplated in subsection (1) available electronically to any person as prescribed.
- (b) The prescribed requirements referred to in paragraph (a) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).”.

**Amendment of section 50 of Act 71 of 2008, as amended by section 34 of Act 3 of 2011**

57. Section 50 of the Companies Act, 2008, is hereby amended by the insertion after subsection (3) of the following subsection:

- “(3A) (a) A company that does not fall within the meaning of an “affected company” must record in its securities register prescribed information regarding the natural persons who are the beneficial owners of the company, in the prescribed form, and must ensure that this information is updated within the prescribed period after any changes in beneficial ownership have occurred. 5
- (b) The prescribed requirements referred to in paragraph (a) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).” 10

**Amendment of section 56 of Act 71 of 2008, as amended by section 36 of Act 3 of 2011** 15

58. Section 56 of the Companies Act, 2008, is hereby amended—

- (a) by the substitution for the heading of the section of the following heading:  
“**Beneficial interest in securities and beneficial ownership of company**”;
- (b) by the substitution in subsection (7) for the words preceding paragraph (a) and paragraph (a) of the following words and paragraph:  
“(7) [A] An affected company must—  
(a) establish and maintain a register of the disclosures made in terms of this section; [and]”;
- (c) by the insertion in subsection (7) after paragraph (a) of the following paragraph:  
“(aA) establish and maintain a register of the persons who hold beneficial interests equal to or in excess of 5% of the total number of securities of that class issued by the company, together with the extent of those beneficial interests, and ensure that this register is updated within the prescribed period after having received a notice contemplated in section 122(1); and 25 30
- (d) by the addition of the following subsections:  
“(12) A company that does not fall within the meaning of an “affected company” must file a record with the Commission, in the prescribed form and containing the prescribed information, regarding the individuals who are the beneficial owners of the company, and must ensure that this information is updated by filing notices with the Commission within the prescribed period after any changes in beneficial ownership have occurred. 35 40  
(13) The prescribed requirements referred to in subsection (12) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).  
(14) The Commission must maintain a register of the information contained in the records contemplated in subsections (7)(aA) and (12).” 45

**Amendment of section 69 of Act 71 of 2008, as amended by section 46 of Act 3 of 2011 and section 111 of Act of Act 19 of 2012**

59. Section 69 of the Companies Act, 2008, is hereby amended—

- (a) in paragraph (b) of subsection (8) by the deletion in subparagraph (iii) of “or”;
- (b) in paragraph (b) of subsection (8) by the substitution for subparagraph (iv) of the following subparagraph:  
“(iv) has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence— 55  
(aa) involving fraud, misrepresentation or dishonesty, or money laundering, terrorist financing, or proliferation

- financing activities as those terms are defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001); or
- (bb) in connection with the promotion, formation or management of a company, or in connection with any act contemplated in subsection (2) or (5); or 5
- (cc) under this Act, the Insolvency Act, 1936, (Act 24 of 1936), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001 [(**Act 38 of 2001**)], the Financial Markets Act, 2012, [or] Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004), the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act 33 of 2004) or the Tax Administration Act, 2011 (Act 28 of 2011); or” 10
- (c) in paragraph (b) of subsection (8) by the insertion after subparagraph (iv) of the following subparagraph: 15
- “(v) when a person is subject to a resolution adopted by the Security Council of the United Nations when acting under Chapter VII of the Charter of the United Nations, providing for financial sanctions which entail the identification of persons or entities against whom member states of the United Nations must take the actions specified in the resolution.” 20
- (d) by the insertion after subsection (9) of the following subsection: 25
- “(9A) A disqualification in terms of subsection (8)(b)(v) ends when the Security Council of the United Nations takes a decision to no longer apply that resolution to a person contemplated in that subsection.”

**Amendment of section 122 of Act 71 of 2008, as amended by section 76 of Act 3 of 2011**

- 60.** Section 122 of the Companies Act, 2008, is hereby amended— 30
- (a) in subsection (1) by the substitution for “a regulated” of “an affected”;
- (b) by the insertion after subsection (3) of the following subsection: 35
- “(3A) An affected company that has received a notice in terms of this section must file a record of that notice with the Commission, in the prescribed form and containing the prescribed information and within the prescribed period after having received that notice.”;
- (c) by the insertion after subsection (4) of the following subsections: 40
- (5) The prescribed requirements referred to in subsection (3A) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).
- (6) The Commission must maintain a register of the information contained in the notices contemplated in subsection (3A).”

