

REPUBLIC OF SOUTH AFRICA

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

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill and prior notice of its introduction published in Government Gazette No. 46744 of
18 August 2022)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 18—2022]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend—

- the Trust Property Control Act, 1988, by inserting definitions of “accountable institution” and “beneficial owner”; by imposing certain requirements on trustees; by specifying matters that would disqualify a person from being appointed or continuing to act as a trustee; by providing for the removal of a trustee who becomes disqualified to continue to act as a trustee; by specifying information that must be kept by trustees in relation to beneficial owners in relation to trusts; by requiring the Master to maintain a register containing information relating to beneficial ownership of trusts, and providing for access to information regarding beneficial ownership; and by specifying certain offences;
- the Nonprofit Organisations Act, 1997, by requiring registration in terms of the Act; by enabling the Nonprofit Organisations Directorate, in order to perform its functions, to collaborate, co-operate, co-ordinate and enter into arrangements with other organs of state; by requiring nonprofit organisations to submit prescribed information about the office-bearers, control structure, governance, management, administration and operations of nonprofit organisations to the director; to require prescribed information relating to the office-bearers, control structure, governance, management, administration and operations of nonprofit organisations to be included in the register that the director must keep, and by providing for access to that information; by providing for grounds for disqualification for a person to be appointed or continuing to act as an office-bearer of a nonprofit organisation; by providing for the removal of an office-bearer; and by providing for certain offences;
- the Financial Intelligence Centre Act, 2001, by amending the definitions of “beneficial owner”, “domestic prominent influential person” and “foreign prominent public official”, and inserting a definition of “prominent influential person”; by amending the objectives of the Financial Intelligence Centre (“Centre”); by amending the functions of the Centre to include the provision of forensic information; by empowering the Centre to request information held by other organs of state; by providing for additional and ongoing due diligence measures, and by amending the process followed when there are doubts about the veracity of information; by aligning certain provisions and Schedules 3A and 3B to appropriately refer to domestic and foreign “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 a definition of “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 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.

BE 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 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**’—

(a) has the meaning defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); and

(b) for the purposes of this Act, in respect of a trust, includes, but is not limited to, a natural person who directly or indirectly ultimately owns the relevant trust property or exercises effective control of the administration of the trust, including— 15

(i) each founder of the trust;

(ii) if a founder 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; 20

(iii) each trustee of the trust;

(iv) 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; 25

- (v) each beneficiary referred to by name in the trust deed or other founding instrument in terms of which the trust is created;
- (vi) if a beneficiary referred to by name in the trust deed is a legal person or a person acting on behalf of a partnership or in pursuance of the provisions of a trust agreement, the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person, partnership or trust; and
- (vii) a person who, through the ability to control the votes of the trustees or to appoint the trustees, or to appoint or change the beneficiaries of the trust, exercises effective control of the trust.”.

Amendment of section 6 of Act 57 of 1988

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);
 - (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 prescribed amount, for theft, fraud, forgery, perjury or an offence—
 - (i) involving fraud, misrepresentation or dishonesty, 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);
 - (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
 - (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); or
 - (f) 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
 - (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) 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.
- (1D) A court may exempt a person from the application of any provision of subsection (1A) (a), (c), (d) or (e).
- (1E) 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), send a copy of the relevant order or particulars of the conviction, as the case may be, to the Master.

(1F) The Master must notify each trust which has as a trustee to whom the order or conviction relates, of the order or conviction.

(1G) (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.

(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 10 of Act 57 of 1988

3. 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):

“(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

4. Section 11 of the Trust Property Control Act, 1988, is hereby amended in 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 paragraphs:

“(dA) 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 the trustee’s functions relating to trust property;

(dB) the prescribed requirements referred to in paragraph (dA) 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

5. 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

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6. 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)(dA) 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

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7. 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 25
- (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 30
- (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 35
- (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.” 40

Amendment of section 2 of Act 71 of 1997

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

- “(b) establishing an administrative and regulatory framework within which nonprofit organisations **[can]** must conduct their affairs; 45
- (c) **[encouraging]** requiring nonprofit organisations to maintain adequate standards of governance, transparency and accountability and to improve those standards.”

