



Inyathelo, 2nd Floor, The Armoury, Buchanan Square
160 Sir Lowry Road, Woodstock, Cape Town

Reference: General Laws: (Anti-Money Laundering & Terrorism Financing) Amendment Bill
Date: 21 October 2022

**Standing Committee of Finance
National Assembly
Parliament of the Republic of South Africa
CAPE TOWN**

For attention: Hon Mr MJ Maswanganyi, MP

By email: awicomb@parliament.gov.za
tsepanya@parliament.gov.za

Cc:

Mr Lindiwe Ntsabo (Portfolio Committee on Social Development) email:
Intsabo@parliament.gov.za

Ms Mpho Mngxitama (Chief Director: NPO Registration, Support and Compliance Monitoring
National Department of Social Development) email: mphomn@dsd.gov.za

Honourable Minister Chairperson

RE: INTENTION TO MAKE SUBMISSIONS ON THE GENERAL LAWS (ANTI-MONEY LAUNDERING AND COMBATING TERRORISM FINANCING) AMENDMENT BILL [B18-2022]

1. We refer to the above-mentioned matter and specifically to the notice issued by the Honourable Mr MJ Maswanganyi, MP on behalf of the standing committee on Finance (“the Committee”) on Tuesday 11 October, extending the invite for public comments on the General laws (anti-Money Laundering and Combating Terrorism Financing) Amendment Bill (“the Bill”).
2. The National NPO Working Group, hereby expresses its intention to continue engaging in the law-making process by way of written and oral submissions to the Committee in respect of the Bill.

BACKGROUND TO THE NPO WORKING GROUP AND INTEREST IN THIS MATTER

3. The NPO Working Group is mandated by 170 NPOs, representing a further estimate of more than 10 000 NPOs across the Republic of South Africa, from large national NPOs to smaller Community Based NPOs spanning the full spectrum of registrations (Voluntary associations, Nonprofit Companies and Trusts) with the primary objective

to give them voice on legislation that implicates them, in this case, all of the Acts affected by the Bill.

4. The NPO Working group has submitted its recommendations to the Committee both written and orally participating in hearings on Tuesday 11 October and Tuesday 18 October 2022.
5. Our updated detailed submissions to the Bill are hereto attached.
6. The matters raised in the Bill are fundamental ones, going to the structures and authorities currently in place. Consequently, in addition to the detailed comment provided, we wish to highlight and address the following larger matters:
 - A. Inappropriateness for the Department of Social Development (“the DSD”) to accommodate the Non-Profit Directorate which has been brought into sharp focus by the submissions and discussions of this Bill;**
 - B. Our motivation and recommendation for an alternate and independent Non-Profit Directorate.**

A. INAPPROPRIATENESS FOR THE DSD TO ACCOMMODATE THE NON-PROFIT DIRECTORATE

We want to take the opportunity to say that this process has outlined very clearly that the DSD is not the appropriate place for the Non-Profit Directorate to sit for the following reasons:

- A.1 Gearing the DSD up to accommodate what this Bill requires would come at great expense to Treasury to first address the current inadequate capacity and appropriate data systems before layering the finance monitoring function which also require forensic auditors and lawyers.
- A.2 It appears that the DSD does not request nor allocate a sufficient budget to manage the NPO Directorate component of staff and information systems that will collect, process and store data to support profiles/subscribers of over 270 000 NPOs. The system was designed more than 15 years ago and to our knowledge hasn't been upgraded.
- A.3 The current system only keeps record of registrations and does not have the capacity to even monitor compliance and legitimacy of these registrations. To this point, a facility is available to upload documents and submit annual narrative reports and financial statements in terms of Section 18 (1) of the NPO 71 Act of 1997, but often this isn't working properly - when it works it is fantastic! However NPOs often have to resort to sending via registered mail to the National Office in Pretoria or to an email address. If an 'Acknowledge Receipt of Annual Reports

Letter' is not received NPOs are unable to apply for further grant funding from the DSD to implement their programmes.