**Amendment of Arrangement of Sections**

- 61.** The Arrangement of Sections of the Companies Act, 2008, is hereby amended by 45 the substitution for item 56 of the following item:
- “**56.** Beneficial interest in securities and beneficial ownership of company”.

**Amendment of section 159 of Act 9 of 2017**

- 62.** Section 159 of the Financial Sector Regulation Act, 2017, is hereby amended by 50 the insertion after subsection (3) of the following subsection:
- “(4) A significant owner of a financial institution must comply with a directive issued in terms of subsection (2) or (3).”

**Insertion of Chapter 11A and sections 159A to 159C in Act 9 of 2017**

**63.** The Financial Sector Regulation Act, 2017, is hereby amended by the insertion after Chapter 11 of the following Chapter:

**“CHAPTER 11A**

**BENEFICIAL OWNERS**

5

**Beneficial owners**

**159A.** (1) For the purposes of this Chapter, “**beneficial owner**” means a natural person who, directly or indirectly, ultimately owns a financial institution or exercises effective control of that financial institution.

(2) The Minister, the Reserve Bank and a financial sector regulator are not, in those capacities, beneficial owners of a financial institution. 10

**Standards in relation to beneficial owners**

**159B.** (1) In addition to the powers in Part 2 of Chapter 7 to make standards, a financial sector regulator may make standards applicable to— 15

(a) beneficial owners with respect to—

(i) fit and proper requirements, in particular honesty and integrity; and

(ii) reporting of relevant information regarding the beneficial owner to the financial sector regulator; and 20

(b) financial institutions with respect to the—

(i) identification and verification of beneficial owners; and

(ii) reporting relevant information in respect of beneficial owners to the financial sector regulator. 25

(2) Standards referred to in subsection (1) may—

(a) prescribe what would or would not constitute direct or indirect ultimate ownership or control, or the ability to exercise such control, as contemplated in the definition of beneficial owner for purposes of section 159A; 30

(b) exclude specified persons from the definition of beneficial owner as contemplated in section 159A; and

(c) distinguish between different types and categories of beneficial owners. 35

**Regulator’s directives in relation to beneficial owners**

**159C.** (1) (a) A financial sector regulator may issue to a beneficial owner a written directive requiring the beneficial owner to take action specified in the directive if the beneficial owner has contravened or is likely to contravene a financial sector law for which the financial sector regulator is the responsible authority. 40

(b) A directive in terms of paragraph (a) must aim to stop the beneficial owner from contravening the financial sector law, or reducing the risk of such a contravention, and may include requiring the beneficial owner to take steps to cease being a beneficial owner.

(2) A beneficial owner of a financial institution must comply with a directive issued in terms of subsection (1).” 45

**Amendment of long title of Act 9 of 2017**

**64.** The long title of the Financial Sector Regulation Act, 2017, is hereby amended by the insertion after the words “**significant owners**” of the words “**and beneficial owners**”.

**Amendment of Arrangement of Sections of Act 9 of 2017**

**65.** The Arrangement of Sections of the Financial Sector Regulation Act, 2017, is hereby amended by the insertion after item 159 of the following items:

“CHAPTER 11A

BENEFICIAL OWNERS

5

**159A.** Beneficial owners

**159B.** Standards in relation to beneficial owners

**159C.** Regulator’s directives in relation to beneficial owners”.

**Short title and commencement**

**66.** (1) This Act is called the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act, 2022, and takes effect on a date determined by the President by proclamation in the *Gazette*. 10

(2) Different dates may be determined by the President in respect of the taking effect of different provisions of this Act.

**MEMORANDUM ON THE OBJECTS OF THE GENERAL LAWS  
(ANTI-MONEY LAUNDERING AND COMBATING TERRORISM  
FINANCING) AMENDMENT BILL, 2022**

