

LAW SOCIETY OF SOUTH AFRICA'S SUBMISSIONS ON THE DRAFT GENERAL LAWS (ANTI-MONEY LAUNDERING AND COMBATING TERRORISM FINANCING) AMENDMENT BILL, 2025

1. Introduction

The Bill does not expressly mention legal practitioners or amend Schedule 1 of FICA. However, because attorneys are already accountable institutions, the expanded powers given to the FIC apply to them by default. Practically, the Bill broadens how information collected under FICA may be used, shared, and accessed, including introducing lifestyle audits and extended record-keeping. These changes do not create new core obligations but increase downstream regulatory use of information collected from clients.

The LSSA notes that lifestyle audits, while not targeting legal practitioners directly, pose risks as attorneys' records may become entry points for scrutiny of clients or related persons. From a FATF standpoint, differentiation between high-risk and low-risk legal services is critical. The Bill's uniform expansion of AML/CFT powers does not reflect this distinction. Additionally, the Bill does not reference FATF or South Africa's greylisting/delisting context, raising questions about proportionality.

The LSSA welcomes the opportunity to comment on the Bill as part of efforts to strengthen South Africa's AML/CFT framework ahead of the forthcoming FATF Mutual Evaluation cycle.

2. General Observations

The LSSA acknowledges that the alignment across the Nonprofit Organisations Act, the Financial Intelligence Centre Act, the Companies Act, and the Financial Sector Regulation Act is long overdue. However, several provisions raise constitutional, practical, and administrative-law concerns requiring refinement to ensure proportionality, clarity, and fairness.

3. Expansion of the FIC's Information-Sharing and Lifestyle Audit Powers

The Bill significantly expands the information-sharing powers of the FIC and authorises the use of lifestyle audits. While potentially effective against corruption, these powers require additional safeguards.

- The Bill should clarify procedural safeguards, thresholds, and oversight mechanisms for lifestyle audits, particularly those conducted without judicial authorisation.
- Lifestyle audits should be expressly aligned with sections 14 (privacy) and 33 (just administrative action) of the Constitution.
- Clear guidance on data retention, secondary use, and onward sharing is needed to ensure POPIA compliance and reduce litigation risk.

4. Enhanced Monitoring and Enforcement of Non-Profit Organisations

The proposed amendments to the NPO Act introduce enforcement powers, administrative sanctions, and higher penalties. While acknowledging FATF's focus on the NPO sector, the LSSA recommends:

- Recognising the diversity of NPOs, including small, volunteer-based organisations with limited capacity.
- Implementing a risk-based, graduated enforcement model supported by guidance notes and transitional measures.
- Providing clarity on the structure, independence, and procedures of the Arbitration Tribunal to ensure confidence in the appeals process.

5. Beneficial Ownership and Administrative Sanctions under the Companies Act

The strengthened beneficial ownership rules and sanctions for persistent non-compliance is acknowledged. However, improvement is needed in ensuring that CIPC's enforcement mechanisms align with administrative justice.

- Clear alignment with notice requirements, opportunities to remedy, and proportional sanctions are recommended.
- Guidance on calculating turnover-based fines is essential, particularly for SMEs, to ensure fairness and predictability.

6. Amendments to the Companies Act

6.1 Proposed amendments to section 82: no comment

6.2 Proposed amendments to section 171:

6.2.1 It is unclear whether, where a compliance notice has been issued for failure to submit the securities register or the register of beneficial interest, which is what the new section 171(8) deals with:

6.2.1.1 the new section 171(8) can be used as an alternative to section 171(7);

6.2.1.2 the new section 171(8) can be used as an alternative to section 171(7)(a) (so that in these circumstances either section 171(7)(a) or section 171(8) can be utilized, or section 171(7)(b));

6.2.1.3 replace section 171(7)(a) entirely (so that in these circumstances either section 171(7)(b) or section 171(8) can be utilized);

6.2.1.4 section 171(7) is not available to be used (so that in these circumstances only (8) can be utilized);

Wording needs to be added to clarify the above.

6.2.2. The words 'but may not do both in respect of any particular compliance notice' at the end of section 171(7) may also require amendment, to refer to section 171(8);

6.2.3 If any parts of section 171(7) can also be utilised as alternatives to section 171(8), then similar words to those at the end of section 171(7) should be written in to section 171(8), to ensure only one remedy is pursued for any particular compliance notice.

- 6.3 Proposed amendments to section 175: no comment
- 6.4 Proposed insertion of section 175A: no comment

7. Amendments to the Financial Sector Regulation Act

The LSSA welcomes Bill's forward-looking approach to new financial products and technologies. To support effective implementation:

- Stakeholder consultation must occur early when expanding licensing or supervisory categories.
- Coordination mechanisms between regulators should be strengthened to prevent duplication and inconsistent supervision.

7. Concluding Remarks

The LSSA noted the objectives and commends National Treasury for its proactive approach to strengthening South Africa's AML/CFT framework. With targeted refinements; especially regarding safeguards, proportionality, and implementation guidance. The Bill can enhance effectiveness while remaining constitutionally sound and administratively practical.

The LSSA acknowledges the comments and contributions made by Mr Martus de Wet, Ms Abigail Reynolds and Mr Micheal Shackleton, members of the legal profession.