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TABLE OF PUBLIC COMMENTS ON THE GENERAL LAWS AMENDMENT BILL AND THE DEPARTMENT AND FIC RESPONSES

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General comment on time period for public consultation	• The majority of commentators raised the issue that the time period for public consultation is too short. • A few commentators also raised the issue that there was no consultation during the drafting of the Bill and prior to the Bill being tabled in Parliament	• The 2 week time period for public consultation is within the rules of Parliament. An extension to 25 October has been granted. • The urgency to address the deficiencies in the several specific laws being amended and the complexity thereof necessitated the process followed and resulting time periods to table the Bill in Parliament
Consistency and alignment of legislation	• SAIS : Unintended consequences and impact of conflicting legislation must be avoided • Timeous and sector specific guidance must be provided by regulators • The consequences of overregulation i.e., frictional costs and operations cost of implementation must be duly considered so as not to create a barrier to operate within the financial markets and ensure alignment with international best practices.	• Proposals for refinements to the definition of "beneficial owner "are submitted to the Committee for consideration, taking into account comments received • Additional guidance to be provided timeously • Noted – it should, however, be borne in mind that all jurisdictions seeking FATF compliance bear the same burden
Dear South Africa is a network of online platforms designed to facilitate government and encourage the public to participate in unbiased decision-making processes or policy formation at SOE, municipal, provincial and national levels.	• 155 did not support the Bill • 3 supported the Bill	• The comments are noted. No substantive comments were made on specific provisions in the Bill
Fragmentation of registers: a call for the adoption of BODS	amaBhungane and Corruption Watch • The creation of registers is a vital introduction. However, we have concerns with how the Bill regulates the recording and publication of those registers - primarily because the Bill creates a number of different registers for each type of entity regulated by the component pieces of	• 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

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	legislation and the differing obligations on those different entities in maintaining those registers. • In the absence of an agreed standard or approach between these various entities, there is a serious risk that beneficial ownership data will be fragmented and will do little to assist law enforcement agencies in accessing the requisite information timeously. • We call for the adoption and inclusion of the Beneficial Ownership Data Standard (BODS) within 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.	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 called the IDC on Beneficial ownership (a cabinet endorsed IDC), 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

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		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. • Access to the various registers will be dealt through regulations after consultation with all stakeholders, s and will be a staged process in line with the approach by most by other FATF compliant jurisdictions • The point about the necessity of ensuring appropriate co-ordination and consistency between the information registers is well noted. • The differences that exist are mainly due to the differences in the various type of entities and aligning terminology with the relevant Act, whilst the obligations to register and provide BO information are largely the same. The core aspects of the various definitions of BO are in line with the FATF standard and the differences cater for the differences between the types of entities.
Public Participation in Drafting of the Regulations	amaBhungane and Corruption Watch • There are numerous instances where the Bill confers responsibility to prescribe reporting requirements, time periods and people to whom information can be disclosed in regulations. The regulations are to be determined in consultation with the FIC, but there is no mention of public participation in the drafting process. The sheer volume of material to be determined in regulations means that much of the content of	• 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

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	these amendments to the Acts has not been determined in the legislation. Without public participation in the regulation drafting process there will therefore be no opportunity for concerned organisations and individuals to provide input on this important content. It is therefore imperative that public participation be written into the Acts through this Bill. • We recommend the following inclusion in all the provisions in which content is to be prescribed (the example is from clause 2 of the Bill): "The prescribed requirements referred to in paragraph (a) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), and after a full period of public consultation, including opportunity for the public to make written and oral submissions." • The Clauses in the Bill which would require such amendment are: 2, 4, 5, 11, 12, 13, 53, 54, and 55.	Justice and Constitutional Development also publishes all subordinate legislation for public consultation prior to promulgation, even where there is not an explicit requirement to publish for public consultation in the primary legislation.
Access to BO information	Open Ownership: • While much of the detail of the implementation of timely and direct access can be prescribed in secondary legislation or guidance notes, it would strengthen the legislation to include wording related to timeous and direct access. • Equally important is that once these changes are made, the relevant authorities are empowered to collect beneficial ownership data in a standardized way so that it can best be combined across different registers to connect the ownership or control of companies, trusts, non profit organisations, and other arrangements back to individual beneficial owners, or indeed with other data sources such as public contracting or asset data	• 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

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	• It is unclear who will have access to the trust Register and under what conditions, as this is as prescribed amaBhungane and Corruption Watch • We note with extreme disappointment that the Bill does not seek to make beneficial ownership registers publicly available. Currently, there are only two mentions of public registers in the Bill. Both relate to a "register of persons who are disqualified from serving" as a trustee within a trust (Clause 2) or as an office-bearer within an NPO (Clause 13). FATF has listed the requirement of making beneficial ownership information "publicly available" in their Guidance on Transparency and Beneficial Ownership as part of understanding the risk associated with legal persons, and particularly in respect of companies' registers. • It is vital that the information disclosed provides sufficient information to the public while not unjustifiably limiting POPIA. As mentioned elsewhere, POPIA should not - and need not - prevent disclosure of certain personal information. In addition, the disclosure of severely-redacted beneficial ownership data would not serve the purpose of public disclosure. The legislation should stipulate the minimum standards of information to be disclosed. We have suggested that, at a minimum, the full name and contact details of the beneficial owner be disclosed to allow for "unambiguous identification", as characterised by Open Ownership. The legislation should also require that the regulations clearly set out what information has been collected by the accountable institution but any justifications for	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

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	why that information is not being made publicly available. • We make the following recommendations to allow for proactive disclosure of the registers and ensuring public access to updated registers: (5) The prescribed requirements referred to in this section must give effect to ensuring public access to the register. BASA Whilst the proposed amendments throughout the different pieces of legislation speaks to the accessibility of beneficial ownership information to "prescribed persons" it is submitted that the list of prescribed persons must include all accountable institutions as defined under the FIC Act to ensure accessibility and availability of the required information to enable transparency of the clients of the accountable institution and to assist accountable institutions to fulfil their obligations under the FIC Act insofar as identifying and or verifying beneficial owner information. In this regard, please see BASA's comments under line-item numbers 6, 9 and 33.	being done, it is submitted that it is appropriate to put the information in a registry and make it available with sufficient safeguards. • The role of the National Treasury through the Minister of Finance as well as the FIC will ensure that the development of the regulations relating to the registers in the different laws are consistent. • As a best practice guide the FATF definition of competent authorities that should have access to registers is as follows: Competent authorities refers to all public authorities with designated responsibilities for combating money laundering and/or terrorist financing. In particular, this includes the FIU; the authorities that have the function of investigating and/or prosecuting money laundering, associated predicate offences and terrorist financing, and seizing/freezing and confiscating criminal assets; authorities receiving reports on cross-border transportation of currency & BNIs; and authorities that have AML/CFT supervisory or monitoring responsibilities aimed at ensuring compliance by financial institutions and DNFBPs with AML/CFT requirements. • Regulations will set out the details around the access to the information contained in the register

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Verification of BO information	Open Ownership: Need to create certainty on the intent of the drafters if the legal responsibility and mandate to verify beneficial ownership data were included in primary legislation with the detail being determined in subsidiary legislation. amaBhungane and Corruption Watch Investigative journalists have found that perpetrators of State Capture were empowered by the fact that business addresses were unverified. In some instances, registered company addresses were "business post-boxes". In other instances, the address would lead to an abandoned building or an open field. The lack of verification made it considerably harder to identify accountable individuals. In order to address this weakness identified by FATF we propose that the Bill seeks to encourage compliance through the provision of an administrative sanction. Additional verification measures (e.g. updates to a company's business address and other relevant information) may be included in a company's annual return - with the addition of turnover thresholds, imposed through regulation, to ensure that smaller entities are not overburdened. The remainder would come down to implementation: ensuring appropriate budget allocations, resourcing and monitoring of performance / compliance	• Systems will not initially be in place to pick up on anomalies – required from the CIPC would be a BO-Register where from data can be sourced by LEA's. It is the duty of the LEA's to scrutinize the data and investigate further to ascertain any anomalies. • In terms of current information that is kept by the CPIC, they do verify identities of local directors via the department of home affairs. It also makes it an offence in terms of s214 if a person to provide false records or misleading information. • Further consideration will be given to placing obligations on beneficial owners to provide accurate information. • The capacitation of the systems in relation to the verification of information is an aspect that will be addressed through the IDC BOT BO Framework. • Offences provisions will deter persons from providing inaccurate information
TRUST PRORERTY CONTROL ACT		
Clause 1 'beneficial owner'— (a) has the meaning defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); and (b) for the purposes of this Act, in respect of a trust, includes, but is not limited to, a natural	AmaBhungane & Corruption Watch • We have serious concerns around how the definition of a "beneficial owner" has been proposed in the Bill. It is a demonstration of prolixity and fragmentation (i.e. multiple amendments in various pieces of legislation rather than creating a single, universal definition)	• Proposals for refinements to the definition of "beneficial owner" will be to the Committee for consideration taking into account comments received. • See comment above: "The differences that exist are mainly