**1. BACKGROUND TO THE BILL**

- 1.1 The money laundering, terrorism financing and proliferation financing of weapons of mass destruction regulatory landscape is constantly evolving, necessitating improvements to the regulatory framework to maintain the integrity of South Africa's financial system. South Africa's commitment to combating money laundering, terrorism financing and proliferation financing ("AML/CFT/CPF") is demonstrated through the enactment of various pieces of legislation aimed at combating financial crime. The Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) ("the FIC Act"), is one of the pieces of legislation that was enacted to meet the international standards in relation to the combating of financial crimes. The Financial Action Task Force ("the FATF") is an inter-governmental body which sets standards and develops and promotes policies relating to AML/CFT/CPF. These standards are used as benchmarks in formal peer review and evaluation processes to test the robustness of a country's measures against these illicit activities, and the integrity of its financial systems.
- 1.2 South Africa was recently assessed by a joint International Monetary Fund, Eastern and Southern African Anti Money Laundering Group and the FATF assessment team that assessed South Africa's AML/CFT/CPF regime. The assessment included a review of the relevant AML, CFT and CPF laws and regulations, and the supervisory and regulatory systems in place to deter money laundering and terrorism and proliferation financing. Weaknesses in the regulatory framework identified in the mutual evaluation process highlight the need to ensure that South Africa has a robust AML/CFT/CPF regulatory framework. In identifying issues requiring review, consideration is given to the Mutual Evaluation Report prepared by the assessment team on ways to improve South Africa's legal and institutional framework, and to strengthen the implementation of measures to combat money laundering, terrorism financing and proliferation financing.
- 1.3 Following the adoption of the Mutual Evaluation Report, South Africa must now report to the FATF on a regular basis on the steps taken to improve the South African system to combat money laundering, terrorism financing and proliferation financing. The first such follow-up report will be made in October 2022. A large portion of the actions that South Africa is to take in this process involve amendments to the FIC Act, including the Schedules to the FIC Act. In order to demonstrate clearly in October 2022 that South Africa remains politically committed to the process of continuous improvement, the country should be able to report that a process to implement the necessary legislative changes is well under way.

**2. OBJECTS OF THE BILL**

2.1 *Enhancing the Customer Due Diligence requirements of Accountable Institutions*

The primary objective of the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill, 2022 ("the Bill"), is to address the deficiencies identified in the Mutual Evaluation Report relating to the customer due diligence measures contained in the FIC Act. The amendments to the FIC Act contained in the Bill do not substantially change the principles on which the customer due diligence provisions are based. The proposed amendments will result in a stronger AML/CFT/CPF regulatory framework. A detailed explanation of each proposed amendment to the FIC Act is contained in paragraph 3.3.

## 2.2 *Production of forensic evidence*

Further ways were identified to improve South Africa's legal and institutional framework, and to strengthen the implementation of measures to combat money laundering, terrorism financing and proliferation financing. These include a clear mandate for the Financial Intelligence Centre ("Centre") to produce forensic evidence on the results of the analysis it produces that could be used as expert testimony in cases where this may be relevant in court proceedings.

## 2.3 *Amendment of Schedule 2*

Schedule 2 contains the list of supervisory bodies that are responsible for ensuring compliance with the provisions of the FIC Act. The objective of the proposed amendments to Schedule 2 to the FIC Act is to ensure effective supervision of the estate agency and gambling sector. Schedule 2 is amended to entrust the supervision of compliance with the FIC Act in the estate agency and gambling sectors to the Centre. The proposed amendments entail the removal of the references to the regulators of the estate agency and gambling sectors as supervisory bodies from Schedule 2 to the FIC Act. These proposed amendments are necessary to complete the process that is already underway in Parliament to effect other amendments to Schedule 2 to the FIC Act.

## 2.4 *Centre's access to databases and registers held by an organ of state*

The Bill extends the powers of the Centre to request for information or for access to any database held by any organ of state as well as to have access to information contained in a register that is kept by an organ of state. This is necessary to ensure that the Centre has access to a sufficiently wide range of information that is held in the public sector to perform its functions effectively.

## 2.5 *Addressing specific recommendations in the Mutual Evaluation Report through amendments to the Nonprofit Organisations Act, 1997, the Trust Property Control Act, 1998, the Companies Act, 2008, and the Financial Sector Regulation Act, 2017*

2.5.1 The Bill also addresses several recommendations in the Mutual Evaluation Report that necessitate amendments to the Trust Property Control Act, 1988 (Act No. 57 of 1988) ("the TPCA"), the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997) ("the NPO Act"), the Companies Act, 2008 (Act No. 71 of 2008) ("the Companies Act"), and the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) ("the FSRA").

### 2.5.2 *Recommendation 25 and IO.5—Amend the TPCA to provide legal framework for beneficial ownership information in respect of trusts:*

- Require trustees to hold information on agents and service providers to trusts;
- Require all trustees to keep information which they obtain up to date and accurate;
- Provide for broader grounds for disqualification to be a trustee; and
- Provide for offences for trustees in respect of specified breaches of the TPCA.

2.5.3 *Recommendation 8 and IO.10—Amend the NPO Act in line with Recommendation 8 requirements:*

- Implement policy recommendations to improve the oversight of its broader Nonprofit Organisation (“NPO”) sector;
- Apply controls of the NPO Act to all NPOs, not just NPOs that register voluntarily; and
- Provide for offences and penalties in respect of specified contraventions of the NPO Act.