- A.4 The data systems are inefficient, and do not have sufficient granularity of data to monitor NPOs. Even when reports are digitally lodged, data is not able to be retrieved, separated and stored appropriately. In regard to the proposed Bill, there is not currently the ability to monitor where funds are coming in from and how they are being disbursed at an aggregated and individual level.
- A.5 The system is not secure, the URL does not begin with 'https'. It is poorly maintained and broken. We query if the systems being used are in fact hackable.
- A.6 The NPO Register is out of date because of political interference from successive Ministers. Many non-profits choose not to register with the NPO Directorate because of a lack of confidence in the DSD.
- A.7 It is important to note that the work done by many non-profits does not fall within the scope of the DSD. There is a lack of comprehension of the full scale of the non-profit sector.
- A.8 It is therefore evident that the DSD is not the appropriate department to contain or manage the Non-Profit Directorate, especially if it is to have an added responsibility to monitor NPOs for money laundering and terrorist activity. For the NPO Directorate (Registrar) to have credibility and to serve all stakeholders properly, it needs to be moved out and that is the major submission we are making.

B. OUR MOTIVATION AND RECOMMENDATION FOR AN ALTERNATE NON-PROFIT DIRECTORATE

Our motivation is to encourage and support an Independent Body to serve non-profit organisations in their contribution to meeting the diverse needs of the population of the Republic.

- B.1 A credible and effective Registry or oversight body which serves and enables the full scope and ambit of non-profit work should not be housed under a government department but should be established and given the status of an Independent statutory body reporting to Parliament.
- B.2 This could be achieved either by shifting and upgrading the current NPO Directorate, or by beginning afresh.
- B.3 There is broad support in the sector for an oversight body which is independent of DSD and which has the funding, staffing and systems

to effectively serve the sector, and play a responsive and supportive role.

- B.4 A wide consultative process would have to be followed in setting up such an independent registry.

We feel that this is the appropriate time to bring this matter to the fore, and for serious debate by Treasury as this shift could impact in a positive way to support the efficient and effective work of the NPO Directorate (Registrar).

We believe the Department of Social Development has a Heart & Soul for the betterment of humankind, whilst the NPO Directorate needs a Head & Administrative focus.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Feryal Domingo', with a stylized flourish at the end.

Feryal Domingo
Chairperson
NPO Act Working Group
Cell: 083 401 2353

DETAILED SUBMISSIONS ON GENERAL LAWS (ANTI-MONEY LAUNDERING AND COMBATTING TERRORISM FINANCING AMENDMENT BILL) UPDATED AFTER MEETING 18 OCTOBER 22

Sections	Current Financial Intelligence Act	The Bill	Our proposal	Our motivation and comments
Section 1(1)	<p>"beneficial owner"</p> <p>in respect of a legal person, means a natural person who, independently or together with another person, directly or indirectly -</p> <p>a) owns the legal person; or</p> <p>b) exercises effective control of the legal person;</p>	<p>"beneficial owner" in respect of a legal person;</p> <p>a) means a natural person who, independently or together with another person, directly or indirectly -</p> <p>a) owns the legal person; or</p> <p>b) exercises effective control of the legal person;</p> <p>i) ultimately owns or exercises effective control of -</p> <p>aa) a client of an accountable institution; or</p> <p>or</p> <p>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</p> <p>ii) exercises control of a client of an accountable institution on whose behalf a transaction is being conducted; and</p> <p>b) includes -</p> <p>i) in respect of legal persons, each natural person contemplated in section 21B(2)(a);</p> <p>ii) in respect of a partnership, each natural</p>	<p>Add clause 1(1)(c): which reads:</p> <p>“(c) excludes, in the case of non-profit companies or voluntary associations members and others with voting powers, those members or others with voting powers if neither they nor any related person derives any benefit from the work of the non-profit company or Voluntary Association.”</p>	<p>With-member NPCs and voluntary associations must have members and:</p> <ul style="list-style-type: none"> • Where (as is usually the case) these members have nothing to gain from the work of the company, they do not pose a risk; • Where the members are other organisations (and sometimes the other organisations may have sub-groups as members), the gathering and updating of natural persons details through these layers is impossible, burdensome and costly; and • The unintended consequence of forcing the gathering and exposure of ultimate (non-beneficiary) members will be a decrease in good governance and accountability as many with-members NPCs will convert to no-member models and voluntary associations will limit their member base.