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person who directly or indirectly ultimately owns the relevant trust property or exercises effective control of the administration of the trust, including— (i) each founder of the trust; (ii) if a founder of the trust is a legal person or a person acting on behalf of a partnership, the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person or partnership; (iii) each trustee of the trust; (iv) if a trustee of the trust is a legal person or a person acting on behalf of a partnership, the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person or partnership; (v) each beneficiary referred to by name in the trust deed or other founding instrument in terms of which the trust is created; (vi) if a beneficiary referred to by name in the trust deed is a legal person or a person acting on behalf of a partnership or in pursuance of the provisions of a trust agreement, the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person, partnership or trust; and (vii) a person who, through the ability to control the votes of the trustees or to appoint the trustees, or to appoint or change the beneficiaries of the trust, exercises effective control of the trust.''.	that subverts the intentions of addressing and properly regulating beneficial ownership. This should be seriously addressed. • Our submission is that the Bill should only introduce a single definition of "beneficial owner" within the Financial Intelligence Centre Act. This definition should be sufficiently broad to cater for the various scenarios within which it will be applied. Secondary legislation (such as the Companies Act, Trust Property Control Act, etc.) should not seek to alter or expand the definition as that would introduce regulatory uncertainty and create loopholes that can be exploited. Less is more in this scenario. • We recommend an inclusion in this provision to allow for proactive disclosure of the register of all trusts' beneficial ownership by the Master. One way to do this would be through the inclusion of additional subsections between subsections (2) and (3) in the existing proposed amendment, reading: "(3) The Master must annually disclose in the prescribed manner the full register of all trusts' beneficial ownership within its jurisdiction. (4) The prescribed requirements referred to in this section must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001). The requirements must include, at a minimum, the full name and contact details of the beneficial owner to ensure unambiguous identification, a disclosure of any additional information recorded but not available for public access and a justification as to why such information has been withheld and must provide for access for members of the public to the register."	due to the differences in the various type of entities and aligning terminology with the relevant Act, whilst the obligations to register and provide BO information are largely the same. The core aspects of the various definitions of BO are in line with the FATF standard and the differences cater for the differences between the types of entities." • Access to the register will be determined in regulations that will be promulgated after consultation

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	Open Ownership • Open Ownership raised the concern of difficulty to assess the consequence of the cross reference to BO definition to the FIC Act – may unnecessarily complicating compliance • Furthermore the definition does not sufficiently cover all forms of ownership and control and does not specify that ownership and control can be held both directly and indirectly. The definition should comprise a broad catch all definition of what constitutes BO including a non-exhaustive list of example ways in which BO can be held. • The definition should specify a threshold and include a clear prohibition of agents, custodians, employees, intermediaries, or nominees acting on behalf of another person qualifying as a BO. • The current definition only applies to beneficiaries listed in the trust deed and not to new or discretionary beneficiaries – The definition of beneficial owners should include protectors, administrators, discretionary beneficiaries and any other natural person exercising ultimate effective control over the trust (including through a chain of control/ownership or through a nominee arrangement) • The definition should be applicable to foreign trusts covered under the regime, certain terms like 'founder' may not always be clear – Add 'or equivalent role' to all trust roles.	• Proposals for refinements to the definition of "beneficial owner "are submitted to the Committee for consideration taking into account comments received. • Guidance can be provided in regulations regarding examples of the ways in which BO can be held. • The intention is not to hard code a threshold amount in the various Acts but to rather provide best practice through guidance and it is relevant to recognize that the usefulness of thresholds is relatively limited, as, for example, as a person with 2% shareholding can control the legal entity or arrangement by other means • The terminology used to describe the parties to a trust is consistent with the existing provisions in the Trust Property Control Act ie founder, trustee and beneficiaries, and it is also relevant to note that many of these categories referred to in the current definition. In respect of parties exercising control that are not any of the 3 parties listed above, paragraph (b) (vii) lists such persons. However, the comment will be considered to ensure that all relevant categories are covered. • It is agreed that Trust property located in the Republic must be within the ambit of the BO provisions even if it is

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		administered in terms of a foreign trust. • 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 of the two points above, 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. • The current provisions in the TPCA could potentially be strengthened, as the Master has the discretion whether to authorise a trustee administering such property. Revisions to the section that deals with foreign trusts. Consideration will be given to developing refinements to the current provisions, or at

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	LSSA • This meaning of "beneficial owner" in subsection (a) may not be inclusive enough to be effective in respect of the essence of a trust. • "natural person": In trust practice it sometimes happens that another trust can be the beneficiary of a trust - thus the reference to only "a natural person" is inadequate. • "directly or indirectly ultimately owns the relevant trust property": It seems that these underlined words are intended to qualify the persons/parties/entities referred to in paragraphs (b)(i) to (vii) also quoted above. In other words, the mere fact to be a "founder" or a "trustee" or a "beneficiary", or the other versions of it referred to in the said sub-paragraphs (i) to (vii), is not enough to cause a "natural person" on its own, to qualify as "a beneficial owner" but in addition, the natural person has to "ultimately" own the trust property, "directly" or "indirectly". How this will apply in the context of a fully discretionary trust (which is the most common kind of trust in South Africa) can and will be quite difficult. The reason being that in the case of a fully discretionary trust with beneficiaries defined by class, such as the descendants of X, it can happen that X, albeit named in the trust deed will not qualify as a beneficiary and that "ultimately" only the grandchildren or perhaps the grand- grandchildren (all who may be unborn during X's lifetime) will "ultimately" be vested with the trust property as "owners". Prior to such vesting all the other unnamed	least to ensure that the provisions in the forthcoming Regulation fo Trust Property Bill will clearly provide for this. • The current definition of "beneficial owner" in (b)(iv) does recognize the scenario referred to in relation to "directly, indirectly, or ultimately owns". • The comment regarding "natural person" would seem to be covered in included under item (vi) of the definition i.e. "<u>if a beneficiary</u> referred to by name in the trust deed is a legal person or <u>a person acting on behalf of a partnership or in pursuance of the provisions of a trust agreement</u>, <u>the natural person who directly or indirectly ultimately owns or exercises effective control</u> of that legal person, partnership or <u>trust</u>; and". • In relation to to the first part of the proposed definition, natural persons who directly or indirectly owns the trust property or exercise effective control. The second part lists some (not exhaustive) of the parties that re beneficial owners. It appears that the comments related to direct and indirect ownership (that resulted in the write up on vesting) are not premised on a correct interpretation of the definition. • In the context described (i.e. no 'living natural person' who ultimately owns the trust property can be determined), would <u>the 2nd</u>

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	beneficiaries will only posses a spes (hope) that they may be benefitted by the trustees of the trust until the trustees actually exercise their discretion to benefit same. The term "vest" can, for trust law purposes, bear different meanings as will be explained below. The current wording thus creates unnecessary uncertainty as to which beneficiaries qualify as "beneficial owners" for purposes of the Bill. • The use of the terms "directly" or "indirectly" in respect of the trust's "ultimate ownership" contributes further to the confusion of the intended meaning of the phrase quoted above, especially when the different meanings of the word "vesting" of a trust benefit is taken into consideration. • For purposes of the Bill and the proposed amendments to the Trust Property Control Act, the aforementioned may be indicative of the difficulties and the costly route in future to effectively implement the proposed measures in order to determine and establish "control" of a trust, all of which can lead to an inundated number of court cases that may be caused by the proposed measures, unless somewhat clearer measures of what constitutes control for purposes of the Bill are introduced. • What is lacking in the definitions of the parties described in the proposed amendment of section 1(b)(i)-(vii) of the TPC Act and which will require further attention in the Bill, is where one trust is the founder of another trust, as in the case of a so-called "roll-over" trust • In the proposed amendments to the TPC Act it is not clear whether the said amendments will apply to all the different forms of trusts such as also in respect of testamentary trusts ("bewind" and real), charitable / public benefit organisation	part of the BO definition not at least capture the natural who exercises effective control of the administration of the trust (which could also be the founder, trustee or any other person with such control), as there is no requirement that this person also "ultimately own' the trust property? • This comment regarding where one trust is a founder of another trust is noted, and will be further considered, as currently the situation is provided for where a trust is a beneficiary of another trust. • This comment is noted, in relation to certain types of trusts that may not fall under the ambit of the FIC Act, and where the AML/CFT risk is low, and will be further considered, although it will need to