2.5.4 *Recommendation 24 and IO.5—Amend the Companies Act to provide for a legal framework for beneficial ownership information in respect of companies:*

- Provide for a requirement that companies must keep securities registers on shareholding up to date;
- Require that companies keep accurate and up-to-date information on their beneficial owners;
- Provide for a comprehensive mechanism through which the Companies and Intellectual Property Commission can keep accurate and updated beneficial ownership information; and
- Expand the grounds for disqualification to be a director of a company to include convictions for offences relating to money laundering, terrorist financing or proliferation financing activities.

2.6. *Recommendation 26 and IO.03—Amend the FSRA to provide an enabling framework for financial sector regulators to test the fitness and propriety of beneficial owners of financial institutions as part of market entry controls and on an ongoing basis*

- Provide a definition of “beneficial owner” in respect of financial institutions;
- Provide a legal mechanism through which financial sector regulators can test the honesty and integrity of beneficial owners of financial institutions and require them to provide relevant information regarding their beneficial ownership;
- Provide a legal mechanism through which financial sector regulators can require financial institutions to identify and verify their beneficial owners and require them to provide relevant information regarding their beneficial owners; and
- Enable financial sector regulators to take specified action against beneficial owners who contravene or are likely to contravene a financial sector law.

### 3. SUMMARY OF THE BILL

#### 3.1 *Amendments to the TPCA (clauses 1–8)*

These clauses implement the Mutual Evaluation Report recommendations for amendments to the TPCA, set out in paragraph 2.5.2 above. *Clause 1* inserts definitions of “accountable institution” and “beneficial owner” in section 1. *Clause 2* amends section 6 to specify matters disqualifying a person from acting or continuing to act as a trustee. *Clause 3* amends section 18 to clarify that a person who was appointed outside the Republic as trustee must be authorised by the Master to act as trustee. *Clause 4* amends section 10 to require a trustee to disclose their position as trustee to any accountable

institution with which the trustee engages in that capacity, and to make it known to the accountable institution that the relevant transaction or business relationship relates to trust property. *Clause 5* amends section 11(1) to require that a trustee record the prescribed details relating to accountable institutions which the trustee uses as agents to perform any of the trustee's functions relating to trust property and from which the trustee obtains any services in respect of their functions relating to trust property. *Clause 6* inserts a new section 11A that specifies information that must be kept by trustees in relation to the beneficial ownership of the trust, requires the Master to maintain a register containing information relating to the beneficial ownership of trusts, and provides for the access to the information regarding beneficial ownership. *Clause 7* amends section 19 to specify that a failure by a trustee to perform duties in terms of sections 10(2), 11(1)(e), and 11A(1) of the Act commits an offence. *Clause 8* amends section 20 to specify that a trustee may be removed by the Master if the trustee becomes disqualified to continue to act as a trustee.

### 3.2 *Amendments to the NPO Act (Clauses 9–17)*

These clauses implement the Mutual Evaluation Report recommendations for amendments to the NPO Act, set out in paragraph 2.5.3 above. *Clause 9* amends section 2 to update the objects of the Act to align with the other proposed amendments making the registration of specified nonprofit organisations mandatory, and requiring compliance with the Act (in particular, requirements relating to governance, transparency and accountability). *Clause 10* amends section 5 to insert a new subsection (2) to provide that in order to perform its functions, the Nonprofit Organisations Directorate (“Directorate”) may collaborate, co-operate, co-ordinate and enter into arrangements with other organs of state. *Clause 11* amends section 12, to make registration of specified nonprofit organisations mandatory, and to clarify that the director when considering an application for registration in terms of section 13, after having received amendments to the constitution in terms of section 19, or at any other time, may only require a nonprofit organisation to make an alteration to its constitution to ensure that the constitution addresses the matters referred to in subsection (2). *Clause 12* amends section 13, to specify that the director may only refuse to register a nonprofit organisation on the grounds that the applicant has not complied with the requirements for registration in section 12 or has not complied with a notice issued in terms of subsection (3), as referred to in subsection (6). It is further specified that a nonprofit organisation that has submitted an application for registration is deemed to be registered unless and until the director has given notice to the applicant in terms of subsection (3) and the process envisaged in subsections (4) to (6) has been completed. *Clause 13* amends section 18 to require registered nonprofit organisations to submit prescribed information about the office-bearers, the control structure, governance, management, administration and operations of nonprofit organisations to the director, and that the information that is provided must be kept up to date. *Clause 14* amends section 24 to include information about the office-bearers, control structure, governance, management, administration and operations of registered nonprofit organisations in the register that the director must keep, and provides for access to that information. *Clause 15* inserts a new Chapter 3 and section 25A to provide for grounds for disqualification to be appointed as an office-bearer of a registered nonprofit organisation, and to enable the director to remove an office-bearer of a nonprofit organisation when that person fails to comply with the requirements of the Act, or becomes a disqualified person. *Clause 16* amends section 21 to clarify that The director may only cancel the registration of a non-profit organisation as contemplated in section 20 and section 21. *Clause 17* amends section 29 to include contraventions relating to the failure to comply with section 12 and section 18(1)(bA) of the Act.