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		person contemplated in section 21B(3)(b); and iii) in respect of a trust, each natural person contemplated in section 21B(4)(c)(d) and (e);		
Section 1(1)			<p>Adding the definition: “cross-border non-profit entity” (OR: “at-risk non-profit entity’ OR ‘external flow non-profit entity’)</p> <p>means a not for profit legal entity established or registered in the Republic or carrying out non-profit activities in the Republic as described in section 23 of the Companies Act, which raises funds in the Republic and distributes or expends locally-raised funds outside of the Republic or to or for the benefit of persons not domiciled in the Republic</p>	<p>As per the instruction that the organisations at risk are seen to be as here defined, and that no monetary threshold is likely to be approved</p> <p>For reasons of the current unsuitability of the NPO Directorate for the gathering, secure storage and separation out of the data required we suggest that the mandatory registration of the at-risk class of non-profits takes place under FICA.</p> <p>Using FICA instead of creating what will be perceived as a ‘naughty’ class of NPOs, is also a more neutral and politically acceptable road.</p> <p>Please note that no cross reference is here made to the definition of non-profit in the NPO Act, as this will limit the application of the clause, excluding common-purpose (inward/member facing/member-beneficiation organisations)</p>
Section 21B (2) Additional due diligence measures relating to legal persons, trusts and partnerships	(2) If a client contemplated in section 21 is a legal person, 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 identity of the beneficial owner of the client by—		<p>Adding 21(2)(c) to read :</p> <p>(c) if the client is a trust, voluntary association or non-profit company and is transferring or spending funds which were raised in</p>	<p>Adding the duty to send up a flare if an organisation falls within the definition and is not registered as a reporting institution.</p> <p>The reporting institution structure already in place refers to Schedule 3 of the FICA, and that list currently contains only car dealers and those who deal in Kruger Rands.</p>

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	<p>(i) determining the identity of each natural person who, independently or together with another person, has a controlling ownership interest in the legal person;</p> <p>(ii) if in doubt whether a natural person contemplated in subparagraph (i) is the beneficial owner of the legal person or no natural person has a controlling ownership interest in the legal person, determining the identity of each natural person who exercises control of that legal person through other means; or</p> <p>(iii) if a natural person is not identified as contemplated in subparagraph (ii), determining the identity of each natural person who exercises control over the management of the legal person, including in his or her capacity as executive officer, non-executive director, independent non-executive director, director or manager; and</p> <p>(b) take reasonable steps to verify the identity of the beneficial owner of the client, so that the accountable institution is satisfied that it knows who the beneficial owner is.</p>		<p>the Republic outside of the Republic, shall determine whether the client is registered with the Centre as a reporting institution, and is complying with requirements of registration as a reporting institution.</p>	<p>Adding this class of non profits to that list is, in our view, and neat and effective way of exercising oversight, empowering intervention and in a neutral way which does not seem to vilify these organisations but places them n a category with others who are carrying on legitimate activities but whose way of operating may place them at greater risk of being used for money laundering, terrorist financing or fraud.</p>

Sections	Current Financial Intelligence Act	The Bill	Our proposal	Our motivation and comments
<p>Section 21B Additional due diligence measures relating to legal persons, trusts and partnerships</p>	<p>(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 -</p> <p>c) establish the identity of the founder;</p> <p>d) establish the identity of -</p> <p>i) each trustee; and</p> <p>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;</p> <p>e) establish -</p> <p>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; or</p> <p>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.</p>	<p>(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 -</p> <p>c) in respect of the founders of the trust, establish the identity of</p> <p>i) each the founder; and</p> <p>ii) if the 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;</p> <p>d) in respect of the trustees of the trust establish the identity of -</p> <p>i) each trustee;</p> <p>iA if a trustee is a legal person or person acting on behalf of a partnership, the beneficial owner of that legal person or partnership; and</p> <p>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 person is appointed as a trustee of the trust or not;</p> <p>e) in respect of the beneficiaries of the trust, establish -</p>	<p>Amend 21B(4)(c) to read:</p> <p>(i) each founder or initial donor which is still living; and</p> <p>i) if the initial donor or 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 if that legal person or partnership exists.</p> <p>Add as section 4(e) (iii):</p> <p>(iii) or if there are no identifiable individuals who are or may be beneficiaries, a description of the class or group of persons (or other living organisms) which may benefit from the work of the trust.</p>	<ul style="list-style-type: none"> • Most common to refer to founders of trusts as ‘donors’; • In the case of charitable trusts the initial donor is often deceased or closed down. This proposed amendment stops financial institutions from demanding the impossible. <p>Addition of (iii) reason: Many charitable trusts will never be able to name or identify individuals who benefit from their work. A trust, set up, for instance, to protect the fynbos on Table Mountain, has no namable beneficiaries. A trust set up to develop awareness of and counter gender-based violence will also not be able to identify beneficiaries.</p>