Amendment of section 5 of Act 71 of 1997

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9. 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—
- (a) measures to co-ordinate their approach to performing their functions in terms of legislation; 5
 - (b) entering into a memorandum of understanding, which, among other matters, may provide for—
 - (i) the sharing of information between the parties, including—
 - (aa) the types of information to be furnished by each party; or 10
 - (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;
 - (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.” 15

Amendment of section 12 of Act 71 of 1997

10. Section 12 of the Nonprofit Organisations Act, 1997, is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection: 20

“(1) (a) [**Any**] A nonprofit organisation that is not an organ of state [**may apply to the director for registration**], including a foreign nonprofit organisation, that intends to operate within the Republic must be registered in terms of this Act before it commences operations, subject to paragraph (b), and in accordance with prescribed registration requirements. 25

(b) A nonprofit organisation that is operating but is not registered in terms of this Act on the date of commencement of this provision, must register within the period determined by the Minister by notice in the *Gazette*, in accordance with prescribed transitional arrangements and registration requirements. 30

(c) A nonprofit organisation, whether 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: 35

“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 intends to register**] must—”; and
 - (c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 40

“The constitution of a nonprofit organisation [**that intends to register,**] may make provision for matters relevant to conducting its affairs, including matters that—”.

Amendment of section 18 of Act 71 of 1997 45

11. 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: 50

“(bA) prescribed information about the office-bearers, control structure, governance, management, administration and operations of nonprofit organisations;”; and
 - (b) by the insertion after subsection (1) of the following subsection: 55

“(1A) The prescribed requirements referred to in paragraph (bA) of subsection (1) must be prescribed after having consulted 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 24 of Act 71 of 1997, as amended by section 3 of Act 17 of 2000

- 12.** 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 nonprofit organisations;”; and
 - (d) by the addition of the following subsections:

“(4) A 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

- 13.** 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 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. 72 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, 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);
 - (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); or
 - (f) 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 nonprofit organisation, or consent to being appointed or elected as an office-bearer; or
 - (b) act as an office-bearer of a 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
 - (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) 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
 - (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.
- (5) A court may exempt a person from the application of any provision of subsection (1)(a), (c) or (e).
- (6) 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 (1)(e),
- send a copy of the relevant order or particulars of the conviction, as the case may be, to the Directorate.
- (7) The Directorate must notify each nonprofit organisation which has an office-bearer to whom the order or conviction relates, of the order or conviction.
- (8) (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.
- (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).
- (9) A nonprofit organisation may not knowingly permit a disqualified person to serve or act as an office-bearer.
- (10) A person who becomes ineligible or disqualified while serving as an office-bearer of a nonprofit organisation ceases to be entitled to continue to act as an office-bearer immediately.
- (11) An office-bearer of a nonprofit organisation may at any time be removed from office by the director if—
- (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
 - (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 29 of Act 71 of 1997

14. Section 29 of the Nonprofit Organisations Act, 1997, is hereby amended in subsection (2)—

- (a) by the deletion in paragraph (b) of “or”;
- (b) by the substitution in paragraph (c) for the full stop of “; or”; and
- (c) by the insertion of the following paragraph after paragraph (c):

“(d) to fail to perform any duty imposed or requirement in terms of section 12 or 18(1)(bA);”.

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

15. 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”; 5
- (b) by substitution in the definition of “authorised officer” for paragraph (i) of the following paragraph:
 “(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”; 10
- (c) by the addition in the definition of “authorised officer” after paragraph (i) of the following paragraph:
 “(j) an investigative division of the Auditor-General authorised by the Auditor-General to act under this Act;”; 15
- (d) by the substitution for the definition of “beneficial owner” of the following definition:
 “‘beneficial owner’—
 (a) means a natural person who directly or indirectly— 20
 (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
 (ii) exercises control of a client of an accountable institution on whose behalf a transaction is being conducted; and 25
 (b) includes—
 (i) in respect of legal persons, each natural person contemplated in section 21B(2)(a);
 (ii) in respect of a partnership, each natural person contemplated in section 21B(3)(b); and 30
 (iii) in respect of a trust, each natural person contemplated in section 21B(4)(c), (d) and (e);”;
- (e) by the substitution for the definition of “domestic prominent influential person” of the following definition: 35
 “‘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:
 “‘foreign [prominent public official] politically exposed person’ 40
 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’ 45
 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: 50
 “‘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 55
- (i) by the insertion after the definition of “proceeds of unlawful activities” of the following definitions:
 “‘proliferation financing’ or ‘proliferation financing activity’ means 60
 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

16. Section 3 of the Financial Intelligence Centre Act, 2001, is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 10

“(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; 15

(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.”; 20

(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—”; 25

(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 30

(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 35

(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;”. 40

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 45

17. 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] 50

(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;” 55

- (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;”; and
- (d) by the substitution for paragraph (g) of the following paragraph: 5
 “(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).” 10 15