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	(PBO) trusts, B-BBEE trusts, employee trusts, court order trusts (as in RAF cases), special trusts for age and ability related persons (as provided for in the definition of same in section 1 of the Income Tax Act. The recommendation is that the Bill should clarify this. If the amendments are to apply to all the said forms of trust the question is then whether some of these trusts should not be exempt in terms of the common law principle of de minimis non curat lex (the law does not regard (concern itself with) trifles). • Because of the effect and all the implications as well as all the additional duties that comes with it for a "natural person" when qualifying as a "beneficial owner" of a trust in terms of the proposed definition/s in the TPC Act, it may be important to clarify in the Bill when "beneficial ownership" will terminate? Even more so, if taken into consideration that failure to comply with some of the stipulations, albeit after a process is followed, can lead to criminal offenses and harsh penalties etc. Webber Wentzel □ We submit that the legislator may wish to consider clarifying what is meant by the terms "effective control" and "control" (used in the definition of "beneficial owner") since while control in the company law context is generally determined with reference to, for example, a majority of the voting rights associated with a company's securities, for purposes of the Financial Intelligence Centre Act, 2001, ownership of 25% or more of the shares with voting rights in a legal person is understood to usually be sufficient to exercise control of it. □ We further submit that the legislator may wish to consider providing for the threshold, if any, in regulations to the Act rather than hardcoding the	be assessed whether is a strong case for permitting the possible exemption of certain categories of trusts. • A provision like that might come with complications and might probably only amount to the repetition of the definition of a beneficial owner in a negative statement. It is already difficult to define a beneficial owner in the South African context. • It is accepted that the BO of a trust may change, but this will be determined by the trust instrument/trustee/current BO and the Master must be notified accordingly by the trustee under the amended s11A()(d). • FIC Guidance Note 7 currently provides for this but also explains the correct context of using the threshold ("A controlling ownership interest depends on the ownership structure of the company. It may be based on a threshold, e.g. any person owning more than a certain percentage of the company (e.g. 25%).)". SA's AML framework was also interrogated by the Global Forum's AEOI Peer Review assessors in reviewing the AEOI Standard legal

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	percentage in the Act. Any such threshold should be determined in consultation / agreement with the Financial Intelligence Centre to ensure consistency throughout the market and in respect of different legal persons. We also submit that if the legislator does not wish to provide for a threshold at present, it may wish to consider providing for the power (to prescribe a threshold) in the Act, should a threshold become desirable in future (so avoiding the process of amending the Act at that time).	framework incorporated in SA, but in the end they accepted the FICA approach (no prescribed threshold required in AML legislation) based on this response: ""The term "Beneficial Owner" or "Controlling Persons" is incorporated in SA's domestic legal framework implementing the AEOI in accordance with the CRS and the Commentary (i.e. in accordance with Recommendation 10 and its Interpretative Note of the FATF Recommendations 2012). Although SA's domestic legal framework implementing the AEOI Standard accordingly incorporates the guidance that anything over a 25% threshold may identify a control ownership interest, its AML legislation (the Financial Intelligence Centre Act) additionally looks to any ownership interest that gives rise to concern as determined in applying a risk-based approach – even if a lower percentage. The FATF Interpretative Notes on the Recommendations are incorporated in in SA's domestic AML legal framework through the enactment of the FATF 2012 Recommendations in the SA AML legislation (the FIC Act, which in section • The courts have made a distinction between legal control and factual control when dealing with sham trusts. The definition in

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		the TPCA should include both forms • The terms will take on the ordinary dictionary meaning. However consideration will be given to expanding on the term to ensure consistent application of the requirements • This comment regarding the potential for a threshold is noted, and will be given further consideration, although it would not be desirable to provide for a specified threshold in primary legislation. • The intention is not to hard code a threshold amount in the various Acts but to rather provide best practice through guidance
	NGOLAW, Milk Matters. True North 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. 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. Amend (b)(i) and (ii) as marked: (i)- each initial donor or founder of the trust who is still living; (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	• Proposed revisions to the definition of "beneficial owner" will be submitted to the Committee, taking into account the comments received it should be noted that the definition in its final form will need to contain terminology consistent with the Trust Property Control Act

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	still in existence, the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person or partnership;	
Foreign owned trusts	• Open Ownership: The amendments to the Trust Property Control Act are not explicit in bringing foreign owned trusts firmly within the disclosure framework. • LSSA: There is no clear indication in the Bill that it will also apply to foreign trustees as provided for in section 8 of the TPC Act. Thus, because foreign trustees might not be required to be "authorised" by the Master (and in this way then escape the definition of "beneficial ownership") it is recommended that because of the specific object of the Bill, particular attention be given to the position of foreign trustees and be addressed in the Bill. • If the intention is to bring foreign trustees within the scope of the definition of ''beneficial owner" it should be provided for and indicated as such in the Bill.	• 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. The current provisions in the TPCA are not quiet conducive for this as the Master has the discretion whether to authorise a trustee administering such property. Revisions will be proposed to tighten the section that deals with foreign trusts. • In SA's OECd Global Forum's *2022 Exchange of Information on Request Peer Review Report* the following shortcoming is identified: • "In respect to trusts where a South African resident is a trustee of a foreign trust and the trust property is not held in South Africa, beneficial ownership information may not be available." This led to the recommendation: "**South Africa is recommended to ensure that beneficial ownership information is available for all such trusts where a South African resident is a trustee of a foreign trust and the trust property is not held in South Africa**." Notably, the concern was not foreign trusts but resident trustees of foreign

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		trusts. They were satisfied that under section 8 of the TPCA 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. • Note that **under tax law**, if a foreign trust is effectively managed by a trustee(s) in South Africa, such trusts will have to be registered as taxpayers in South Africa. They will effectively be regarded as resident trusts for as long as they are managed in South Africa. Furthermore, the individual tax return of a trustee, founder or trust beneficiary, also requires tax information regarding their foreign investments and structures, such as offshore trusts and partnerships.
	BASA 1) BASA proposes that the proposed definition of "beneficial owner" as reflected in **Annexure A** be adopted. 2) Alternatively, if the definition is not adopted, BASA proposes that: a) 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. b) The wording "if beneficiaries are not referred to by name in the trust deed or other founding	• Proposed revisions to the definitions of "beneficial owner will be submitted to the Committee, taking into account the comments received • In terms of the Interpretation Act "words in the singular number include the plural, and words in the plural number include the singular".

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	instrument in terms of which the trust is created, the particulars of how the beneficiaries of the trust are determined" as stipulated in section 21B(4)(iii) of the FIC Act be included into the definition of beneficial ownership in the Trust Property Control Act. c) The wording in sub-section (b)(vii) be replicated in proposed amendments to section 21B of the FIC Act.	• Consideration will be given as to how discretionary beneficiaries should be appropriately included in the definition of "beneficial owner".
Clause 2 Section 6 of the Trust Property Control Act, 1988, is hereby amended by the insertion after subsection (1) of the following subsection: (1A) A person is disqualified from being authorised as a trustee if the person— (a) is an unrehabilitated insolvent; (b) has been prohibited by a court to be a director of a company, or declared by a court to be delinquent in terms of section 162 of the Companies Act, 2008 (Act No. 71 of 2008), or section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984); (c) is prohibited in terms of any law to be a director of a company; (d) has been removed from an office of trust, on the grounds of misconduct involving dishonesty; (e) has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence— (i) involving fraud, misrepresentation or dishonesty, money laundering, terrorist financing or proliferation financing activities as defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); (ii) in connection with the promotion, formation or management of a company, or in connection with any act contemplated in section 69(2) or (5) of the Companies Act, 2008; or	LSSA • ''(1A) A person is disqualified from being authorized as a trustee if the person -": The recommendation is that the word "authorized" referred to here should be indicated in the Bill as "authorized in terms of section 6(1)" of the TPC Act. • It is recommended that purely on democratic and perhaps also constitutional principles, the consultation group should be enlarged / extended to at least include civil professional legal and financial organisations / institutions. Webber Wentzel We submit that the following additional subsections should be included after subsection (1G): "(1H) A person who is disqualified, as set out in this section, must not– (a) be appointed as a trustee, or consent to being appointed as a trustee; or (b) act as a trustee. (1I) The trustees of a trust may not knowingly permit a disqualified person to serve or act as a trustee of the trust." amaBhungane and Corruption Watch Subsection (1B)(a) limits this disqualification to 5 years. This disqualification is too short.	• Agree • 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 Develop currently publishes all secondary legislation for public comment, without any requirement to do so in primary legislation. The reason why the Minister of Finance is specifically included is because it the Minister does not ordinarily consult with other Ministers before publication of regulations (except where they have financial implications, then Minister of Finance will be consulted). The Regulations that will be promulgated will certainly be published for comment.