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		<p>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;</p> <p>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; and</p> <p>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.</p>		
Regulation 1, definitions section			<p>Addition of a definition to read:</p> <p>“cross border non profit organisation report”</p> <p>Means a report which must be submitted by accountable and reporting institutions in terms of section 28B of the Act.</p>	<p>This definition added to create a mechanism for reporting a cross border non profit organisation which has not provided notice as required.</p>
Schedule 3: List of Reporting Institutions	<p>(1) A person who carries on the business of dealing in motor vehicles.</p> <p>(2) A person who carries on the business of dealing in Kruger rands.</p>		<p>Add:</p> <p>(3) cross-border non profit entity</p> <p>(Or ‘external-flow’ or ‘at-risk’ or any other neutral but descriptive phrase)</p>	<p>The Minister may add to this list in Schedule 3 per government gazette.</p> <p>We think this a neat solution.</p> <p>Section 76 says (our summary): Minister by Gazette can add to list of reporting institutions category of persons</p>

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				used or likely to be used for money – laundering BUT if it would not be appropriate to make them accountable institutions in terms of schedule 1

Sections	Current Trust Property Control Act	The Bill	Our proposal	Our motivation and comments
Section 1(b)	Addition	<p>"beneficial owner" -</p> <p>(a)- has the meaning defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); and</p> <p>(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 own the relevant trust property or exercises effective control of the administration of the trust, including-</p> <p>(i)- each founder of the trust;</p> <p>(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;</p> <p>(iii)- each trustee of the trust;</p> <p>(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;</p> <p>(v)-each beneficiary referred to by name in the trust deed or other founding instrument in terms of which the trust is created;</p> <p>(vi)- if a beneficiary is referred to by name in the trust deed is a legal</p>	<p>Amend (b)(i) and (ii) as marked:</p> <p>(i)- each initial donor or founder of the trust who is still living;</p> <p>(ii)- if a founder or initial donor of the trust is a legal person or a person acting on behalf of a partnership, and that partnership or legal person is still in existence, the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person or partnership;</p>	<p>The founding party for a South African charitable trust is usually referred to as the donor. The addition of the words 'initial donor' is to make it clear who is being referred to here.</p> <p>The balance of the amendments is to take care of the very long life of some trusts and the fact that initial donors may be deceased or no longer exist. The initial donor is a legal requirement for the formation of the trust and the identity of that donor is historical fact, ie is never updated. This proposed change is to stop banks unnecessarily bothering trusts for details of deceased or defunct donors OR banks expecting there to be replacement ones.</p>

Sections	Current Trust Property Control Act	The Bill	Our proposal	Our motivation and comments
		<p>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</p> <p>(vii)- a person who, through the ability to control the votes of the trustee or to appoint the trustees, or to appoint or change the beneficiaries of the trust, exercises effective control of the trust.</p>		

Sections	Current Companies Act	The Bill	Our proposal	Our motivation and comments
Section 1	Addition of new definition of 'beneficial owner'	<p>"beneficial owner"</p> <p>(a)- has the meaning defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); and</p> <p>(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-</p> <p>(i)- ownership of the securities of the company;</p> <p>(ii)- the exercise or control of the exercise of the voting rights associated with securities of that company;</p> <p>(iii)- the exercise or control of the right to appoint or remove members or the board of directors;</p> <p>(iv)- ownership, or the exercise of control of-</p> <p>(aa)- a holding company of that company;</p> <p>(bb)- a juristic person other than a holding</p>	<p>Add sub-section (c) to state:</p> <p>(c) in the case of a non-profit company excludes members and others with voting powers if neither they nor any related person has or could have any personal financial interest in the activities or outcomes of the activities of the non-profit company.</p>	<p>NPC's which work for public benefit are often accountable to members and:</p> <ul style="list-style-type: none"> • Where (as is usually the case) these members have nothing to gain from the work of the company, they do not pose a risk; • Where the members are other organisations (and sometimes the other organisations may have sub-groups as members), the gathering and updating of natural persons details through these layers is impossible, burdensome and costly; and • The unintended consequence of forcing the gathering and exposure of ultimate (non-beneficiary) members will be a decrease in good governance and

