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

Responses by National Treasury and Financial Intelligence Centre to submissions made to the Standing Committee on Finance by 10 October 2022

PRESENTED BY:

NATIONAL TREASURY

18 October 2022

national treasury
Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

2030 NDP

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Overview of comments received

- 43 commentors in total– 30 commentators from the NGO sector specifically
- The general thread through out the comments is the short period within which to comment on the Bill
- The majority of the commentators support the Bill in general bar the specific comments which will be highlighted in the following slides
- Commentators in general support the Bill in its objective to address the technical compliance deficiencies identified in the FATF Mutual Evaluation Report and as one of the initiatives in the government's action plan to prevent the country from being greylisted
- The comments received have been constructive and have assisted in enhancing some of the draft proposals to amend the respective Acts which will be put to the Committee for its consideration during the deliberation of the Bill

General comments

COMMENTS	RESPONSES
Consistency and alignment of legislation – 1) There should be a single definition of beneficial owner (BO) in the Trust Property Control Act, Companies Act, Financial Sector Regulation Act and FIC Act. 2) Cross reference to the FIC Act definition of BO may have unintended consequences. 3) The definition should prescribe a threshold	This comment is noted. Specific proposals for refinements to the definitions of "beneficial owner " in the various pieces of legislation will be submitted to the Committee for consideration, taking into account the very helpful comments received
Fragmentation of registers – to include the Beneficial Ownership Data Standard (BODS) in the Bill. This will ensure that the data is interoperable not just domestically between departments, but internationally with other FATF member states that have implemented BODS. BODS provides a consistent way to collect, use, exchange and publish beneficial ownership information	Comments highlighting the potential for the fragmentation of the registers is noted. This is a policy issue that will be referred to the Interdepartmental Committee (IDC) chaired by National Treasury that is responsible for AML/CFT/PF policy. It is not necessary for this to be provided for in primary legislation. Access to the various registers will be dealt through regulations after consultation with all stakeholders, and will be a staged process in line with the approach by most by other FATF compliant jurisdictions The design of the national Beneficial Ownership on Transparency registries framework is receiving the attention of the governmental Working Group on Beneficial ownership, co lead by DPSA and FIC and constituted by the CIPC and Masters Offices, FIC and SARS. This IDCBOT is attending to the structural and technical ICT design and implementation of national BO Framework The revised FATF Interpretation Note to Rec 2 provides that countries should follow a multi-pronged approach and decide on the basis of risk, context and materiality, what forms of registry or alternative mechanisms they will use to enable efficient access to info by all competent authorities. Companies should also be required to obtain and hold information on their own BO. Public authorities or bodies like tax authorities, FIU, companies registry or BO registry should also be required to hold BO info. It should be noted that the revised FATF Rec 24 and the revised Interpretation Note do not mandate that the registry be held by one body but can be held by multiple bodies.

General comments

COMMENTS	RESPONSES
Access to beneficial owner information – 1) Bill does not seek to make beneficial ownership registers publicly available. 2) The Bill should provide for timeous and direct access to BO registers. 3) Certain categories of person should have access to BO registers such as accountable institutions. 4) The Bill does not specify which information of the prescribed information will be made available to users.	Access to the various registers will be dealt through regulations after consultation with all stakeholders, and will be a staged process in line with the approach by most by other FATF compliant jurisdictions Regulations will set out the details around the access to the information contained in the register. The Bill also provides for the regulations in the different laws to made after consultation with the Minister of Finance and the FIC. This will ensure that the development of the regulations relating to the registers in the different laws are consistent and co-ordinated. It is envisaged that the registers accessible to competent authorities and obliged entities having CDD obligations, on a tiered access basis, taking into consideration the Protection of Personal Information Act and the Promotion of Access to Information Act. The question of open access to the general public is left by FATF to countries to decide. This decision has not yet been made as it requires full consultation with all stakeholders. The revised FATF Interpretation Note to Rec 2 , it is not mandated that the registry be public, but there must be some form of access by AML obliged persons to effect the sharing of information between designated authorities and institutions to effect cross-checking of data. It is further important to note, that a registry by itself is not a panacea, it does not ensure access to accurate information in a timely manner. It's a base or a foundation but cannot be the only source to be relied on by authorities. It should be viewed as the icing on the cake or the ultimate step. If the goal is timely, accurate information available to competent authorities, companies gathering info, banks, law enforcement and other competent authorities compelling the provision of this information are needed. If all this is being done, it is submitted that it is appropriate to put the information in a registry and make it available with sufficient safeguards.