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(iii) under this Act, the Companies Act, 2008, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, 1998 (Act No. 89 of 1998), the Financial Intelligence Centre Act, 2001, the Financial Markets Act, 2012 (Act No. 19 of 2012), Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004), or the Tax Administration Act, 2011 (Act No. 28 of 2011); or (f) is an unemancipated minor, or is under a similar legal disability. (1B) A disqualification in terms of subsection (1A)(d) or (e) ends at the later of— (a) five years after the date of removal from office, or the completion of the sentence imposed for the relevant offence, as the case may be; or (b) one or more extensions, as determined by a court from time to time, on application by the Master in terms of subsection (1C). (1C) At any time before the expiry of a person's disqualification in terms of subsection (1A)(d) or (e)— (a) the Master may apply to a court for an extension contemplated in subsection (1B)(b); and (b) the court may extend the disqualification for no more than five years at a time, if the court is satisfied that an extension is necessary to protect the public, having regard to the conduct of the disqualified person up to the time of the application. (1D) A court may exempt a person from the application of any provision of subsection (1A) (a), (c), (d) or (e). (1E) The Registrar of the Court must, upon— (a) the issue of a sequestration order;	Grounds for disqualification include acts of dishonesty like fraud. Comparable offences, such as those imposed for delinquent directors in terms of section 162 of the Companies Act, prescribe a minimum ban of 7 years. At the very least the provision as proposed in the Bill should match this standard - given the severity of the acts that form the basis of the grounds for disqualification. The same holds true for disqualification in terms of the NPO Act as proposed by the Bill. BASA There is a duplication/overlap between (e) and (e)(i) – "*fraud*" is repeated and is similar to misrepresentation or dishonesty (unless this relates to a specifically prescribed offence); and "fraud, misrepresentation or dishonesty" etc are not defined in section 1(1) of the FIC Act – there should be a separation between the offences listed in (e)(i). BASA proposes that section 1A(e) be amended as follows: "(e)"has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined ~~more than~~ the prescribed amount **in accordance with the applicable legislation,** for theft, fraud, forgery, perjury or an offence— (ii) involving ~~fraud, misrepresentation or dishonesty,~~ money laundering, terrorist financing or proliferation financing activities as defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);"	• The wording of the section is consistent with the wording in section 69 of the Companies Act which allows for a period within which the disqualification applies, although we will double check the proposed provisions as recommended. • The wording of the section is consistent with the wording in section 69 of the Companies Act which allows for a period of 5 years • Paragraph (e)(i) will be redrafted taking into consideration the comment • The second proposal to amend paragraph (e) is not supported . The reference to the prescribed amount is set in terms of section 69 of the Companies Act. Where the fine imposed is in access of prescribed amount then the section will apply. In terms of the Companies Regulations the prescribed minimum value of a fine upon conviction for certain offences, which would result in automatic disqualification as a director in terms of section 69 (8) (b) (iv), is R 1 000.

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(b) the issue of an order for the removal of a person from any office of trust on the grounds of misconduct involving dishonesty; or (c) a conviction for an offence referred to in subsection (1A)(e), send a copy of the relevant order or particulars of the conviction, as the case may be, to the Master. (1F) The Master must notify each trust which has as a trustee to whom the order or conviction relates, of the order or conviction. (1G) (a) The Master must establish and maintain in the prescribed manner a public register of persons who are disqualified from serving as a trustee, in terms of an order of a court pursuant to this Act or any other law. (b) The prescribed requirements referred to in paragraph (a) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).''.		
Clause 3 Section 10 of the Trust Property Control Act, 1988, is hereby amended by the addition of the following subsection, the existing provision becoming subsection (1): ''(2) A trustee must disclose their position as trustee to any accountable institution with which the trustee engages in that capacity, and must make it known to the accountable institution that the relevant transaction or business relationship relates to trust property.	LSSA • Keeping in mind the different forms of trusts indicated above, varying from "special trusts" to court order trusts (in Road Accident Fund and other cases where compensation is ordered / granted), consideration should perhaps be given here to some exemptions and/or a qualifying minimum amount for "the relevant transaction or business relationship relates to trust property" which will be exempt from disclosure in terms of the common law principle of de minimis non curat lex (the law does not regard (concern itself with) trifles). Webber Wentzel □ We submit that section 10(2) should be amended to require trustees to make these	• The obligation to disclose to an accountable institution that one is a trustee is not onerous. The accountable institution will then determine if it is a trust falling within the scope of the FIC Act. Certain trusts do not fall under the scope of the FIC Act, namely o Testamentary disposition o By virtue of a court order o A person under curatorship o Trustees of a retirement fund • The accountable institution is required to keep a record of this

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	disclosures in writing, and to maintain a record of these disclosures for evidentiary purposes. We submit that the heading of section 10 should also be amended to reflect the expanded ambit of the section, as follows: "Trust account and disclosure to accountable institutions.". BASA It is proposed that the trustee also discloses the beneficial ownership details and provide that trustees provide an organisation structure as per prescribed regulations. It is proposed that section 10(2) be reworded as follows: ''A trustee must disclose their position as trustee, **together with any beneficial ownership details of the trust,** to any accountable institution with which the trustee engages in that capacity and must make it known to the accountable institution that the relevant transaction or business relationship relates to trust property.''	information as part of the customer due diligence measures • In addition, the requirement to record the accountable institution that the trustee uses as an agent is provided for in clause 4 • Agree to amend the heading • 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 • Clause 5 sets out the obligation on the trustee to establish and record the beneficial ownership information of the trust
Clause 4 Section 11 of the Trust Property Control Act, 1988, is hereby amended in subsection (1)— (a) by the substitution in paragraph (d) for the full stop of ''; and''; and (b) by the insertion after paragraph (d) of the following paragraphs: ''(dA) record the prescribed details relating to accountable institutions which the trustee uses as agents to perform any of the trustee's functions relating to trust property, and from which the trustee obtains any services in respect of the trustee's functions relating to trust property; (dB) the prescribed requirements referred to in paragraph (dA) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by	LSSA • Consideration should perhaps be given also here to a qualifying minimum amount / value for "trustee's functions relating to trust property" which will be exempt in terms of the common law principle of de minimis non curat lex (the law does not regard (concern itself with) trifles) • It is recommended that purely on democratic and perhaps also constitutional principles, the consultation group should be enlarged / extended at least to include private/civil professional legal and financial organisations / institutions.	• A threshold amount for the obligation to record the details of the accountable institution is not supported as it would add to the administrative burden of proving that the trust property falls within the certain threshold • 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

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section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).		regulations made in terms of the Companies Act the Nonprofit Organisation Act. The Departemnt of Justice also publishes all subordinate legislation for comment prior to promulgation, even if there is not an explicit requirement for publication in the primary legislation.
Clause 5 ''Beneficial ownership 11A. (1) A trustee must— (a) establish and record the beneficial ownership of the trust; (b) keep a record of the prescribed information relating to the beneficial owners of the trust; (c) lodge a register of the prescribed information on the beneficial owners of the trust with the Master's Office; and (d) ensure that the prescribed information referred to in paragraphs (a) to (c) is kept up to date. (2) The Master must keep a register in the prescribed form containing prescribed information about the beneficial ownership of trusts. (3) A trustee must make the information contained in the register referred to in subsection (1)(c), and the Master must make the information in the register referred to in subsection (2), available to any person as prescribed. (4) The prescribed requirements referred to in this section must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).''. LSSA	Open Ownership: • The information to be collected is currently prescribed information which needs to be specified to be sufficient to unambiguously identify. There are no provisions for: ○ which information of the prescribed information will be made available to users ○ a requirement for the Master to verify information e.g. identities ○ a requirement to keep information up to date if e.g. a new beneficiary is born or a new discretionary beneficiary is added ○ structured data ○ how the data will interact with the company register • There are no provisions for a public consultation period – To insert wording that the Minister must invite comments on draft amendments before publication in Gazette after approval from Parliament • Include provisions for foreign trusts – the should also include provisions for parties to a trust which may not exist under SA law eg protectors	• The forthcoming Regulation of Trust Property Bill will propose to provide for preliminary verification of information at the point of its collection by a trustee. • A requirement to keep information up to date is provided for in clause 11A(1)*(d)* • Access and details on beneficial owner information will be fleshed out in regulations after public consultation • 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 the Nonprofit Organisation Act. The Departemnt of Justice also publishes all subordinate legislation for comment prior to promulgation, even if there is not an explicit requirement for publication in the primary legislation.