### 3.3 Amendments to the FIC Act (clauses 18–54)

#### 3.3.1 Definitions (Clause 18)

- 3.3.1.1 The definition of “organ of state” is amended to read “national department” to remove any ambiguity as to with whom the Centre may share information.
- 3.3.1.2 The definition of “Auditor-General” has been added to allow the Centre to share information with the office of the Auditor-General.
- 3.3.1.3 The definition of “beneficial owner” is amended to ensure that the definition encapsulates every natural person who is a beneficial owner of a client that is a legal person, partnership or trust.
- 3.3.1.4 The definitions of “domestic prominent influential person” and “foreign prominent public official” are amended to instead refer to “domestic politically exposed person” and “foreign politically exposed person”. A definition of “prominent influential person” is inserted as a distinct category of person from “politically exposed person”, to better align with the FATF terminology and relevant requirements. Associated amendments are made to sections 21F to 21H and Schedules 3A and 3B, and a new Schedule 3C is inserted that specifies categories of “prominent influential persons”.
- 3.3.1.6 The definitions section is further amended to add a definition of “proliferation financing” consistent with the term being introduced through the amendments contained in the Bill.

#### 3.3.2 Objectives (Clause 19)

- 3.3.2.1 Section 3 of the Act is amended in *clause 19* to expand the objectives of the Centre to include the identification of persons involved in money laundering activities, terrorist financing and related activities, as well as proliferation financing activities.
- 3.3.2.2 *Clause 19* also includes a technical amendment that will allow the Centre to not only share information that it collects, but also information that it produces.
- 3.3.2.3 *Clause 19* further amends section 3 to delete the phrase “organ of state” and replace the phrase with “national department”, and to add a reference to the Auditor-General, as explained in the amendments to the definitions section.
- 3.3.2.4 Section 3 is also amended to empower the Centre to administer measures requiring all persons, and not only accountable institutions as is currently provided, to freeze property and transactions pursuant to financial sanctions that may arise from resolutions adopted by the Security Council of the United Nations.
- 3.3.2.5 Section 3 is amended to provide for the Centre to produce forensic evidence relating to the flow of financial transactions and the links between persons and between persons and property, based on the flow of financial transactions.

3.3.3 *Functions (Clause 20)*

3.3.3.1 *Clause 20* amends section 4 to delete the phrase “organ of state” and replace the phrase with “national department”, and to add a reference to the Auditor-General under the functions of the Centre, as explained in the amendments to the definitions section.

3.3.3.2 *Clause 20* includes an amendment to provide that the Centre must annually provide a report to the Minister regarding the implementation of the Act, that includes information that is necessary to demonstrate the implementation of the Act.

3.3.3.3 *Clause 20* also amends section 4 to enable the provision of information and guidance to all persons, and not only to accountable institutions, that will assist them to meet requirements to freeze property and transactions pursuant to resolutions adopted by the Security Council of the United Nations contemplated in section 26A.

3.3.3.4 Further, *clause 20* amends section 4 by removing the reference to accountable institutions being regulated by any other law, consistent with the recent amendments to Schedule 2 to the Act that removed a number of supervisory bodies and for which the Centre is now responsible for supervising and enforcing compliance of the Act.

3.3.4 *General Powers (Clause 21)*

3.3.4.1 *Clause 21* empowers the Centre to enter into public private partnerships for the purposes of achieving the objectives of the Centre in section 3.

3.3.4.2 *Clause 21* also is amended to enable the Centre, for the purposes of this Act and to perform its functions effectively, to request for information or for access to any database held by any organ of state as well as to have access to information contained in a register that is kept by an organ of state.

3.3.5 *Additional due diligence measures relating to legal persons, trusts and partnerships (Clause 22)*

*Clause 22* amends section 21B to provide for instances where the partners in a partnership or, in the case of trusts, founders, trustees or beneficiaries, are legal persons.