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		<p>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.</p>		<p>accountability as many with-members NPCs will convert to no-member models.</p>
Section 1			<p>NOTE: this an alternate suggestion to the suggested amendment to FICA re adding this class to the ‘reporting institutions’ Schedule.</p> <p>Add the following definition to section 1: “cross-border voluntary association” (OR: “at-risk’ OR ‘external flow’)</p> <p>means a voluntary association established in the Republic or carrying out non-profit activities in the Republic as described in section 23 of the Companies Act, which raises funds in the Republic and distributes or expends locally-raised funds</p>	<p>The wording of the proposed added definition adjusted in line with the recent discussions.</p> <p>This addition initially proposed as an alternative to the FICA amendment as suggested above or the compulsory NPO registration.</p> <p>We still think that this registration with CIPC would be preferable to compulsory registration of this class of organisations under DSD.</p> <p>It has been done with co-ops, so should not be impossible.</p> <p>Compulsory registration as an NPC would be appropriate and useful, bringing that organisation under the detailed regulatory requirements of the Companies Act, into the public visibility that the online BizPortal allows, and requiring the annual reporting on financials and details of compliance which the Companies Act and regulations require.</p>

Sections	Current Companies Act	The Bill	Our proposal	Our motivation and comments
			outside of the Republic or to or for the benefit of persons not domiciled in the Republic.	
Section 1	<p>"foreign company" means an entity incorporated outside the Republic, irrespective of whether it is—</p> <p>(a) a profit, or non-profit, entity; or</p> <p>(b) carrying on business or non-profit activities, as the case may be, within the Republic;</p>	No proposed amendment in the AML CTF Bill	<p>foreign company" means an entity incorporated or unincorporated entity or organisation outside the Republic, irrespective of whether it is—</p> <p>(a) a profit, or non-profit, entity; or</p> <p>(b) carrying on business or non-profit activities, as the case may be, within the Republic;</p>	<p>Foreign non-profit companies and foreign trusts are already required to register in South Africa under section 23 of the Companies Act and section 8 of the Trust Property Control Act.</p> <p>This proposed amendment requires the registration with CIPC also of the foreign equivalents of voluntary associations (unincorporated or unregistered bodies and organisations) which may be carrying out non-profit activities in South Africa.</p> <p>This proposed amendment either replaces the AML-CTF Bill proposal to make registration as an NPO compulsory for these entities OR is needed to support the compulsory registration under FICA or NPO, as one then has a local registration number, regardless of type of legal entity.</p> <p>As the Companies Act already has well defined parameters for registration and the systems and processes to cope with these registrations (and the NPO Directorate does not) and also the oversight capacity, data searching capacity and reporting requirements in terms of the Companies Act are more effective and appropriate, it makes so much more sense to register the foreign voluntary associations with CIPC.</p>

Sections	Current Companies Act	The Bill	Our proposal	Our motivation and comments
Section 8 Categories of Companies	(3) No association of persons formed after 31 December 1939 for the purpose of carrying on any business that has for its object the acquisition of gain by the association or its individual members is or may be a company or other form of body corporate unless it— (a) is registered as a company under this Act; (b) is formed pursuant to another law; or (c) was formed pursuant to Letters Patent or Royal Charter before 31 May 1962.		Add 8(4) to read: Any association of persons which is or becomes a ‘cross-border voluntary association’ shall, within one year of so becoming, convert to being a non-profit company under this Act.	This proposed addition to the Companies Act makes mandatory the registration of a non-profit company where a voluntary association fits the defined class for compulsory registration. The CIPC would have to institute a process for this ‘conversion’ as it does with the conversion of Pty’s to NPCs, provided that the name is approved and an NPC registration number would be allocated. The process would have to ensure continuity of legal existence, so SARS would have to continue the tax ref number, for example, and deeds office updates of details would be permitted (instead of transfer of property). Likewise banking and accounting history would have to continue intact.
Section 8 Categories of Companies			Add 8(5) to read: Any association of persons which wishes to convert to a non-profit company under this Act, shall make application in the prescribed manner.	We very often encounter voluntary associations which wish to fall under the more credible, transparent and highly regulated CIPC and Companies Act, but there currently is no legal mechanism in place for conversion. A voluntary association which wishes to ‘convert’ has to start a new NPC, obtain tax exemption for it, then transfer everything across from the voluntary association to the new NPC. This process can take years, as the two organisations need to be run side by side for some time to allow the new NPC to develop a history which will be acceptable to donors.

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				Providing a mechanism for voluntary conversion would allow these organisations to continue their operations with their financial history, bank accounts, employment contracts, SARS history and status etc all intact, but under the auspices and heft of the Companies Act. If we are to amend the Companies Act to enforce mandatory registration for conduit voluntary associations, it makes sense to take this as a positive opportunity to allow voluntary associations to make this transition. Many would be very pleased to be able to do so.