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	• It is believed that there are still many inter vivos trusts with only a single fix property as a trust asset, not to even mention the many "small" testamentary trusts created for minor or incapacitated beneficiaries with relatively low value trust assets administered by trustees who may have to "establish and record" in terms of the proposed measures in the Bill. for which most, if not all the stipulations of the Bill might be a total "over kill". Keeping in mind also the different forms of trusts indicated above, varying from "special trusts" to court order trusts (in RAF and other cases where compensation is ordered / granted), consideration should perhaps be given here to some exemptions and/or a qualifying minimum amount/value which will be exempt from "establishing and recording" because of of the common law principle of de minimis non curat lex (the law does not regard (concern itself with) trifles).	• A protector is not recognized in SA Trust law and the term is not used in the Trust Property Control Act. The proposed definition of a "beneficial owner" should still be wide enough to include them (and other role players in trusts that are not part of trusts in South Africa) if they fall under the ambit of a beneficial owner, to cater for instances where there layers of "legal distance" between the BO and the assets spread over several jurisdictions.
	• Although we cannot and certainly do not wish to speak on behalf of the Master's offices, we can only comment on this specific measure imposed on the Master from a current and foreseeable future perspective of how service delivery by the Master's offices is experienced by users of the Master's offices throughout South Africa. It is our serious concern that unless the Master's offices are properly staffed with skilled personnel, all the good intentions with the Bill in respect of the administration of trusts and in respect of which the TPC Act finds application, will not come to fruition or reality. • It is recommended that purely on democratic and perhaps also constitutional principles, the consultation group should here also be enlarged / extended at least to include	• There will need to be capacitation provided to the Master's Office to carry out these functions, and this will be addressed through engagement between the National Treasury and the DoJCD, and also through the work of the IDC BOT that is working on the beneficial ownership framework for South Africa.

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	private/civil professional legal and financial organisations / institutions. Webber Wentzel □ We submit that a duty to make information relating to the beneficial owners of a trust available to companies in which trusts are invested and to accountable institutions that require specific prescribed information should be placed on trustees. Alternatively, such companies should be included in the persons to whom the information must be made available (to be prescribed) (see below). □ In view of the fact that the prescribed information relating to beneficial owners is likely to include personal information and confidential information and may – depending on the information requirements prescribed – include sensitive commercial information, we submit that the persons to be prescribed should be limited to: o founders; o trustees; o beneficiaries; o companies in which trusts are invested (if not dealt with in terms of an amendment to this section (see above)); o accountable institutions that require specific prescribed information;and o regulatory authorities. • We also caution that trustees and the Master may be required to disclose personal information of beneficial owners where the disclosure of this information may be prohibited under foreign legislation. ASISA It is imperative that accountable institutions have access to information on beneficial ownership of trusts.	• The type of information to be recorded will be set out in regulation • These comments are noted. - Access to beneficial owner information will be determined in regulations

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	BASA 1) BASA proposes that its amendments to section 11A as reflected in **Annexure A** be adopted. 2) Alternatively, if the proposals are not adopted, BASA proposes that section 11A(1)(d) be amended as follows: "ensure that the prescribed information referred to in paragraphs (a) to (c) is **adequate, accurate and** ~~kept~~ up to date." 3) Alternatively, it is proposed that accountable institutions be included as prescribed persons in the Regulations.	• Noted - Access to beneficial owner information will be determined in regulations • The proposal is not supported as 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 will ensure the accuracy of the information
Clause 6 ''Failure by trustee to account or perform duties 19. (1) If any trustee fails to comply with a request by the Master in terms of section 16 or to perform any duty imposed upon **[him]** the trustee by this Act, the trust instrument or by any other law, the Master or any person having an interest in the trust property may apply to the court for an order directing the trustee to comply with [**such**] the Master's request or to perform **[such]** the duty. (2) A trustee who fails to comply with an obligation referred to in 15 section 10(2), 11(1)(dA) or 11A(1), commits an offence and on conviction is liable to a fine not exceeding R10 million, or imprisonment for a period not exceeding five years, or to both such fine and imprisonment.''.	LSSA • The penalty clause in 19(2) is commendable but as indicated above, our concern is to what extent will it be practicable to enforce it with the current and forseeable future service delivery experienced from the Master's offices in the RSA. • See again also our concerns and comments above, for which the common law principle of de minimis non curat lex (the law does not regard (concern itself with) trifles) can easily find application and where the South African society in such instances rather be decriminalized instead of the opposite. Webber Wentzel □ Since trustees may need to place reliance on information that is provided to them, we submit that section 19 should be amended to provide that a trustee will not be guilty of an offence in terms of section 11A(1) if the trustee can show that the	• There will need to be capacitation provided to the Master's Office to carry out these functions, and this will be addressed through engagement between the National Treasury and the DoJCD, and also through the work of the IDC BOT that is working on the beneficial ownership framework for South Africa. • 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

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	trustee took all reasonable steps to establish the beneficial ownership of the trust. We note that section 19(2)'s proposed introduction of these new offences(for failure to comply with an administrative obligation embodied in sections 10(2), 11(1)(dA) or 11A(1)) is likely to disincentivise persons to act as trustees.	establish and keep a register of beneficial ownership. • The forthcoming Regulation of Trusts Bill will propose to provide that a trustee that wilfully fails establish and keep register of BO, or that knowingly keeps false information of a beneficial owner is guilty of an offence. It also will provide sanctions for the provision of wrong information to a trustee.
Clause 7 Section 20 of the Trust Property Control Act, 1988, is hereby amended by the substitution for subsection (2) of the following subsection: ''(2) A trustee may at any time be removed from office by the Master— (a) if **[he has been convicted in the Republic or elsewhere of any offence of which dishonesty is an element or of any other offence for which he has been sentenced to imprisonment without the option of a fine]** the person becomes disqualified	LSSA • "the person becomes disqualified to be authorised as a trustee in terms of section 6(1A)": See again our comments in respect of section 6(1A). in terms of which foreign trustees may fall outside the scope of having to be authorised by the RSA Master causing these trustees to fall outside the scope of the Bill. • "if the trustee fails to give security or additional security" See our comments in respect of foreign trustees and the reference to the said Wills & Trusts par B6.2.3 where the following opinion is expressed: "It also seems that the requirement for furnishing security in terms of section 6(2) might fall away	• See above responses in relation to foreign trusts, and we will consider proposing wording to clarify how section 6(1A) would apply to foreign trustees.

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to be authorised as a trustee in terms of section 6(1A); or (b) if the trustee fails to give security or additional security, as the case may be, to the satisfaction of the Master within two months after having been requested **[thereto]** to do so by the Master, or within [such] a further period [as] that is allowed by the Master; or (c) if **[his]** the trustee's estate is sequestrated or liquidated or placed under judicial management; or (d) if **[he]** the trustee has been declared by a competent court to be mentally ill or incapable of managing **[his]** their own affairs or if **[he]** the trustee is by virtue of the **[Mental Health Act, 1973 (Act No. 18 of 1973)]** Mental Health Care Act, 2002 (Act No. 17 of 2002), detained as a patient in an institution or as a State patient; or (e) if [**he**] the trustee fails to perform satisfactorily any duty imposed upon **[him]** the trustee by or under this Act or to comply with the requirements of this Act or any lawful request of the Master.''.	when section 6(1) does not find application. This is due to the clear link between the two subsections and how it is worded. If section 6 does not apply, it also seems as if the recognition can be granted retrospectively; however, there are no statutory or other guidelines in this regard". • "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 to the exiting proposed wording	
NONPROFIT ORGANISATIONS ACT		
Risk assessment of NPO sector	amaBhungane and Corruption Watch It is concerning that it appears that no effective assessment to identify those organisations at risk has been conducted prior to the drafting of these amendments. We understand that a NPO Task Team had been appointed, but there has been no indication of what assessments it conducted or of its findings. 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. And without having access to the Task Team's findings, it is impossible for the public to	• 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.