3.3.6 *Ongoing due diligence (Clause 23)*

Section 21C is amended in *clause 23* to provide for instances where the accountable institution suspects that a transaction or activity is suspicious in terms of section 29 (STR) and the institution reasonably believes that performing the customer due diligence (CDD) measures in terms of section 21C will disclose to the client that an STR will be made to the Centre, it may discontinue the CDD process and consider filing an STR.

3.3.7 *Doubts about veracity of previously obtained information and when reporting suspicious and unusual transactions (Clause 24)*

Section 21D deals with the process to be followed by accountable institutions when there are doubts about previously obtained CDD information from a client. *Clause 24* extends this obligation to instances where an STR is made to the Centre.

- 3.3.8 *Alignment of provisions and Schedules to appropriately refer to domestic and foreign “politically exposed persons”, as distinct from “prominent influential persons” (Definitions, Clauses 25–27 inserting sections 21F to 21H, Clauses 47–49 providing for amending Schedules 3A and 3B and the new Schedule 3C)*

In order to appropriately align with FATF terminology and current requirements, it has been determined that it would be appropriate in the FIC Act to refer to distinguish between “politically exposed persons” and “prominent influential persons”. This is reflected through amendments to the definitions section noted above, sections 21F to 21H are amended to refer to a “foreign politically exposed person” and a “domestic politically exposed person”, rather than a “foreign prominent public official” or a “domestic prominent influential person”, as is currently the case. The sections are also amended to refer, where appropriate, to the category of a “prominent influential person”. Sections 79A and 79B and Schedules 3A and 3B are also amended accordingly to refer to “domestic politically exposed persons” and “foreign politically exposed persons”. A new section 79C and a new Schedule 3C are inserted to empower the Minister to designate categories of “prominent influential persons” and to amend the Schedule as appropriate.

- 3.3.9 *Provisions relating to resolutions of the Security Council of the United Nations (Clauses 28 to 30 and clauses 32 to 34)*

3.3.9.1 *Clause 28* amends section 26A to clarify that the resolutions of the United Nations Security Council become enforceable immediately on the adoption of a resolution. Consequential amendments to align with the amended section 26A are included in amendments to sections 26B and 26C in *clauses 29 and 30* and amendments to section 28A in *clause 32*, and sections 34 and 35 in *clauses 33 and 34*.

3.3.9.2 Section 26B prohibits, among others, any person from transacting with a person or entity identified in terms of a resolution of the United Nations Security Council. *Clause 29* extends this prohibition to also include persons who are acting on behalf of or at the direction of the designated person or entity.

- 3.3.10 *Powers of access by authorised representative to records of accountable institutions (Clause 31)*

*Clause 31* amends section 27A(3) to additionally include a reference to “proliferation financing activities”.

- 3.3.11 *Renewal of a direction not to proceed with transaction (Clause 33)*

*Clause 33* amends section 34 to insert a new subsection (1A), that provides that the Centre may renew the period of the direction to an accountable institution not to proceed with a transaction referred to in subsection (1) for a further period not longer than 10 days, if exceptional circumstances exist that warrant a renewal.

- 3.3.12 *Safeguarding information (Clause 35)*

*Clause 35* amends section 36(3) to also apply in relation to the furnishing of information that is requested by the Centre from another organ of state in terms of section 5(2).

3.3.13 *Disclosure of information by the South African Revenue Service (Clause 36)*

Section 36 requires the supervisory bodies and the South African Revenue Service to advise the Centre of certain unlawful activities it becomes aware of, including suspicious transactions in accordance with section 29. Section 37(1) provides that no duty of secrecy or confidentiality or any other restriction affects the compliance of the provisions of the FIC Act. In terms of section 37, these confidentiality rules apply to the South African Revenue Service. Section 70 of the Tax Administration Act, 2011 (Act No. 28 of 2011), provides for the manner in which the South African Revenue Service may disclose information to other entities, including the Centre. *Clause 36*, therefore, deletes the reference to the South African Revenue Service in respect of the application of the confidentiality rules set out in section 37, as section 70 of the Tax Administration Act provides the necessary safeguard in respect of the disclosure of information held by the South African Revenue Service.

3.3.14 *Access to information held by the Centre (Clause 37)*

The amendments in *clause 37* are connected to the amendments explained in clauses 17, 18 and 19 which are required to also be addressed in section 40 dealing with the agencies that the Centre must share information that it holds with.

3.3.15 *Protection of personal information (Clause 38)*

*Clause 38* amends section 41A to insert a new subsection (3) to empower the Minister to prescribe requirements for the protection of personal information to facilitate the sharing of information between accountable institutions when acting on behalf of the Centre, and when the sharing of information is necessary for the purposes of carrying out the provisions of section 29. The prescribed requirements must ensure that adequate safe-guards are in place as required by section 6(1)(c) of the Protection of Personal Information Act, 2013 (Act No. 4 of 2013).