General comments

COMMENTS	RESPONSES
Public Participation in Drafting of the Regulations – 1) There are numerous instances where the Bill provides for reporting requirements, time periods and people to whom information can be disclosed to be prescribed in regulations. 2) The regulations are to be determined in consultation with the FIC, but no mention of public participation in the drafting process.	Draft regulations are, as a matter of routine, published for public comment before publication, and the importance of public consultation on the regulations is agreed. There are explicit requirements for public consultation in relation to all regulations made in terms of the Companies Act and the Nonprofit Organisation Act. The Department of Justice and Constitutional Development consistently publishes all subordinate legislation for comment, even if there is not an explicit requirement in primary legislation. Draft regulations will be published for comment before they are promulgated.
Capacity – Concerns were raised regarding the capacity of CIPC, Master's Office and the Directorate in the Department of Social Development to implement new provisions in terms of trained staff and system readiness	The comments and concerns raised are certainly noted, and more detailed information and proposals about the capacitation of the CIPC, the Master's Office, and the Directorate for Nonprofit Organisations will be provided. As the role and mandate of these entities expands, government will address issues relating to increasing their resources through the budget process.
Commencement of Act - 1) While the urgency of enacting and enforcing the Bill is understood, it is submitted that accountable institutions should be afforded an appropriate time period to implement the necessary changes to Risk Management and Compliance Programmes to ensure compliance with the amended legislation. 2) It will be important that a reasonable transitional period be provided for when the provisions amending the various pieces of legislation comes into operation as it is pertinent that impacted state entities, accountable institutions and other entities are afforded reasonable opportunity for change management implementation (systems, people, operations and the like) to ensure that all parties have adequate time to implement the relevant amendments and to ensure compliance with the obligations imposed on them.	1) Beneficial ownership obligations already exist on all accountable institutions (AIs) and they are required to preform their BO enquiries using client accessed information. BO registry information would merely assist AIs better verify their BO information have obtained from clients. So, it is anticipated that minimal additional time should be required to implement any access by AIs to the BO information from any contemplated BO registries. 2) The various amendments to the Acts will be brought into operation as soon as practicable once the relevant regulations are developed and have gone through a consultation process. 3) The regulators will assist accountable institutions to ensure they receive the necessary support to implement the new requirements before any enforcement action will be taken for noncompliance with the new obligations. 4) Requests for communication and engagement regarding the implementation of the legislation is well noted.

Trust Property Control Act

COMMENTS	RESPONSES
Foreign owned trusts – 1) The amendments are not explicit in bringing foreign owned trusts firmly within the disclosure framework. 2) There is no clear indication in the Bill that it will also apply to foreign trusts and trustees.	Trust property located in the Republic must be brought within the ambit of the BO provisions, even if it is administered in terms of a foreign trust. Consideration will be given to developing refinements to appropriately clarify the approach to foreign trusts. [consideration to be given on placing clear positive obligation on all trustees of foreign trusts operating in SA to disclose that status of being a foreign trust to the banks (and other Ais) and the Masters Offices in revised section 10(2) of TPCA] It is submitted, however, that there is no gap. The reference to "foreign owned trusts" is also a unfortunate naming convention as, in actual fact, a "trust" cannot be owned. More correctly, a trust can be a "foreign managed trust". Within the current scope of s8 of the TPC Act is the following: • A trustee of a foreign trust who has to administer trust property in South Africa; • A non-resident person based outside South Africa appointed as a trustee to administer trust property in South Africa; In view a) and b), it follows that a trust that is formed outside of South Africa, or that is formed by persons who are not South African residents, is nonetheless regulated by the TPC Act if the trust property is located in South Africa.
Disqualification of trustee(Clause 2) – Technical drafting proposals were suggested by commentators	The technical comments are certainly appreciated, and will be incorporated where appropriate
Trustee to disclose status to accountable institutions(Clause 3) -Proposed that the trustee also discloses the beneficial ownership details and provide that trustees provide an organisation structure as per prescribed regulations.	1) The obligation to carry out customer due diligence measures in accordance with its Risk Management and Compliance Programme remains with the accountable institution. This includes measures relating to beneficial owners of trusts. 2) Clause 5 of the Bill sets out the obligation on the trustee to establish and record the beneficial ownership information of the trust.

Trust Property Control Act

COMMENTS	RESPONSES
Record of BO information(Clause 5) –1) No requirement to verify information and 2) for the information to be adequate, accurate and up to date	The adequacy of the information will be dealt with by setting out the precise information required through regulations. The requirement to keep the information up to date in the proposed section 11A(1)*(d)* will help to ensure the accuracy of the information. Imposing a requirement to verify information will depend upon sufficient capacitation being provided to the Masters Office, and further information regarding the proposed approach to capacitating the Masters Office will be provided. It is proposed be addressed in the forthcoming Regulation of Trust Property Bill that is being developed by the Department of Justice and Constitutional Development. Further consideration will be given to providing for penalties for misrepresentation of the information
Failure by trustee to perform duties(clause 6) – 1) Trustees may need to rely on information that is provided to them so there should be provision that a trustee will not be guilty of an offence in terms of section 11A(1) if the trustee can show that the trustee took all reasonable steps to establish the BO of the trust. 2) The new offences(for failure to comply with sections 10(2), 11(1)(dA) or 11A(1)) is likely to disincentivise persons to act as trustees	This comment is noted, and will be further considered, although it must be ensured that effective sanctions are provided for in relation to a trustee's failure to establish and keep a register of beneficial ownership
Removal of trustee(clause 7) - the trustee's estate is sequestrated or liquidated or placed under judicial management": In order to prevent any uncertainty or confusion as to when this measure will apply, it is recommended that the words "and not rehabilitated" be added	The new section 6(1A) lists an unrehabilitated insolvent as a reason for disqualification and therefore can be removed under section 20 . It will be examined to ensure that there is an appropriate linkage between section 6(1A) and section 20 of the Act, as it is proposed to be amended by clause 7