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	understand what threats the amendments in this Bill are addressing. Media Monitoring Africa From a plain reading of South Africa's assessment and the FAFT recommendation, the law reform process and potential consequences for South Africa's NPO sector are disproportionate to the minimal risk identified.	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
Compulsory registration	The following organisations raised objections to compulsory registration and the comments are not repeated as they are captured under other organisations that raised objections to clauses in the Bill: 1. Association of Vineyard Churches 2. Afrikaanse Protestantse Kerk 3. INKULULEKP YESIZWE ASSOCIATION 4. A non-denominational Christian Church 5. Church of the Holy Spirit 6. Alliance of Pentecostal and Charismatic Churches in South Africa 7. Fellowship of Community Churches 8. The Apostolic Faith Mission of South Africa 9. The Christian Network 10. Joshua Generation Church 11. Christian Family Church 12. Sqiniseko Majola	• 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

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	13. KWECO 14. Creativity will Save us 15. Harvest Christian Church 16. Badisa 17. The Full Gospel Church of God 18. Right 2 Know Campaign Media Monitoring Africa The compulsory registration for NPOs has the potential to violate the right to freedom of association, and at this stage, it appears that such limitation falls short of a necessary, proportionate and reasonable, and justifiable limitation. Cause for Justice The proposed amendments will impose legal obligations and limit constitutional rights of NPOs, their governors and office-bearers, the majority of whom are unlikely to ever be involved in money laundering or financing terrorism. The limitation of rights entails a delicate balancing exercise which should attempt to maximize respect for, promoting, protecting and fulfilling the rights in the Bill of rights. Therefore, where less restrictive means are available to limit rights, only such means will pass constitutional muster. We seriously doubt whether the consequences of these measures (both the cost to the entities and the cost to society, as many more NPOs would need to apply human and financial resources towards compliance with the NPO Act, rather than doing good public benefit work) are appropriate and proportional (i.e. constitutionally defensible) when compared to the potential benefit to be achieved by them – i.e. reducing money-laundering done by criminal enterprises through the NPO sector. If the proposed amendments will not yield a significant net benefit (i.e. that the	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 • Part of the plan underway by DSD is to enhance the NPO system. The benefits thereof is to ensure seamless integration with SARS, CIPC, and other regulators. Further this will ease supervision of the targeted NPOs that fall within the FATF definition and also those that are deemed to be at high risk.

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	benefits to be achieved by reducing/eliminating money laundering though the NPO sector materially outweigh/exceed the costs to this sector and society), the proposed amendments will not constitute reasonable and justifiable limitations of the rights of law-abiding non-profit entities and their governors and office bearers. NGOLAW, Milk Matters, True North However, the compulsory and mandatory registration of all non-profits with the NPO Directorate: 1. Is not required by the FAFT recommendation; 2. Is an unnecessary breach of human rights, privacy and freedoms and opposition will be huge and vocal; 3. Will be an unmanageable burden for DSD and parts of the sector; 4. Does not take into account that the NPO system does not have the granularity and searchability of data functions to allow, for instance, ineligible board members to be located, identified and notified; 5. Will have the opposite effect from that intended, as the data and reports of every tiny voluntary association in the country will bury the important information that is needed to assess and address risks; 6. Need not apply to foreign companies who are already required to register and report to CIPC; 7. Should not apply to trusts, as they are required to report to the Master of the High Court in terms of the proposed amendments to the Trust Property Control Act; 8. Should not target voluntary associations broadly, for fear of crippling the NPO directorate with sheer numbers and the small community	

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	organisations that do not have capacity themselves. Southern African Catholic Bishops' Conference It is far from clear, however, that either IO 10 or Recommendation 8 in any way require compulsory registration of NPOs. The thrust of both is instead that "South Africa has not yet done an assessment of their broader NPO sector to identify those organisations, based on their characteristics or activities, that put them at risk of TF [terrorism financing] abuse. South Africa also has no capacity to monitor or investigate NPOs identified to be at risk of TF abuse." We submit that carrying out an assessment of NPOs based on their characteristics or activities, as the Report recommends, requires enhanced investigative and intelligence capacity, not merely the compulsory registration of NPOs. Indeed, it has not been demonstrated at all how compulsory registration will lead to the desired assessment of TF abuses. Against this, compulsory registration threatens NPOs, especially small ones, with undue administrative burdens which many will be unable to meet. There are also obvious financial implications for NPOs that rely on voluntary staff and whose activities may be carried out with little or no financial underpinning. It must also be noted that the common experience of NPOs that have voluntarily registered is that the NPO Directorate in the Dept Social Development is under-resourced and lacks the capacity to deal efficiently with voluntary registrations. There is thus every reason to assume that compulsory registration would simply amplify these problems, rather than lead to effective interventions against terrorism financing.	

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	Free State Care in Action Taking into account the proposed amendments, there is uncertainty that existing structures will have the capacity to implement these amendments. It is already well known that the NPO Directorate has a tremendous backlog in relation to the administrative responsibilities under current legislation. What impact will registration of all NPOs not bring about? The NPO Directorate sits inside a government department that is not trusted by and is inappropriate for a wide part of the non-profit sector. The NPO system does not have an accurate data function to identify and notify unwanted board members. Furthermore, the system is not secure or stable. NPOs are already fighting a tremendous battle to get people involved in organisations and management. Should further demands be placed on these boards through new legislation, which will most likely bring about new requirements without any constructive change, the possibility of board members resigning exists, which will leave organisations in crisis. South African Institute of Race Relations Indeed, section 18 of the Constitution, without qualifiers, provides that every South African has the right to freedom of association. Unlike, for example, section 29(3)(b) of the Constitution, which requires independent schools to be registered, section 18 does not require the registration of free associations, nor does section 19, which provides for free political activity, require the registration of entities involved in political organisation.	

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	We regard the NPO Act's current approach to registration and the regulation of NPO affairs to be congruent with the Constitution but are wary of the proposed changes in the Amendment Bill. FOR SA Registering as a NPO with the DSD will impose administrative and financial burdens on religious organisations, including giving the DSD the power to require that these religious organisations amend their founding documents – e.g. constitutions. Until now, with NPO registration being voluntary, this did not infringe on the aforementioned constitutional rights. This was because only religious organisations, who both wanted to register and were happy with the DSD's recommended changes to their founding documents, could voluntarily chose to register as NPOs with the DSD. The Bill, as a result of making registration mandatory, will give broad and intrusive powers to the State to prescribe changes to a religious organisation's' founding documents. From a religious freedom point of view, if the Bill is adopted in its current form, the State will have an open door to tell religious organisations how to run their internal affairs, and therefore what / how to believe. This amounts to State regulation of religion, which will have the result of violating various rights and freedoms guaranteed by our Constitution, and also undercutting the well-established doctrine of entanglement in our law. For this reason, FOR SA recommends that NPO registration be kept voluntary, given the existing registration / administrative / financial burdens imposed by Companies and Intellectual Property	

CLAUSE IN BILL	COMMENT	RESPONSE
	Commission ("CIPC"), SARS and the Master's Office. Social Change Assistance Trust Capacity building in both the Masters' offices and the NPO Directorate should be a priority. Both offices are not functioning as they should and would be unable to comply with the additional burden created by the proposed Bill. FOR SA and the organisations listed above NPO registration with the DSD remain voluntary, given the duplication of registration / reporting / compliance duties considering most NPOs already being registered with other state institutions and already having to comply with various tax reporting requirements imposed by SARS. Alternatively, that: 1. Section 12(3) 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 that 2. Section 30 of the NPO Act be amended to remove the threat of imprisonment and/or a limitless fine.	
Foreign NPOs	Media Monitoring Africa MMA is of the view that the position of favouring notification over compulsory or mandated registration should apply. NPOs, whether domestic or foreign should be subject to the same process and standards. NGOLAW, Milk Matters. True North	The comment has been carefully considered. As will be explained further in the response presentation to the Committee, it is submitted that a notification or retaining a completely voluntary registration framework as is currently in place will not be sufficient

CLAUSE IN BILL	COMMENT	RESPONSE
	Registration of foreign entities, their officers and companies is dealt with in the following pieces of legislation already in force: • s23 of the Companies Act • s 8 of Trust Property Control Act • 21b. Financial Intelligence Centre Act 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. 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. 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. 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. 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. Milk Matters While we oppose the compulsory registration for foreign non-profits, the definition needs to include	in order to comply with FATF recommendation 8. The Foreign (International NPOs) will be streamlined with the proposed registration requirements.