Amendment of section 5 of Act 38 of 2001

18. 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;”; and 20
- (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.” 25

Amendment of section 21B of Act 38 of 2001, as inserted by section 10 of Act 1 of 2017 30

19. 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 35
 (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; 40
 or”; and
- (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—
 (a) establish the identifying name of the partnership, if applicable;
 (b) establish the identity of— 50
 (i) every partner, including every member of a partnership en commandite, an anonymous partnership or any similar partnership;
 (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; 55
 [(c)] (iii) **[establish the identity of]** the natural person who exercises executive control over the partnership; and 60

- [(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 5
- [(e)] (c) take reasonable steps to verify—
- (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. 10
- (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— 15
- (a) establish the identifying name and number of the trust, if applicable;
- (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— 20
- (i) **[the] each** founder; and 25
- (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 or partnership;
- (d) in respect of the trustees of the trust, establish the identity of— 30
- (i) each trustee;
- (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; 35
- (e) in respect of the beneficiaries of the trust, establish— 40
- (i) the identity of each beneficiary referred to by name in the trust deed or other founding instrument in terms of which the trust is created;
- (iA) if a beneficiary referred to by name in the trust deed 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; 45
- [or] and**
- (ii) if beneficiaries are not referred to by name in the trust deed or other founding instrument in terms of which the trust is created, the particulars of how the beneficiaries of the trust are determined; 50
- (f) take reasonable steps to verify the particulars obtained in paragraphs (a), (b) and (e)(ii); and
- (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.”. 55

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

20. 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): 60

“(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.”.

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

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21. 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

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

(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.”.

20

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

22. Section 21F of 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:

“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—”.

30

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

35

23. 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

(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—”.

45

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

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24. Section 21H of the Financial Intelligence Centre Act, 2001, is hereby amended by the substitution for subsection (1) of the following subsection:

“(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

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25. 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.

(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.

(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).

(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);

(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

(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).]”.

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

26. Section 26B of the Financial Intelligence Centre Act, 2001, is hereby amended— 45

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

“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).”;

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- (b) by the substitution for subsection (2) of the following subsection:
- “(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—
- (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
- (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:
- “(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

27. 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).”.

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

28. Section 27A of the Financial Intelligence Centre Act, 2001, is hereby amended—
- (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:
- “(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

29. 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).”.

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

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

- “(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”; and
- (b) by the insertion after subsection (1) of the following subsection: 5
“(1A) 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.”.

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 10

- 31.** 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: 15
 “(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: 20
 “(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);”.

Amendment of section 36 of Act 38 of 2001, as amended by section 10 of Act 11 of 2008 25

- 32.** Section 36 of the Financial Intelligence Centre Act, 2001, is hereby amended by the substitution for subsection (3) of the following subsection: 30
 “(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.”.

Amendment of section 37 of Act 38 of 2001, as amended by section 11 of Act 11 of 2008 35

- 33.** Section 37 of the Financial Intelligence Centre Act, 2001, is hereby amended by the substitution for subsection (1) of the following subsection: 40
 “(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 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 45

- 34.** Section 40 of the Financial Intelligence Centre Act, 2001, is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (aF) of the following paragraph: 50
 “(aF) an investigative division in **[an organ of state]** a national department;”; and
- (b) by the substitution in subsection (1) for paragraph (aG) of the following paragraph: 50
 “(aG) the Public Protector; **[or]**”; and
- (c) by the substitution in subsection (1) for paragraph (aH) of the following paragraph: 55

- “(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:
- “(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)₂ [or] (aH) or (aI)—”.

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

35. 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 acting on behalf of the Centre, and when the sharing is necessary to achieve the purposes of this Act, 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

36. Section 42 of the Financial Intelligence Centre Act, 2001, is hereby amended—
- (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:
- “(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:
- “(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:
- “(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;
- (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]**
 - (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):
- “(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—
- (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
 - (iv) have adequate safeguards to protect the confidentiality of information exchanged in accordance with this paragraph and this Act.”.

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

37. 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.”.

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

38. 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.”.

Amendment of section 52 of Act 38 of 2001

39. 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

40. The following section is hereby substituted for section 57 of the Financial Intelligence Centre Act, 2001: 5

“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 10

(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— 15

(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

41. 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): 20

“(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 25

42. 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.”.

 30

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

43. 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: 35

“(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”.