Nonprofit Organisations Act

COMMENTS	RESPONSES
Bill does not address FATF requirements under Recommendation 8 – 1) The primary concerns of the FAFT were that South Africa has not yet done an assessment of their broader NPO sector to identify those organisations, based on their characteristics or activities, which put them at risk of TF abuse and (ii) South Africa also has no capacity to monitor or investigate NPOs identified to be at risk of TF abuse. 2) Recommendation 8 does not apply to the NPO sector as a whole. Countries should take a targeted approach to implementing the measures called for in Recommendation 8, including oversight and regulatory mechanisms, based on an understanding of the diversity of the NPO sector and the terrorism risks faced by he domestic NPO sector. Given the variety of legal forms that NPOs can have, depending on the country, the FATF has adopted a functional definition of NPO. This definition is based on those activities and characteristics of an organisation which put it at risk of terrorist abuse, rather than on the simple fact that it is operating on a non-profit basis. Recommendation 8 only applies to those NPOs which fall within the FATF definition of a non-profit organisation.	1) The FATF definition of NPO refers to a legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of "good works". 2) Rec 8 states that since not all NPOs are inherently high risk (and some may represent little or no risk at all), identify which subset of organisations fall within the FATF definition of NPO, and use all relevant sources of information, in order to identify the features and types of NPOs which by virtue of their activities or characteristics, are likely to be at risk of terrorist financing (TF) abuse. 3) Identify the nature of threats posed by terrorist entities to the NPOs which are at risk as well as how terrorist actors abuse those NPOs. 4) Review the adequacy of measures, including laws and regulations, that relate to the subset of the NPO sector that may be abused for (TF) support in order to be able to take proportionate and effective actions to address the risks identified. 5) Countries should take steps to promote effective supervision or monitoring such that they are able to demonstrate that risk based measures apply to NPOs at risk of TF abuse. 6) Authorities are to monitor the compliance of NPOs, including the risk-based measures 7) Authorities to be able to apply effective, proportionate and dissuasive sanctions for violations by NPOs or persons acting on behalf of these NPOs.
Compulsory registration – The majority of the commentators responding on this issue do not support the provisions in the Bill requiring compulsory registration of all NPOs citing 1) constitutionality issues especially affecting religious organisations, 2) it goes beyond FATF requirements, 3) capacity of Department of Social Development to implement Bill, 4) administrative burden on smaller NGOs particularly religious organisations. 5) Sections 12(3) and 30 of the NPO Act be amended to specify that DSD cannot require changes to religious organisations' founding document that would interfere with the religious organisations' doctrines / tenets / beliefs; and to remove the threat of imprisonment and/or a limitless fine in the case of non-compliance.	In light of engagements with the NPO sector, and having carefully considered their submissions and proposals, the National Treasury will present to the Committee detailed proposals to adjust the initially proposed blanket registration requirement for NPOs, which will focus on the registration of a limited subset of NPOs- those that make donations or provide services beyond South Africa's borders, where they could potentially be used- intentionally or unintentionally- in the financing of terrorism. On the capacity of the Directorate to implement the mandatory registration, the Directorate is engaging to ensure the appropriate capacitation and appropriate staffing of the Directorate to respond to the demand.. The legislated turnaround time for registration is 2 months; however, the NPO Directorate will undertake a review of NPO client service operations in order to develop a sustainable strategy for meeting its service standards and reducing registration turnaround times significantly

Nonprofit Organisations Act

COMMENTS	RESPONSES
Risk assessment of NPO sector – 1) No risk assessment conducted to identify those organisations at risk prior to the drafting of these amendments. Without understanding the nature of the threat of terrorism financing to NPOs and the subset of NPOs which are particularly vulnerable it is irresponsible to implement measures which purport to respond to those vulnerabilities. 2) The proposed amendments and potential consequences for South Africa's NPO sector are disproportionate to the minimal risk identified.	A national terrorist financing risk assessment was conducted by the Inter-Departmental Working Group which is a multi-agency, government-led process, involving the private sector. It identified the terrorist financing vulnerabilities, threats and risks. The finding is that South African-based NPOs and charities are vulnerable to potential abuse by terrorist groups despite the fact that it is not currently assessed as posing a significant terrorism financing risk. Although there have been no terrorism financing convictions related to the South African NPO sector, the prevalence of cash and specifically charities operating near or in conflict zones associated with terrorism pose a higher terrorism financing risk. These charities and NPOs, or individuals within the charities and NPOs are at risk of being exploited by terrorist groups in these areas. There is a process to form a technical team with the Sector with the aim to conduct a rapid assessment survey on the understanding of the risk in the NPO Sector. The findings will strengthen the NPO Risk assessment
Foreign NPOs - NPOs, whether domestic or foreign should be subject to the same process and standards.	It is submitted that any NPO that raises money in South Africa and disburses it in other countries should be registered, irrespective of whether they are legally domiciled in South Africa or not. The Foreign (International NPOs) will be streamlined with the proposed registration requirements.
Duty to provide reports and information(clause 11) – 1) There is no obligation to keep "prescribed information about the office-bearers, control structure, governance, management administration, and operations of non-profit organisations" up to date and to be adequate and accurate .	Consideration will be given to adding a provision relating to ensuring that the information is updated
Amend the definition of office bearer - 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. 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.	This comment is noted, and will be given further careful consideration regarding potentially proposing a refinement to the definition of "office bearer". If the scope of NPOs that are required to be registered is significantly reduced as will be proposed, this concern might potentially be reduced or fall away.