CLAUSE IN BILL	COMMENT	RESPONSE
	the founding documents of foreign non-profits which may differ from those of the various South African non-profits.	
Bill does not address FATF requirements under Recommendation 8	Media Monitoring Africa • The primary concerns of the FAFT were that (i) 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. • It appears that South Africa's March assessment may address the first concern. The second concern is worth further consideration. To MMA's current knowledge little has been done to address this concern. Rather, the government has elected to implement a "quick fix", and require NPOs to register. This does not solve a capacity vacuum and it does not create an enabling environment for NPOs. Rather, a lack of capacity can increase risk. NGOLAW, Milk Matters, True North 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	• The relevant FATF requirements in respect of NPOs is as follows: ○ For the purposes of this Recommendation, 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". ○ Countries should: (a) Since not all NPOs are inherently high risk (and some may represent little or no risk at all), identify which subset of organizations 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 abuse (b) 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; (c) review the adequacy of measures, including laws and regulations, that relate to the subset of the NPO sector that may be abused for terrorism financing support in order to be able to take

CLAUSE IN BILL	COMMENT	RESPONSE
	which fall within the FATF definition of a non-profit organisation. There is only one kind of organisation that is not currently already registered and that meets this definition, and that is the unregistered conduit voluntary association. Voluntary associations in general are one of the most diverse groups of organisations in the non- profit sector. They range from large national associations that have been around for 100 years to small community sports clubs that are started ad hoc, employ no staff, and receive little to no funding from outside sources.	proportionate and effective actions to address the risks identified; and (d) periodically reassess the sector by reviewing new information on the sector's potential vulnerabilities to terrorist activities to ensure effective implementation of measures. ○ Targeted risk-based supervision or monitoring of NPOs: ➢ 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 terrorist financing abuse. ➢ Appropriate authorities should: (a) monitor the compliance of NPOs with the requirements of this Recommendation, including the risk-based measures being applied to them under criterion 8.3; and (b) be able to apply effective, proportionate and dissuasive sanctions for violations by NPOs or persons acting on behalf of these NPOs.

CLAUSE IN BILL	COMMENT	RESPONSE
New definition to replace 'constitution'	NGOLAW, Milk Matters, True North The substitution in subsection 1(iv) for the definition of "constitution" the following definition: "'founding document' includes a constitution, trust deed, memorandum of incorporation or, in the case of a foreign organisation, its founding document" *all other references in the Act to 'constitution' would have to be changed to read 'founding document'.	• The replacement of the term 'constitution' with 'founding document' will require consequential amendments throughout the Act. It is recommended that this proposal be explored when the Act is amended by the DSD in a separate process • The proposal is noted and is being considered for the NPO Amendment Bill.
New definition to replace 'office bearer'	NGOLAW, Milk Matters, true North This amendment proposed is in line with FICA, the Companies and Trust Property Control Acts. 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. Substituting the definition of office bearer with the	• The proposal is not supported and consideration of amending the definition be be explored when the Act is amended by the DSD in the separate Nonprofit Organisation Amendment Bill process • The proposal is noted, currently; the Governing Structures in the Voluntary Associations (VAs) is referred to as Office Bearers. That is those who have the governing powers. In addition, the Other staff members (management) are those who are referred to Executives;

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	following wording: Definition of 'office bearer' Office bearer means a director, trustee or person holding executive position elected to the committee or governing board of the organisation"	
Clause 8 Section 2 of the Nonprofit Organisations Act, 1997, is hereby amended by the substitution for paragraphs (b) and (c) of the following paragraphs: ''(b) establishing an administrative and regulatory framework within which nonprofit organisations **[can]** must conduct their affairs; (c) [**encouraging]** requiring nonprofit organisations to maintain adequate standards of governance, transparency and accountability and to improve those standards.''.	BASA Though not specific to clause 8, there is no definition in the NPO Act for a definition that resembles "UBO" principles. We recommend that a definition be incorporated. It is suggested that the following definition of who are considered "beneficial owners" of a NPO: "natural person(s) that act in the capacity of office-bearers, persons with control or persons who ultimately manages the non profit organisation." NGOLAW, Milk Matters, True North 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. NPCs and Trusts are hit twice by the provisions which is not necessary as these provisions are already taken care of under the Trust Property Control Act and Companies Act.	• The term 'beneficial owner' is not used in the context of the NPO Act so adding a definition is not relevant in this context and not supported • In the NPO sector ownership reference is to those who are founding members. • The concerns raised in relation to compulsory registration are taken into account in the development of amendments to the clauses dealing with compulsory registration that will be presented to the Committee for consideration
Clause 10 Section 12 of the Nonprofit Organisations Act, 1997, is hereby amended— (a) by the substitution for subsection (1) of the following subsection:	Webber Wentzel The current position is that nonprofit organisations have a choice whether to register as nonprofit organisations under the Act. These amendments now make it mandatory for all	• See general comments above in relation to the capacity of the Directorate of Nonprofit Oraganisations

CLAUSE IN BILL	COMMENT	RESPONSE
‘‘(1) (a) [Any] A nonprofit organisation that is not an organ of state [may apply to the director for registration], including a foreign nonprofit organisation, that intends to operate within the Republic must be registered in terms of this Act before it commences operations, subject to paragraph (b), and in accordance with prescribed registration requirements. (b) A nonprofit organisation that is operating but is not registered in terms of this Act on the date of commencement of this provision, must register within the period determined by the Minister by notice in the Gazette, in accordance with prescribed transitional arrangements and registration requirements. (c) A nonprofit organisation, whether registered in terms of the Act or not, must comply with the requirements of this Act.’’; (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: ‘‘Unless the laws in terms of which a nonprofit organisation is established or incorporated make provision for the matters in this subsection, the constitution of a nonprofit organisation [that intends to register] must—’’; and (c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: ‘‘The constitution of a nonprofit organisation [that intends to register,] may make provision for matters relevant to conducting its affairs, including matters that—’’.	nonprofit organisations to register under the Act. It would be helpful to clarify that this registration is required notwithstanding other forms of registration nonprofit organisations may already have or wish to have, eg as non-profit companies under the Companies Act. We submit that it is also essential to clarify that the nonprofit organisation registration under the Act will be in addition to any form of existing registration and that nonprofit organisations will not have to de-register from existing forms ofregistration. In addition, it is important to clarify whether nonprofit organisations are required to have a constitution in addition to their existing governing documents (ie their memorandum of incorporation or trust deed). On one construction of section 12(1)(c) it appears that nonprofit organisations may choose not to register in terms of the Act but must still comply with the Act whereas section 12(1)(b) makes registration in terms of the Act mandatory. If registration is mandatory, which it appears it is, we submit that section 12(1)(c) should be amended to indicate in which circumstances a nonprofit organisation may not be registered – presumably, during the transitional period determined by the Minister within which they must register. ○ We note that nonprofit organisations often do not have sufficient means and resources to comply with the various reporting requirements under the different regulatory frameworks that govern nonprofit organisations. This may serve as a deterrent to compliance and give rise to a lack of compliance. amaBhungane and Corruption Watch • Compelling all NPOs to register may be unnecessary as monitoring is only required for NPOs “identified to be at risk of TF abuse”. It is	• The concerns raised in relation to compulsory registration are endeavoured to be taken into account in proposed amendments that are submitted to the Committee for consideration.