 40

Amendment of section 79A of Act 38 of 2001, as amended by section 58 of Act 1 of 2017 45

44. 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

(b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 50

“The Minister may, by notice in the *Gazette*, amend the list of domestic **[prominent influential]** politically exposed persons in Schedule 3A to—”.

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

45. Section 79B 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 foreign [prominent public officials] 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 foreign **[prominent public officials]** politically exposed persons in Schedule 3B to—”. 15

Insertion of section 79C in Act 38 of 2001

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

“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— 20

(a) add to the list any person or category of persons;

(b) delete any person or category of persons from the list; or

(c) make technical changes to the list. 25

(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

(b) consider submissions received. 30

(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

47. Schedule 2 to the Financial Intelligence Centre Act, 2001, is hereby amended by the deletion of items 4 and 9. 35

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

48. Schedule 3A to the Financial Intelligence Centre Act, 2001, is hereby amended—
- (a) by the substitution for the heading of the following heading: 40
“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]**—”; 45
- (c) by the substitution in paragraph (a) for the words preceding subparagraph (i) of the following words: 50
“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 5
- (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**].” 10

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

49. 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 15
- (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—”. 20

Insertion of Schedule 3C in Act 38 of 2001

50. The following schedule is hereby inserted after Schedule 3B to the Financial Intelligence Centre Act, 2001: 25

“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; 30

(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*.”. 35

Substitution of Index of Act 38 of 2001

51. The Index of the Financial Intelligence Centre Act, 2001, is hereby substituted by the following: 40

“ARRANGEMENT OF SECTIONS

1. Definitions
- 1A. Application of Act when in conflict with other laws

CHAPTER 1

FINANCIAL INTELLIGENCE CENTRE 45

2. Establishment
3. Objectives
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8.	Acting Director	
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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

52. Section 1 of the Companies Act, 2008, is hereby amended by the insertion after the definition of “beneficial interest” of the following definition: 50

“**beneficial owner**”—

- | | | |
|-----|---|----|
| (a) | has the meaning defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); and | |
| (b) | for the purposes of this Act, in respect of a company, includes, but is not limited to, a natural person who, directly or indirectly, ultimately owns or exercises control of a company, including through— | 55 |
| | (i) ownership of the securities of the company; | |
| | (ii) the exercise or control of the exercise of the voting rights associated with securities of that company; | 60 |

- (iii) the exercise or control of the exercise of the right to appoint or remove members of the board of directors;
- (iv) ownership, or the exercise of control of—
 - (aa) a holding company of that company;
 - (bb) a juristic person other than a holding company of that company;
 - (cc) a body of persons corporate or unincorporate;
 - (dd) a partnership; or
 - (ee) any other category or type of entity that may be specified in regulations for this purpose,
 that owns or is able to exercise control of, as the case may be, that company, including through a chain or network of ownership; or
- (v) the ability to otherwise materially influence the decision-making or policy of the company;”.

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

53. 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:
 - “(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; and”;
 - (c) by the insertion after subsection (1) of the following subsection:
 - “(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

54. Section 50 of the Companies Act, 2008, is hereby amended by the insertion after subsection (3) of the following subsection:
 - “(3A) (a) A 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.
 - (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 56 of Act 71 of 2008, as amended by section 36 of Act 3 of 2011

55. 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**”; and
 - (b) by the addition of the following subsections:
 - “(12) A company must file a record with the Commission, in the prescribed form and containing the prescribed information, regarding the natural persons 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.

(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).”.

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 5

56. Section 69 of the Companies Act, 2008, is hereby amended 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—
 (aa) involving fraud, misrepresentation or dishonesty, 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); or 15
 (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
 (cc) under this Act, the Insolvency Act, 1936[,] (Act No. 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 No. 12 of 2004), the Protection of Constitutional Democracy Against Terrorism and Related Activities Act, 2004 (Act No. 33 of 2004), or the Tax Administration Act, 2011 (Act No. 28 of 2011);” 25

Amendment of Arrangement of Sections

57. The Arrangement of Sections of the Companies Act, 2008, is hereby amended by the substitution for item 56 of the following item:
 “**56.** Beneficial interest in securities and beneficial ownership of company” 30

Amendment of section 159 of Act 9 of 2017

58. Section 159 of the Financial Sector Regulation Act, 2017, is hereby amended by 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).” 35

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

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

“CHAPTER 11A

BENEFICIAL OWNERS 40

Beneficial owners

159A. (1) For the purposes of this Chapter, ‘**beneficial owner**’—
 (a) has the meaning defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); and
 (b) for the purposes of this Act, includes, but is not limited to, a natural person who directly or indirectly ultimately owns or is able to exercise control of a—
 (i) financial institution; or
 (ii) natural person, legal person, partnership or trust that owns or is able to exercise control of, as the case may be, a financial institution. 50

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

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—
- (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
 - (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.
- (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;
 - (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.