Nonprofit Organisations Act

COMMENTS	RESPONSES
Disqualification and removal of office-bearers(clause 13) – 1) Subsection (11) should be amended as follows to include the additional ground for removal from office contemplated in the Trust Property Control Act: "the office-bearer has been declared by a competent court to be mentally ill or incapable of managing the office-bearer's own affairs or if the office-bearer is, by virtue of the Mental Health Care Act, 2002 (Act No. 17 of 2002), detained as a patient in an institution or as a State patient" 2) The first point to note is that there is no apparent link between these new requirements to be, or to continue as, an office-bearer in an NPO, on the one hand, and the objective of combating terrorism financing on the other. For example, the fact that someone is, or becomes, insolvent, does not suggest an openness to terrorism financing. It must also be stressed that many NPOs, especially small ones that grow organically from within communities, do not handle large amounts of money. Therefore, the office-bearer criteria that apply to public companies or trusts, for example, do not necessarily apply to NPOs. 3) Secondly, the criteria for disqualification include being 'an unemancipated minor' or someone under a 'similar legal disability'. Quite a number of successful NPOs in our country have been started and run by minors.	1) The proposal is not supported as the trustee and an office bearer at an NGO is not comparable in this instance. Other safeguards are in place to deal with this issue, namely paragraphs (e)(ii), (iii). 2) and 3) While it should be borne in mind that the definition of 'office bearer' in the NPO Act is: "office-bearer" means a director, trustee or person holding an executive position" it would be unlikely that a minor will hold this position the point is noted and consideration will be given to deleting paragraph (f) referring to an unemancipated minor, or is under a similar legal disability If the scope of NPOs that are required to be registered is significantly reduced as will be proposed, this concern might potentially be reduced or fall away.
Offences(clause 14) – 1) The new offences proposed by the Bill have the potential to deter persons from acting as office-bearers of NPOs. 2) The blanket criminalisation of obligations often has unintended consequences and consideration to be given to whether the contraventions can be penalised via administrative sanctions. 3) The effect of the Bill would be to send religious leaders to jail for failing to adhere to administrative requirements. The amendments were made without sufficient public awareness being raised. Religious leaders are therefore unaware of the Bill, the effect it will have on them and their religious organisation	This comment is noted, and consideration will be given as to the appropriate penalty that should be imposed for contraventions. If the scope of NPOs that are required to be registered is significantly reduced as will be proposed, this concern might potentially be reduced or fall away.

Financial Intelligence Centre Act

COMMENTS	RESPONSES
Definition of investigative division in a national department(clause 15) - The substitution of "organ of state" with "national department" introduces a far narrower definition and excludes certain critical state functionaries from being able to participate in critical information sharing.	The ability of the FIC to share intelligence information it holds is set out in section 40 of the FIC Act. The agencies are specified and includes all law enforcement agencies, SARS, IPID, Pubic Protector, NPA, intelligence services etc. The proposed amendment is to one item on this list which is an investigative division in an organ of state.
Definition of proliferation financing'(clause 15) – It is proposed that the definition should be more closely aligned with the FATF definition	A distinction is to made between the concept of 'weapons of mass destruction(WMD) proliferation' and 'financing of proliferation'. In respect of compliance obligations in respect of proliferation financing, the FIC Act provisions are aimed at dealing with targeted financial sanctions which includes targeted financial sanctions relating to the financing of proliferation. Compliance obligations also extend to identifying the risk of proliferation financing. The commentator's proposals are proposing incorporating elements of WMD proliferation. In addition, the proposed definition in the Bill is adapted to take in to account terminology used in the FIC Act
FIC must annually review the implementation of the FIC Act(Clause 17)- 1) The amendment should expressly provide for greater transparency and accountability - both to the Minister and to the wider public. This could be done in the form of the Minister presenting the annual report before the relevant portfolio committee in Parliament and the report itself being made publicly accessible. 2) The challenge with STRs is that there is no way of knowing whether accountable institutions are in fact reporting suspicious activities. Nor is there any way of tracking whether the FIC is in fact acting upon the STRs that it receives.	1) The FIC is a public entity listed in Schedule 3 of the Public Finance Management Act and are therefore bound by the prescripts of the Act. The FIC's annual report which includes information relating to the work performed by the FIC annually is publicly available and tabled in Parliament. 2) The FIC's Annual Report contains statistics relating to the number of STRs received as well as reports disseminated by the FIC to agencies entitled to receive the reports. 3) The FIC Act provides that the FIC annually reviews and submits a report to the MOF annually on the implementation of the FIC as required by section 4(e) of the FIC Act. This the FIC does each year, when it submits a separate implementation report. The FIC Act provides that report only be made available to the MOF. The MOF may decide whether to release that report or parts thereof to the public.