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Section 1	<p>Definitions of "constitution"</p> <p>'constitution' includes a trust deed and memorandum and articles of association</p>	The AML-CTF Bill includes no proposed changes to this definition, but they are needed to align with the intent of the Bill and other legislation.	<p>The substitution in subsection 1(iv) for the definition of "constitution" the following definition:</p> <p>“'founding document' includes a constitution, trust deed, memorandum of incorporation or, in the case of a foreign organisation, its founding document”</p> <p>*all other references in the Act to 'constitution' would have to be changed to read 'founding document'.</p>	<ol style="list-style-type: none"> 1. The current definition of the founding document as 'constitution' creates wide and deep confusion in the non-profit sector, as organisations which are in fact trusts and non-profit companies think they have to have a constitution, draft and adopt them, and inadvertently set up a second legal entity being a voluntary association. Changing the definition to a more generic "founding document" would make a big difference in providing clarity around this issue. 2. Although we do not support the compulsory registration of foreign non-profits, this definition should be amended to include their (various) founding documents, as these might not otherwise fit within the definition. 3. The definition needs to be updated to refer to the new name for a company founding document, under the new Companies Act.

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Section 1	<p>Definition of ‘office bearer’</p> <p>“Office bearer means a director, trustee or person holding executive position”</p>	<p>The AML-CTF Bill includes no proposed changes to this definition, but it needs to be changed to align with the intent of the Bill and other legislation.</p>	<p>Substituting the definition of office bearer with the following wording:</p> <p>Definition of ‘office bearer’</p> <p>Office bearer means a director, trustee or person holding executive position elected to the committee or governing board of the organisation”</p>	<p>UPDATE: NOTE THAT IF NPO REGISTRATION WILL BE COMPULSORY FOR ANY CLASS OF NON-PROFITS IT IS VERY IMPORTANT TO FIX THIS MISALIGNMENT IN THE CURRENT NPO ACT</p> <p>This amendment proposed is in line with FICA, the Companies and Trust Property Control Acts.</p> <p>Directors of non-profit companies and trustees of trusts are those responsible for governance, who sit on the governing board and who have ultimate fiduciary responsibility for the organisation. In Voluntary Associations, those who govern and have ultimate fiduciary responsibility are those who are elected by the members to serve on the committee governing body.</p> <p>The reference in the current definition to ‘executive’ position is to those who manage/administer- the management team employed by the organisation. The correction is required to ensure that it is the same functional group or status being referred to and tracked across all three types of legal entities. If the amendment is not made then Voluntary Associations would not have to disclose details of their board, but those of their CEO and senior managerial staff.</p>
Section 2	<p>Provides for the objects of the Act</p>	<p>The objects of the Act are to encourage and support nonprofit organisations in their contribution to meeting the diverse needs of the population of the Republic by</p> <p>(b) - establishing an administrative and regulatory framework within which nonprofit organisations can must conduct their affairs</p> <p>(c) - encouraging requiring nonprofit organisations to</p>	<p>No amendments should be made to this section, as the amendment proposed would make NPO registration compulsory for all organisations defined as NPOs, which exceeds FAFT requirements.</p> <p>NPCs and Trusts are hit twice by the provisions which is not necessary as</p>	<p>UPDATE: NOTE THAT THIS POINT ALREADY ACCPETED</p> <p>Note, the NPO Act defines as ‘nonprofit organisation’s</p> <p>“All trusts, company or other association of persons</p> <ul style="list-style-type: none"> - (a) established for a public purpose and - (b) the income and property of which are not distributable to its members or office-bearers except as reasonable compensation for services rendered. <p>This proposed amendment turns what is currently a voluntary registration into a compulsory one.</p>