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.
- (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).”

Amendment of long title of Act 9 of 2017

60. 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

61. 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

159A. Beneficial owners

159B. Standards in relation to beneficial owners

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

Short title and commencement

62. (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*.

(2) Different dates may be determined by the President in respect of the taking effect of different provisions of this Act. 5

**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 1–7)*

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 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 4* 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 5* 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 6* amends section 19 to specify that a failure by a trustee to perform duties in terms of sections 10(2), 11(1)(dA), and 11A(1) of the Act commits an offence. *Clause 7* 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 8–14)

These clauses implement the Mutual Evaluation Report recommendations for amendments to the NPO Act, set out in paragraph 2.5.3 above. *Clause 8* amends section 2 to update the objects of the Act to align with the other proposed amendments making the registration of nonprofit organisations mandatory, and requiring compliance with the Act (in particular, requirements relating to governance, transparency and accountability). *Clause 9* 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 10* amends section 12, to make registration of nonprofit organisations mandatory, so that the “Directorate’s” oversight will apply to all nonprofit organisations. *Clause 11* amends section 18 to require nonprofit organisations to submit prescribed information about the office-bearers, the control structure, governance, management, administration and operations of nonprofit organisations to the director. *Clause 12* amends section 24 to include information about the office-bearers, control structure, governance, management, administration and operations of nonprofit organisations in the register that the director must keep, and provides for access to that information. *Clause 13* inserts a new Chapter 3 and section 25A to provide for grounds for disqualification to be appointed as an office-bearer of a 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 14* amends section 29 to include offences 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 15–51)

3.3.1 Definitions (Clause 15)

- 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 16)*

- 3.3.2.1 Section 3 of the Act is amended in *clause 16* 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 16* 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 16* 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 17)*

- 3.3.3.1 *Clause 17* 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 17* 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 17* 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 17* 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 18)*

3.3.4.1 *Clause 18* 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 18* 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 19)*

Clause 19 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 20)*

Section 21C is amended in *clause 20* 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 21)*

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 21* 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 22–24 inserting sections 21F to 21H, Clauses 44–46 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 25 to 27 and clauses 29 to 31)*

3.3.9.1 *Clause 25* 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 28 and 29* and amendments to section 28A in *clause 29*, and sections 34 and 35 in *clauses 30 and 31*.

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 26* 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 28)*

Clause 28 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 30)*

Clause 30 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 32)*

Clause 32 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 33)*

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 33*, 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 34)*

The amendments in *clause 34* 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 35)*

Clause 35 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 which is necessary to achieve the purposes of the Act. The prescribed requirements must ensure that adequate safeguards 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 36)*

3.3.16.1 *Clause 36* 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 36* 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 36* 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 37 to 42)*

Clauses 37 to 42 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 43)*

3.3.18.1 *Clause 43* 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 47)*

Clause 47 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 48)*

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 48* 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 48*, 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 will 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 49)*

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 49*, 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 50)*

Clause 50 inserts a new Schedule 3C that specifies categories of “prominent influential persons”.

3.3.23 *Substitution of Index (Clause 51)*

Clause 51 substitutes the existing Index to the Act with an Arrangement of Sections.

3.4 *Amendment of Companies Act (Clauses 52–57)*

Clause 52 inserts a definition of “beneficial owner” in section 1. *Clause 53* amends section 33 to provide for a comprehensive mechanism through which the Commission can keep accurate and updated beneficial ownership information. *Clause 54* inserts a new subsection (3A) in section 50, to provide for a requirement for a 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 55* amends section 56 to insert a new subsection (12) that provides a requirement for a company to file a record of the natural person(s) who owns or controls the company as per the definition of “beneficial owner”, with the Commission. *Clause 56* amends section 69 to insert references in subsection (8)(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).

3.5 *Amendment of FSRA (Clauses 58–61)*

3.5.1 *Clause 58* 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 59* 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 60* amends the long title of the FSRA.

3.5.4 *Clause 61* amends the Arrangement of Sections of the FSRA.

3.6 *Short title and commencement (Clause 62)*

Clause 62 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.