Financial Intelligence Centre Act

COMMENTS	RESPONSES
Ongoing due diligence(clause 20) - The proposed amendment enables the accountable institution to abandon its on-going due diligence efforts if such due diligence will "tip off" the client if the due diligence was initiated off the back of a section 29 report. There is an incongruency between this clause and clause 21 as in one instance you may forfeit the refresh, but in another similar situation the refresh is enforced.	1) The proposed wording provides 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 a STR will be made to the FIC, it may discontinue the CDD process and consider filing an STR. The use of the term 'may' indicates that the provision can be used if such circumstances arises and is not required in all instances 2) This requirement is one of the deficiencies identified by FATF that the FIC Act does not meet the requirement in Recommendation 10 that where an accountable institution is unable to comply with a relevant CDD measure it should be required to consider making a suspicious transaction report in relation to its client 3) Clause 21 is dealt with below
Doubts about veracity of previously obtained information and when reporting suspicious and unusual transactions(clause 21) – 1) There is a concern for tipping off when the submission of a suspicious or unusual transaction report coincides with the process of ongoing due diligence, as is evidenced by the addition of subsection (2) to section 21C in clause 20 of the Bill. The proposed amendment of section 21D also creates a risk of tipping off if an accountable institution is required to repeat customer due diligence requirements when a section 29 report is made. 2) Noting the insertion of the word 'or' and the content of 21D(b), the resultant effect is that each time an accountable institution submits a suspicious or unusual transaction report in terms of section 29, the steps contemplated in sections 21 and 21B, are to be performed. In the absence of the provision contemplating a STR/ SAR being filed based on adequacy/ veracity of the information, the obligation is too onerous and unnecessary	1) The context of the proposals in the Bill are different in clause 20 and the same wording cannot be applied to clause 21. 2) The context of the wording in clause 21 stems from the deficiency identified in Recommendation 10 that the FIC Act does not provide for CDD measures to be undertaken when there is a suspicion of ML/TF 3) Clause 21 requires an accountable institution when, after entering into a single transaction or establishing a business relationship, makes a suspicious transaction report, it must repeat the CDD measures referred to in section 21 and 21B to the extent that it is necessary to confirm the information previously obtained 4) The extent to which the accountable conducts this exercise will depend on the risk and as set out in its RMCP 5) The essential difference in clause 20 and 21 is that in clause 20 the STR has not been made while in clause 21 the requirement is in stances where an STR has been submitted to the FIC 6) The use of the word 'or' indicates that the issue of veracity of previously obtained information is not linked to the requirement when an STR is made. They remain two separate issues.

Financial Intelligence Centre Act

COMMENTS	RESPONSES
Notification of person and entities identifies by the UN Security Council(clause 25) – 1) In terms of the POCDATARA Amendment Bill, section 25 will be repealed and is replaced by a reference to section 26A of the FIC Act. It is therefore proposed that the repeal be preempted in this Bill and that Section 26A(2) be deleted. 2) Considering the proposed amendments to section 26A (1) and 26B(1), the notice referred to will become superfluous. and suggest that section 26A(3) be deleted. 3) As a resolution adopted by the UN Security Council as contemplated in section 26A(1) of FICA has immediate effect, it is proposed that the Director of the FIC must give immediate notice of such adoption.	1) The proposed amendments to the FIC Act have been included in the POCDATARA Amendment Bill currently before the Police Portfolio Committee. The POCDATARA Amendment Bill contains amendments to the FIC Act that delete section 26A(2) which will bring the targeted financial sanction regime relating to terrorism into the scope of the FIC Act. All consequential amendments as a result of this are being dealt with through amendments in the POCDATARA Amendment Bill. 2) The POCDATARA Amendment Bill was at an advanced stage in the process when the proposals to amend the FIC Act in GLAB was developed. Due to this it was decided to keep the amendments to the FIC Act in the POCDATARA Amendment Bill and the timing of the two Bills are being monitored. 3) The insertion of the word 'immediate' is not supported as the removal of the wording 'from time to time' is a safeguard that the notice will be published as soon as practicable.
Intervention by the FIC(clause 30) - A proposal to reword section 34(1A) as the word "extend" is more appropriate in the circumstances.	Taking into account the possible unintended consequences of the proposed amendment in clause 30 it is proposed that the amendment be withdrawn
Protection of personal information(clause 35) - This proposed provision merely reiterates the position as articulated in section 6 of the POPI Act regarding the processing of personal information being excluded if the private body is acting as the agent and per the instruction of the public body. This would therefore require the FIC to instruct an accountable institution (a private body) as its agent to process specific personal information to be able to apply the exclusion from POPI Act and based on our understanding will not enable information sharing among accountable institutions to detect, prevent and report financial crime and money laundering activity.	The comment is noted, and a revision of the wording of the clause will be considered

Financial Intelligence Centre Act

COMMENTS	RESPONSES
Risk Management and Compliance Programme(clause 36) – 1) Proposal that section 42(2)(q)(iv) should be amended as follows to cater for the absence of risk. 2) Propose the deletion of reference to branches and subsidiaries	1) It is submitted that there will not be an instance where there is no risk if the host country does not have equivalent AML/CFT measures as contained in the FIC Act and the proposal is therefore not supported. 2) The proposals are not supported as the amendments in this clause are intended to address the deficiencies raised in the MER that accountable institutions should be required to implement group wide programmes to all branches and majority owned subsidiaries of the accountable institution
Clauses 37 to 42 (Penalties and Sanctions) – 1) These clauses refer to the FIC Act, in which, in section 45C, a fine is capped at R10 million for natural persons and R50 million for legal entities. However, having set fines without consideration of a natural person's net worth or a company's turnover may result in little or no impact if the person is particularly rich or the company particularly large. This needs to be revised to take into account net worth or turnover. 2) The amendment proposed in clause 39, section 52 of the FIC Act detrimentally impacts the practise of journalism. The inclusion of "any other person" would include a journalist reporting on issues relevant to the FIC, and so creates an offence for a journalist to fail to report prescribed information to the FIC. This creates an ethical conflict, and would severely hamper the ability of journalists to investigate and report on instances of financial crime.	1) Over and above the financial penalties, there are other administrative penalties such as restricting the business activities or suspension. Also, the penalties are per offence so if there are a number of contraventions the penalties will be commensurate with the number of contraventions. 2) 'any other person' in the context of the FIC Act refers to persons who have an obligation to report a suspicious transaction. In terms of section 29 a person who carries on a business, is in charge of a business, manages or is employed in the business and suspects that the business has received or is about to receive the proceeds of unlawful activities or other transactions set out in the section is obliged to report the suspicion to the FIC 3) The scenario set out by the commentator will not apply. The obligation to report will only apply if the business they are employed in is involved in any of the activities set out in section 29