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		maintain adequate standards of governance, transparency and accountability and to improve those standards;	these provisions are already taken care of under the Trust Property Control Act and Companies Act.	<p>We cannot support legislation which would make registration compulsory for all, as this is not an appropriate and reasonable response to the risk seeking to be averted.</p> <p>It is a major legal shift which would require extensive consultation. It would impose a burden on the sector and the Registrar without any useful result.</p> <p>The universal and compulsory registration of an unknown (but large) number of currently unregistered voluntary associations across SA will create a deluge of data which will break the NPO Directorate systems (such as they are) and which will bury the data on illegal flows of funds so deep that it will never be found.</p> <p>The (fascist) history of compulsory non-profit registration during the apartheid regime under the 1978 Fundraising Act and the unconstitutional impinging on the rights of freedom of association, expression etc will provoke vehement and public protests from the sector which will undermine the intent of the Bill and possible itself lead to Grey- Listing</p>
section 12(1)	(1) Any nonprofit organisation that is not an organ of state may apply to the director for registration.	<p>(1) (a) A nonprofit organisation that is not an organ of state 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.</p> <p>(b) a nonprofit organisation that is operating but is not registered in terms of this Act on the date</p>	<p>Our first proposal and preferred outcome is that the compulsory registration of a limited and defined class of non-profits takes place not under the NPO Act, but under FICA, as a “reporting institution” OR under CIPC, as a second option.</p> <p>However, if this is not accepted, the pre-requisite for limited-ambit compulsory registration as an NPO would need to be that:</p> <p>1. The NPO Directorate (internally) kept this list of</p>	<p>First important note here is that NPO status is an additional registration available to an existing legal entity and is not a type of legal entity.</p> <p>The first hurdle for the proposed mandatory NPO registration of foreign organisations operating in SA is that there is no local legal entity which is able to apply to the NPO Directorate to be registered.</p> <p>The foreign founding document contents will not also comply with the provisions of the NPO Act. What will happen, in fact, is that if a foreign organisation had to be registered under the NPO Act, the NPO Directorate (most of whose staff seem not to understand the legal nature of voluntary associations and NPO status) would in all likelihood supply it with a standard form constitution. The foreign entity would then sign that document, unknowingly set up a new South African voluntary association and create a whole lot of confusion.</p>

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		of commencement of this provision, must register within the period determined by the Minister by notice in the Gazette, in accordance with the prescribed transitional arrangements and registration requirements.	<p>organisations separate from those of voluntary NPO registrations, so that they can be separately tracked;</p> <p>2. The NPO Directorate systems are substantially upgraded and reinforced for security, stability and to allow data required to be found and extracted;</p> <p>3. The NPO Directorate is relocated as structure independent of DSD;</p> <p>4. The staffing and skills at the NPO Directorate are overhauled and upgraded. People with legal, forensic and audit skills should be on the team.</p> <p>If contained in the NPO Act, we would need a definition, and we suggest:</p> <p>“cross-border non-profit organisation” OR “external-flow non-profit organisation” OR “at-risk non-profit organisation”</p> <p>means a non-profit</p>	<p>Registration of foreign entities, their officers and companies is dealt with in the following pieces of legislation already in force:</p> <ul style="list-style-type: none"> • s23 of the Companies Act • s 8 of Trust Property Control Act • 21b. Financial Intelligence Centre Act No. 38 Of 2001 <p>Section 23 of the Companies Act already provides that any external non-profit company must register with CIPC within 20 business days after it first began to conduct non-profit activities within South Africa.</p> <p>Section 23 goes on to specify that certain activities do not qualify as non-profit activities (those applicable to non-profits are holding meetings, opening a bank account or purchasing any interest in any property). So, these activities will not require registration with CIPC.</p> <p>However, being a party to an employment contract OR, over the course of 6 months engaging in a course of conduct or pattern of activities which would lead a person to reasonably conclude that the company intended to continually engage in non-profit activities within SA does give rise to the need to register the foreign entity in SA.</p> <p>It should be noted that the definition of ‘foreign company’ in the Companies Act refers to an ‘entity incorporated outside of the Republic’- it could therefore be any sort of formally established entity, and not necessarily a company, for it to be required to register under section 23.</p> <p>It should also be noted that, at the point at which an external non profit company must legally be registered, the foreign entity often chooses, instead, to establish an SA NPC or SA charitable trust, for various reasons.</p> <p>A legal mechanism therefore already exists in the Companies Act to require a local registration (and, ipso facto, inclusion in the SA Financial Intelligence Centre Agency and tax systems) for foreign entities which cross the lines laid down in the Companies Act.</p> <p>Section 8 of the Trust Property Control Act already requires that</p> <p><i>“When a person who was appointed outside the Republic as trustee has to administer or dispose of trust property in the Republic, the provisions of this Act shall apply to such trustee in respect of such trust property</i></p>