3.3.16 *Risk Management and Compliance Programme (Clause 39)*

3.3.16.1 *Clause 39* amends section 42, which creates obligations for accountable institutions in relation to the Risk Management and Compliance Programme (RMCP). The amendments require accountable institutions to consider new as well as existing products or services that may involve or facilitate money laundering or terrorist financing activities.

3.3.16.2 The clause also extends the obligation to provide in the RMCP for the manner and process by which an accountable institution determines whether not only a prospective client is a foreign or a domestic politically exposed person or a prominent influential person, but to also include how it applies in respect of an existing client.

3.3.16.3 The clause also provides for the RMCP to include the process and manner when reporting suspicious and unusual transactions in accordance with section 21D.

3.3.16.4 In addition, *clause 39* extends the obligation to provide in the RMCP for the manner and processes by which an accountable institution conducts enhanced due diligence for higher-risk business relationships to also include single transactions.

3.3.16.5 *Clause 39* also provides for the additional obligation for accountable institutions to provide for the manner in which the institution will apply appropriate additional measures to manage the risks if the host country does not permit the implementation of measures required in terms of the Act.

3.3.16.6 Further, the clause makes provision for the manner and processes by which group-wide programmes of an accountable institution for all of its branches and majority owned subsidiaries are implemented, so as to enable the institution to comply with the requirements of the Act. This also extends to the exchange of information within its branches, subsidiaries or other operations relating to the analysis of suspicious or unusual transactions or activities. Accountable institutions are now also required to have adequate safeguards to protect the confidentiality of information exchanged in terms of the new requirements in this clause.

3.3.17 *Offences provisions (Clauses 40 to 45)*

*Clauses 40 to 45* amend the sections of the Act (sections 49A, 50, 52, 57, 59 and 64) that did not provide for an administrative sanction to be imposed for failing to comply with a particular section in the Act. The clauses now make provision for both an administrative sanction to be imposed for failing to comply as well as the existing offence for a contravention of a particular section in the Act.

3.3.18 *Amendment to the list of supervisory bodies (Clause 46)*

3.3.18.1 *Clause 46* amends section 75 to provide for the Minister to have the discretionary power, consistent in sections 73 and 76, to add to the list of supervisory bodies in Schedule 2 to the Act a supervisory body which will be responsible for supervising and enforcing compliance with the Act.

3.3.18.2 The clause also makes provision for the Minister to delete any supervisory body from Schedule 2 if the Minister reasonably believes that a supervisory body is not satisfactorily performing its supervisory or enforcement functions in terms of the Act.

3.3.19 *Amendment to Schedule 2: List of Supervisory Bodies (Clause 50)*

*Clause 50* deletes the Estate Agency Affairs Board and the provincial licensing authorities defined in section 1 of the National Gambling Act, 2004 (Provincial Gambling Boards). The Centre will be responsible for supervising and enforcing compliance of the Act for both estate agents as well as persons who carry on the business of making available a gambling activity in terms on section 3 of the National Gambling Act for which a license is required to be issued by a provincial licensing authority.

3.3.20 *Amendment to Schedule 3A: Domestic Politically Exposed Persons (Clause 51)*

3.3.20.1 Schedule 3A lists the individuals who going forward will be referred to as “domestically politically exposed persons” instead of “domestic prominent influential persons”. Such individuals are those that currently hold, including in an acting position for a period exceeding six months or has held the position at any time in the preceding 12 months. *Clause 48* amends the Schedule 3A to provide that those individuals listed under paragraph (a) will be considered a domestic

politically exposed person if that person currently holds or has held the position at any time.

3.3.20.2 In respect of individuals listed in paragraph (b), *clause 51* provides that an individual is considered to be a domestic politically exposed person if the person currently holds the position, including in an acting position for a period exceeding six months or has held the position at any time in the preceding 12 months.

3.3.20.3 *Clause 51*, in addition, amends Schedule 3A to remove the term “based in the Republic” so that the individual who holds the position of head, or other executive directly accountable to the head, of an international organisation with be considered a domestic politically exposed person, irrespective of whether the person is based in the country or not.

3.3.21 *Amendment to Schedule 3B: Foreign Politically Exposed Persons (Clause 52)*

Schedule 3B lists the individuals who are considered what will going forward be referred to as “foreign politically exposed persons” instead of the current term of “foreign prominent public officials”. The phrase “at any time in the preceding 12 months” is deleted in *clause 52*, to provide that such an individual is considered a foreign politically exposed person if the person currently holds or has held the position listed in Schedule 3B.