Companies Act

COMMENTS	RESPONSES
Nominee ownership – 1) The Bill's approach to nominee arrangements should be seriously reconsidered. In some instances, State Capture was enabled through the use of nominee arrangements. With the country still reeling in the aftermath of State Capture, it is not clear what the intention of preserving these arrangements is**.** 2) Clearer consideration for the treatment of nominee ownership arrangements would be beneficial.	Nominees are mandated to disclose on whose behalf they acting/holdings interest fo This is again a policy issue which requires in depth consideration and consultation whic can be accommodated on the Companies Amendment bill processes. We agree with Ope Ownership comments, but it would not be appropriate to deal with this process in th Bill.
Beneficial ownership information in respect of publicly listed companies – 1) Provision to empower the Minister, in consultation with the Minister of Finance and the Financial Intelligence Centre, to exempt certain companies, including listed companies, from the requirement to file a record of the natural persons who ultimately own or control the company, and any changes. 2) We are concerned about the practical implications of this requirement, especially for listed companies with large registers, which may consist of thousands or even hundreds of thousands of shareholders. Will CIPC's systems be able to cater for large securities registers? We also question the value added by this requirement, as the annual register will only show who the shareholders are at a particular point in time. For active listed companies, the shareholders constantly change, so this requirement will not achieve the objective of promoting transparency.	These comments regarding the impact of reporting requirements on listed companies an other companies are certainly noted, and proposals will be presented to the Committee i order to potentially address some of these concerns.
Section 8 Categories of Companies – 1) The proposed addition to the Companies Act makes mandatory the registration of a non-profit company where a voluntary association which primarily receives and makes donations has its PI score go over the level at which an audit become compulsory for an NPC. The CIPC would have to institute a process for this 'conversion' as it does with the conversion of Ptys 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.	This comment is noted, and will be given consideration to. The comment does not direct relate to an existing provision in the Bill, and it would need consideration by the dtic, th CIPC, and SARS as to how this comment might potentially be addressed.

Companies Act

COMMENTS	RESPONSES
Proposed new amendment to section 52(2)- Inspecting uncertificated securities registers An amendment to section 52(2) of the Companies Act, a section dealing with the inspection of uncertificated securities registers is proposed, to o ensure public access to up-to-date details of companies' securities registers,. It is recommended to include a provision requiring the proactive publication of this data. An amendment to section 52(2) would make that disclosure mandatory and would ensure that such disclosure is not prohibited by POPIA. This proactive disclosure would relieve companies of the administrative burden of fielding direct requests under section 26 of the Act and does not go further than the right of access provided for in section 26(2) in respect of the content of information to which the access is permitted: it merely makes the access more immediate and effective. It would also enhance and broaden the understanding and knowledge of ownership and allow for better checks and cross-checks of who owns listed companies – the biggest and most impactful companies in our economy. It will furthermore increase the levels of access to company ownership information, which can only be beneficial in the fight against money laundering, tax evasion and corruption.	The comment is noted, and will be given further consideration, although particularly as this is a proposal to add a new amendment provision in the Bill, this aspect will be appropriately further considered and potentially addressed during the Companies Amendment Bill process that will be undertaken by the dtic.
Annual returns (clause 53) - 1) In respect of the proposed amendments to section 33 of the Companies Act, we recommend including an obligation on non-profit companies to disclose its members' register in their annual return. Members of a non-profit company are analogous to beneficial owners in a for-profit company. This would also require a change of the provision to which is referred in the subsection: the existing section 50 only relates to companies' securities registers, while section 24(4) of the Companies Act refers to both a securities register and members' register. 2) Section 33 also addresses external companies and their obligation to file an annual return. However, the amendments proposed in this Bill do not subject external companies to the beneficial ownership regime. This is problematic. 3) Section 33(2) of the Companies Act addresses external (or foreign) companies and their obligation to file an annual return. However, the amendments proposed in GLAB do not seem to subject external companies to the beneficial ownership regime.	In agreement to subject NPC's to submit their members register when filing Annual Returns. Also in agreement to subject external companies to this requirement (To also consider instances where such is not requirement in the country of incorporation). It will be further considered if this should be provided for in this Bill, or the forthcoming Companies Amendment Bill. In relation to public access to information, the current Companies Act provides for making information kept in Companies Registry available to public (S187 (4)(c). This will make the submitted BO information subject to this provision but however this will be done in line with the protection of privacy as envisaged in POPIA. The same principle are applied in relation to the current disclosures of information that the CIPC make in terms of said section.