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			<p>organisation established or registered in the Republic or carrying out non-profit activities in the Republic as described in section 23 of the Companies Act, which raises funds in the Republic and distributes or expends locally-raised funds outside of the Republic or to or for the benefit of persons not domiciled in the Republic</p> <p>12(1) Any non-profit organisation that is not an organ of state may and any cross-border non profit organisation must apply to the director for registration.</p>	<p><i>and the Master may authorise such trustee under section 6 to act as trustee in respect of that property.”</i></p> <p>This means that foreign trusts which wish to operate in SA are required to register with the Master of the High Court, so trusts are taken care of.</p> <p>For foreign voluntary associations or equivalent, we suggest that the provisions of section 23 of the Companies Act are broadened to reach these and please see proposed amendments in the relevant section of this submission.</p> <p>Since a mechanism already exists for a local registration in South Africa of organisations which do more than hold meetings, open bank accounts or hold property, we suggest that the proposed changes be dropped and that those who deal with applications are trained in the correct response to foreign organisations carrying out non profit activities in South Africa, which is that section 23 of the Companies Act compels them to register with CIPC and that, once that registration is accomplished, they may choose to register as an NPO.</p>
section 12(1)	(1) Any nonprofit organisation that is not an organ of state may apply to the director for registration.	<p>Added:</p> <p>c) A nonprofit organisation whether registered in terms of the Act or not, must comply with the requirements of this Act</p>	Opposed	<p>UPDATE: NOTE THAT THIS PROPOSAL NOW DROPPED</p> <p>Here again, please note that the NPO Act defines as ‘nonprofit organisation’s</p> <p>“All trusts, company or other association of persons</p> <ul style="list-style-type: none"> - (a) established for a public purpose and - (b) the income and property of which are not distributable to its members or office-bearers except as reasonable compensation for services rendered. <p>This sweeping proposed addition is shocking and deeply impractical and does not take account of the size and variety of the unregistered</p>

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				<p>voluntary associations in South Africa.</p> <p>As soon as any group of people working together on an outward facing (public purpose) project signs a founding document with the three essential clauses that protect those involved from personal liability, a voluntary association is formed, and one which falls under the definition of “NPO” in the NPO Act. Every residents association, street committee, clean-up initiative, birder group, addiction support group, choir, dance club, running club, meditation group -the list is endless- is not only compelled to register (which we have already argued against in the previous section) but, even if they do not register, even if they do not realise that they have set up a voluntary association and have never heard of the NPO Act, they are compelled to comply with it and to be subject to criminal sanctions for non-compliance. This is clearly an abrogation of their rights, and an abuse of power for no discernible or justified purpose.</p> <p>The requirements of the NPO Act are not only the new (laudable) ones added, such as those who are disqualified from holding office, but also include the annual requirement to lodge reports with the NPO Directorate (financial statements and a narrative report). If section 1(c) is added, all of the organisations we have mentioned will be subject to criminal sanction for not filing reports that they did not know were required.</p>
Section 12(2)	(2) Unless the laws in terms of which a nonprofit organisation is established or incorporated make provision for the constitution of a nonprofit organisation	(2) Unless the laws in terms of which a nonprofit organisation is established or incorporated make provision for the constitution of a nonprofit organisation that intends to register.	Do not adopt	<p>UPDATE: NOTE THAT THIS PROPOSAL NOW DROPPED</p> <p>For reasons as above</p>

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	that intends to register.			
Section 12(3)	(3) The constitution of a nonprofit organisation that intends to register, may make provision for matters relevant to conducting its affairs, including matters that-	(3) The constitution of a nonprofit organisation that intends to register , may make provision for matters relevant to conducting its affairs, including matters that-	Do not amend	UPDATE: NOTE THAT THIS PROPOSAL NOW DROPPED For reasons as above
Sections 24 to s25A	The director must keep a register in the prescribed form of - a) all nonprofit organisations that have been registered b) all nonprofit organisations whose registrations have been cancelled; and c) all nonprofit organisations that have voluntarily deregistered or have been wound up or dissolved	NEW provisions regarding disqualification of 'office bearers' and measures to be taken to enforce their removal from office		The amending and correcting of the definition of 'office bearer' is crucial for this to function as it should, and have the intended effect. The NPO Directorate would need to have a searchable database to locate relevant 'office bearers' and notify. This data base will be incredibly large and the annual uploading of relevant data would be very time consuming if mandatory universal registration were implemented. Note that these provisions have been made consistent across the Trust and Companies Act as well, so no need to make these types of organisation register as NPOs, as they already have these checks and standards in place.