3.3.22 *Insertion of Schedule 3C: Prominent Influential Persons (Clause 53)*

*Clause 53* inserts a new Schedule 3C that specifies categories of “prominent influential persons”.

3.3.23 *Substitution of Index (Clause 54)*

*Clause 54* substitutes the existing Index to the Act with an Arrangement of Sections.

3.4 *Amendment of Companies Act (Clauses 55–61)*

*Clause 55* inserts a definitions of “affected company” and “beneficial owner” in section 1. *Clause 56* amends section 33 to provide for a comprehensive mechanism through which the Commission can keep accurate and updated beneficial ownership information. *Clause 57* inserts a new subsection (3A) in section 50, to provide for a requirement for a company that does not fall within the meaning of an “affected company” to keep a record of the natural person(s) who owns or controls the company as per the definition of “beneficial owner”, and to provide for specified timelines within which the company must record any changes in this information. *Clause 58* amends section 56 to amend subsection (7) to require an affected company to establish and maintain a register of disclosures in terms of the section, and to establish and maintain a register of the persons who hold beneficial interests equal to or in excess of 5% of the total number of securities of that class issued by the company, together with the extent of those beneficial interests, and ensure that this register is updated within the prescribed period after having received a notice contemplated in section 122(1). Section 56 is also amended to insert a new subsection (12) that provides a requirement for a company that does not fall within the meaning of an “affected company” to file a record of the individuals who own or control the company as per the definition of “beneficial owner”, with the Commission. A new subsection (14) provides that the Commission must maintain a register of the information contained in the records contemplated in subsections (7)(c) and (12). *Clause 59* amends

section 69 to insert references in subsection (8)(b)(iv) to include references to offences relating to money laundering, terrorist financing or proliferation financing activities as defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004), or the Tax Administration Act, 2011 (Act No. 28 of 2011), and to include a new subparagraph (v) that refers to when a person is subject to a resolution adopted by the Security Council of the United Nations when acting under Chapter VII of the Charter of the United Nations. *Clause 60* amends section 122 to refer to an affected company, and inserts a new subsection (3A) that requires an affected company that has received a notice in terms of this section must file a record of that notice with the Commission, in the prescribed form and containing the prescribed information and within the prescribed period after having received that notice. A new subsection (5) provides that the prescribed requirements referred to in subsection (3A) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001). A new subsection (6) specifies that the Commission must maintain a register of the information contained in the notices contemplated in subsection (3A).

### 3.5 *Amendment of FSRA (Clauses 62–65)*

3.5.1 *Clause 62* amends section 159 of the FSRA, to provide that a financial institution, key person, representative or contractor to which a regulator's directive in terms of Part 2 of Chapter 10 has been issued must comply with the directive.

3.5.2 *Clause 63* inserts a new Chapter 11A and sections 159A to 159C into the FSRA dealing with beneficial owners. Section 159A provides a definition of "beneficial owner" for the purposes of the Chapter. Section 159B addresses standards in relation to beneficial owners. Section 159C empowers regulator's directives to be made in relation to beneficial owners.

3.5.3 *Clause 64* amends the long title of the FSRA.

3.5.4 *Clause 65* amends the Arrangement of Sections of the FSRA.

### 3.6 *Short title and commencement (Clause 66)*

Clause 66 provides for the short title and commencement.

## 4. ORGANISATIONS AND INSTITUTIONS CONSULTED

The National Treasury developed the Bill in conjunction with the Financial Intelligence Centre. A Working Group was convened by the National Treasury to engage on the content of the Bill with officials of the Financial Intelligence Centre, the Department of Justice and Constitutional Development, the Department of Trade, Industry and Competition, the Companies and Intellectual Property Commission, the Department of Social Development, the Civilian Secretariat for Police, the South African Police Service, the National Prosecuting Authority, the South African Reserve Bank, the Prudential Authority, the Financial Sector Conduct Authority and the South African Revenue Service.

## 5. FINANCIAL IMPLICATIONS FOR THE STATE

- Additional resources to carry out added responsibilities related to producing forensic evidence;
- Additional resources to carry out inspections for estate agencies and gambling sector.

**6. CONSTITUTIONAL IMPLICATIONS**

None

**7. PARLIAMENTARY PROCEDURE**

- 7.1 The State Law Advisers and the National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 7.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Khoi-San Leaders in terms of section 39(1)(a)(i) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not contain provisions pertaining to customary law or customs of traditional communities.