Companies Act

COMMENTS	RESPONSES
Clause 56- requirement to file prescribed beneficial ownership information with the CIPC- 1) Propose that the requirements should be set out in a separate section 56A. 2) There is no provision for the disclosure of the information 3) Whether a requirement to include beneficial ownership information in both the securities register and in separate beneficial ownership information is an unnecessary duplication 4) Concern about practical difficulties and administrative burdens for listed companies to comply with requirements- exemption proposed. 5) Clarification requested regarding the relationship between "beneficial ownership" and "beneficial interest", and whether there are two distinct reports that must be submitted. 6) Proposal to place an obligation on the holders of beneficial interests and beneficial owners to report their interest to ensure that reporting is accurate and complete	Comment is noted, and further consideration will be given to the comment. Requirements regarding the disclosure of information will be set out in regulations, and comments relating to whom access to information must be ensured will be considered in order to ensure that the disclosure of information is appropriately addressed. It will be further consideration if some further specification should be provided in section 56. The comments regarding the potential duplication of reporting of information, practical difficulties and administrative burdens on listed companies are noted. Comments regarding the distinction and relationship between beneficial ownership and beneficial interest, and the reporting of beneficial interest and beneficial ownership information, will be given further considered, and refinements will be proposed in light of consideration of these comments, particularly the aspect of the impact of reporting requirements on listed companies, and the proposal that an obligation should potentially be imposed on the holders of beneficial interests and beneficial owners to report their interests where there may be alternative, reliable sources of information available regarding beneficial owners. It must ultimately be ensured that Beneficial Ownership information is collected and is ultimately made available to Competent Authorities and Law Enforcement Agencies. The current criteria for Beneficial Interest Holders does not meet the FATF definition of beneficial ownership, and therefore whatever mechanism for collecting information is permitted, it must ensure that the collect the BO information as per the criteria to be set by the adopted definition. It is important to note that s56 does not apply to all entities. The disclosures required in term of the section are subject to entity meeting the criteria of being a regulated company as defined in s117(1)*(i)*. This simply mean that the entity should be engaging in affected transaction or if the take-over regulations apply to it.

Financial Sector Regulation Act

COMMENTS	RESPONSES
Clause 59- Insertion of section 159A- proposed refinements to definition of "beneficial owner- 1) the definition could be expanded to give further clarity on reporting obligations by defining the circumstances under which owners or control may apply 2) An alternative proposed definition of "beneficial owner" is proposed 3) Alternatively, it is proposed that wherever the term "natural person" appears, same be amended to state "natural persons**(s)**" to make it clear that it can be more than one natural person	The submissions by Open Ownership and BASA are being given consideration, and proposed refinements to the definitions of "beneficial ownership" in the Bill will be presented to the Committee for consideration.
Clause 59- Insertion of section 159B- relating to the power to make standards- 1) Provide certainty on the creation of standards for critical areas of implementation and consider mechanism for access for (at minimum) law enforcement and competent authorities 2) it is foreseen that there is likely to be confusion between requirements applicable to significant owners and beneficial owners and that cognizance should be taken of unintended consequences in this regard. 3) Clarity is sought on what fit and proper requirements would constitute in respect of beneficial ownership. Whilst section 69 of the Companies Act at provides for the ineligibility and disqualification of persons to be director or prescribed officer, there is no law that dictates the ineligibility of persons entitled to purchase shares or hold ownership interests in a company. It is unclear on what basis the standard is being sought in absence of legislation relating to the criterion for a person to hold an ownership interest(s).	These comments are noted, and will certainly be taken into account in the drafting of the standards that may be made, and it will be sought to be ensured that there is clear distinction between requirements applicable to significant owners and beneficial owners. . .

Financial Sector Regulation Act

COMMENTS	RESPONSES
Clause 59- Insertion of section 159C- Directives in relation to beneficial owners- 1) The section fails to impose any sanction to encourage adherence. Our suggestion would be to consider expressly stating that failure to comply constitutes an offence in terms of section 265 of the same Act. The corresponding amendment to section 265 of that Act	The Financial Sector Regulation Act provides for various enforcement measures that may be undertaken in relation to a contravention of a directive Will engage with FSCA on this comment, it will be further considered if it is appropriate to make contraventions of this type of directive an offence.
Clause 59- Proposed insertion by BASA of a new section 159C to specify duty on beneficial owners to provide information	These comments are noted, and will be further considered, but it might be appropriate for these matters to be provided for in standards that will be issued. .

Proposed approach to registration of NPOs

- In light of the comments regarding the proposed mandatory registration of all NPOs under the NPO Act, this matter is undergoing careful consideration to develop drafting refinements to present to the Committee, and at this stage, the proposed approach regarding the registration of NPOs would be as follows:
  - Not all NPOs would be required to register, the following NPOs would be required to register:
    - Any NPO that makes donations to individuals or organisations domiciled in a foreign country, including when such individuals are physically in South Africa;
    - Any NPO that provides humanitarian, charitable, religious, educational or cultural services outside of South Africa's borders;
  - Wording would be included to explicitly make it clear that the Directorate does not have the discretion to refuse registration if the requirements of the Act are complied with, to ensure that the power of registration would not be able to be exercised in a manner that would potentially infringe on the rights to freedom of association and freedom of religion. Currently, section 13(2) provides that if the applicant for registration complies with the requirements of the Act, then it must be registered.

Proposed approach to registration of NPOs

- Similarly, wording potentially will be proposed to ensure that the grounds on which a non-profit organisation could be deregistered could not be exercised only in respect of non-compliance with requirements in the Act, and would not be able to be exercised in a manner that would potentially infringe on the rights to freedom of association and freedom of religion. Currently, the grounds for cancellation as set out in section 20 are non-compliance with requirements of the Act, or non-compliance with a provision of its Constitution, which has not been rectified after receipt of a notice contemplated in that section.
- In relation to the constitution of an NPO, the Directorate is only able to review that the constitution addresses the matters specified in section 12(2). Consideration will be given to potentially make it explicit that the Directorate cannot require an NPO to change its constitution, it may only refuse registration if the constitution does not address the matters required in section 12(2), although that already is apparently the case in the legislation.
- Making donations or provision of services outside of South Africa (the activities for which registration is required) without being duly registered would be subject to a penalty.

Proposed approach to registration of NPOs

- The activities of the NPOs must also be lawful, and therefore must be in compliance with the provisions of the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act, 2006, which includes provisions relating to providing humanitarian aid in countries deemed by the NCCC to be in conflict.
- It is submitted that retaining a completely voluntary approach, as motivated by a number of commentators, would not be sufficient to satisfy compliance with recommendation 8 of the Mutual Evaluation Report. Even an approach of only require notification would not likely be sufficient.
- It is sought to define the scope of NPOs that would be required to register, to those that most clearly pose a risk to anti-money laundering and combating terrorism financing.
- Other NPOs would continue to be able to register voluntarily.
- By narrowing the scope of NPOs who must register, some of the other concerns and comments may potentially fall away (for example, that we should not require that office-bearers be adults), because the governance requirements for those NPOs that are required to register should be reasonably rigorous.
- Further consideration will be given to the submissions that have been provided to the Committee, and subsequent submissions that will be received, and will propose amendments to the Bill to the Committee in relation to the registration of NPOs.

Ensuring Capacity to manage registration of NPOs, and also capacity to manage registers of beneficial owners

- While we do not yet have a clear estimate of the additional resource requirements of agencies whose mandate is changed/expanded by this legislation, such changes will inevitably lead to requirements for additional resources from the relevant departments. Through the budget process, government will work with those departments to ensure adequate resourcing of these priority functions.

Proposals in relation to definitions of “beneficial owner”

- The helpful proposals from commentators relating to the definition of “beneficial owner” in the Trust Property Control Act, the Companies Act, and the Financial Sector Regulation Act, and are certainly appreciated.
- Refinements to the definitions contained in the tabled Bill are being developed and will be presented to the Committee. The suggestion to remove cross-referencing in the definitions of other legislation to the definition in the Financial Intelligence Centre Act will be implemented.
- Other refinements to the definitions to ensure that the definitions capture the appropriate scope of natural persons relevant to the particular legislation will be proposed.

BENEFICIAL OWNERSHIP NATIONAL REGISTRY FRAMEWORK

IDC BOT is developing a **national integrated, inter-operable and harmonised** BO Registry framework which will enable the BO registries to provide access to law enforcement and other competent authorities via an integrated and harmonised two-tiered National BO Framework comprising core BO registries and key government BO information users and replicators, as follows:

- **Tier 1:** Comprising mainly of a corporate and legal persons BO register held by CIPC supported by a BO Trust Register under the various Masters of the High Court offices, and;
- **Tier 2:** Several government data and asset repositories that will be prime users of the Tier 1 BO information, and then replicate that information in their own Registries which will enable a NB link of assets to BO natural person data. (e.g. the property deeds register (held in various Deeds Offices) and BO register of NPOs held by the DSD)and other public benefit structures liable for tax benefits (held by SARS).

This mechanism should provide a multi-pronged, risk-based approach for effective implementation of the BOT of legal persons, and trust data Registries, within government agencies, including SARS.

BO REGISTRY DIGITAL CONNECTNESS MATTERS TO ADDRESS

Regarding Tier 1 - The CIPC as a centralised repository of basic legal person information is more advanced from a digital data infrastructure perspective, compared to the various digital capability residing in the provincial Master's Offices

The CIPC would be able to more easily transition its ICT infrastructure to a BO registry platform, as it currently does largely verify its basic data. This is not the case with the Masters' Offices having dated digital and ICT infrastructure needing a serious overall. SARS and FIC have undertaken an assessment of trust data kept digitally in or accessible from the Masters' Office, and note the trust data deficiencies is substantial needing urgent enhancement to provide more meaningful trust data to SARS and FIC.

The **national integrated, inter-operable and harmonised** BO Registry framework will require the main contemplated BO Registries to be housed in a centralised CIPC and in various decentralized provincial Masters Offices, would have to be digitally connected and integrated by way of a common BO data standard. CIPC & Masters' Offices located in various places must be digitally connected with the ability to share data between them. These 2 systems must be interoperable and allow an ability for these two registries to provide quality verified information to government agencies, and accountable institutions under FIC Act.

Practical and administrative implications for listed companies of reporting on beneficial ownership

- The comments about the practical implications for publicly listed companies to comply with reporting on beneficial ownership as proposed are certainly noted, and appropriate refinements are being developed.
- These proposals will seek to provide some flexibility in relation to the particular reporting requirements, and the manner of reporting, that may be applicable to different categories of companies, so requirements relating to listed companies could be appropriately formulated.
- It will particularly be taken into account where there is other alternative, reliable sources of relevant information that is available.
- An outright complete exemption of listed companies is not favoured, rather, it is sought to enable that appropriate requirements would be able to set that would be reasonably implementable by listed companies.
- It must ultimately be ensured that Beneficial Ownership information is collected and is ultimately made available to Competent Authorities and Law Enforcement Agencies. The current criteria for Beneficial Interest Holders does not meet the FATF definition of beneficial ownership, and therefore whatever mechanism for collecting information is permitted, it must ensure that the collect the BO information as per the criteria to be set by the adopted definition. It is important to note that s56 does not apply to all entities. The disclosures required in term of the section are subject to entity meeting the criteria of being a regulated company as defined in s117(1)*(i)*. This simply mean that the entity should be engaging in affected transaction or if the take-over regulations apply to it.