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	impossible to know whether a compulsory registration regime is the most appropriate way to monitor those NPOs without knowledge of the findings of the assessment of the NPO sector's risk factors. • the regime proposed in the Bill simply converts the current, voluntary registration regime into a compulsory one, without creating any measures specific to monitoring and investigating terrorism financing. The objectives of voluntary registration under the existing NPO Act are dramatically different to the objectives of compulsory registration to give effect to the FATF requirement for monitoring and investigation of terrorism financing. • The amendments would continue housing the NPO Directorate - now with compulsory registration - within the Department of Social Development (DSD). This is not the appropriate entity to house such a directorate which has the purpose of monitoring and investigating terrorism financing. In fact, FATF reports that "South Africa has identified the following risks of TF abuse to its NPO sector [including that] 'the DSD, the main NPO regulator, does not have the monitoring nor investigative capacity as it relates to national security. It is not a security cluster department and it does not consider national security risks' • The NPO Directorate has neither the capacity nor the expertise to adequately provide the monitoring and investigative functions that FATF would require • We therefore recommend that the provisions amending the NPO Act to incorporate compulsory registration be removed in their entirety from this Bill. • Section 14 of the Bill includes failure to comply with section 12 and 18(1)(bA) of the NPO Act (concerning the requirements for registering an	

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	NPO) to be an offence, with a penalty of a fine and or imprisonment (unspecified). We accept that, if there is a regime of compulsory registration compliance should be mandatory for registering an NPO, but the sanctions of an unspecified fine or term of imprisonment is disproportionate to the offence. Given the capacity constraints affecting the regulation of NPOs at present, it is highly likely that there will be little capacity to assist NPOs in registering. The sanctions therefore could be used against under-resourced and vulnerable NPOs who simply do not have the resources or knowledge of the legislative requirements to comply. • One solution could be that a threshold of annual income for NPOs be developed above which all NPOs must register as NPCs or as public benefit organisations, and therefore be subject to the Companies Act and oversight by the CIPC, or by SARS. The threshold should be determined after consultation with the NPO sector. • The Ministry of Finance, in consultation with the DSD and being guided by the NPOTT findings, should determine whether registration as an NPC or as a PBO (for NPOs above the prescribed threshold) would most effectively respond to FATF's concerns. NGOLAW, Milk Matters, True North The amendments are not supported 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	

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	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 no 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. Milk Matters Agreed- transparency is important. This facility exists - you can request via email for Access to Information as per the Act, however, there is no method for expedience so in the case of checking a suspected 'delinquent office bearer or director' the bank account could be emptied! Often called by some of the small organisations as 'the midnight EFTs'. FOR SA and list of organisations under 'Compulsory Registration' FOR SA recommends that 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.	
Clause 11 Section 18 of the Nonprofit Organisations Act, 1997, is hereby amended— (a) by the insertion in subsection (1) after paragraph (b) of the following paragraph:	BASA • 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 as provided for in Trust	• Further consideration will be given to the proposal to add a provision relating to ensuring that the information is updated.

CLAUSE IN BILL	COMMENT	RESPONSE
‘‘(bA) prescribed information about the office-bearers, control structure, governance, management, administration and operations nonprofit organisations;’’; and (b) by the insertion after subsection (1) of the following subsection: ‘‘(1A) The prescribed requirements referred to in paragraph (bA)subsection (1) must be prescribed after having consulted the Minister Finance and the Financial Intelligence Centre, established by section the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).’’.	Property Control Act. It is proposed that such an obligation to regularly update the prescribed information be included. • As per BASA’s suggestion in line-item number 5 above, it is suggested that the words "adequate" and "accurate" be incorporated into the provisions of section 18(bA). It is proposed that section 18(bA) be amended as follows: “prescribed information about the office-bearers, control structure, governance, management, administration and operations of nonprofit organisations and ensure that the prescribed information is adequate, accurate and up to date.” Southern African Catholic Bishops’ Conference Clause 11 proposes that “prescribed information about the office-bearers, control structure, governance, management, administration and operations of nonprofit organisations” must be provided to the NPO Directorate. This represents a considerable, and quite possibly unconstitutional, interference in the freedom of people to form NPOs and to conduct their activities. Even without knowing what information may ultimately be ‘prescribed’, it can easily be seen that such requirements will likely have a stifling effect on NPO work in general. Many people will see this as an invasion of their privacy, and will withdraw from NPO activities. For a sector that relies in large degree on voluntary members donating time and expertise, this could have a devastating impact. This requirement will also, it hardly needs to be said, add considerably to the administrative and regulatory burdens faced by NPOs.	

CLAUSE IN BILL	COMMENT	RESPONSE
Clause 12 Section 24 of the Nonprofit Organisations Act, 1997, is hereby amended— (a) by the deletion in paragraph (b) of subsection (1) of ‘‘and’’; (b) by the substitution in paragraph (c) of subsection (1) for the full stop of ‘‘; and’’; (c) by the addition to subsection (1) of the following paragraph: ‘‘(d) prescribed information about the office-bearers, control structure, governance, management, administration and operations of nonprofit organisations;’’; and (d) by the addition of the following subsections: ‘‘(4) A nonprofit organisation must make the information referred to in section 18(1)(bA), and the director must provide access to the information in the register referred to in subsection (1)(d), available to any person as prescribed. (5) The prescribed requirements referred to in subsections (1)(d) and (4) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).’’.	Webber Wentzel □ In view of the fact that the prescribed information contemplated by section 24(1)(d) is likely to include personal information and confidential information, we submit that the persons to be prescribed should be limited to office-bearers, accountable institutions that require specific prescribed information and regulatory authorities. □ We also caution that nonprofit organisations and the director may be required to disclose personal information of office-bearers and others where the disclosure of this information may be prohibited under foreign legislation. ASISA The prescribed persons should at least include accountable institutions. Access to this information will greatly assist accountable institutions in discharging their obligations in terms of the Financial Intelligence Centre Act and consequently government and the FIC will be supported in the exercise of its functions. It is imperative that accountable institutions have access to the prescribed information on non-profit organisations. BASA It is recommended that the information be made available to all accountable institutions for purposes of compliance with the FIC Act. It is proposed that section 24(4) be amended as follows: ‘‘A nonprofit organisation must make the information referred to in section 18(1)(bA), and the director must provide access to the information in the register referred to in subsection (1)(d), available to **accountable institutions as defined in the Financial**	• Section 24(3) (3) provides that subsection (2) does not preclude the director from publishing the names of the organisations contemplated in that section in any widely circulated means of communication, as and when considered appropriate. POPIA Act allows for the processing of information if an obligation in law provides for such • Noted however the regulations will address access to the information. • The proposal is not supported as the regulations will set out who has access to theinformation

CLAUSE IN BILL	COMMENT	RESPONSE
	Intelligence Centre Act 38 of 2001 and any other person as prescribed." Alternatively, it is proposed that accountable institutions be included as prescribed persons in the Regulations. NGOLAW, Milk Matters, True North 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.	The NPO Directorate and the National Treasury are engaging in relation to the capacitating the Directorate to enable efficient implementation. In addition to automation, an important objective will be recruiting relevant skills that will ensure meeting newly established service standards. In addition to automation. Staff will be trained adequately.
Clause 13 Disqualification and removal of office-bearers 25A. (1) A person is disqualified from being an office-bearer of a nonprofit organisation if the person— (a) is an unrehabilitated insolvent; (b) has been prohibited by a court to be a director of a company, or has been declared by a court to be delinquent in terms of section 162 of the Companies Act, 2008 (Act No. 72 of 2008), or section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984); (c) is prohibited in terms of any law to be a director of a company; (d) has been removed from an office of trust, on the grounds of misconduct involving dishonesty; (e) has been convicted, in the Republic or elsewhere, and imprisoned without the option of	Webber Wentzel □ We submit that subsection (11) should be amended in the manner indicated below to include the additional ground for removal from office contemplated in the Trust Property Control Act: (11) An office-bearer of a nonprofit organisation may at any time be removed from office by the director if– (a) the person becomes disqualified to be an office bearer in terms of subsection (1); (b) the office-bearer's estate is sequestrated or liquidated or placed under judicial management; or (c) the office-bearer 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; or	• 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)

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a fine, or fined more than the amount prescribed in terms of section 69 of the Companies Act, 2008, for theft, fraud, forgery, perjury or an offence— (i) involving fraud, misrepresentation or dishonesty, money laundering, terrorist financing or proliferation financing activities as defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); (ii) in connection with the promotion, formation or management of a company, or in connection with any act contemplated in in section 69(2) or (5) of the Companies Act, 2008; or (iii) under this Act, the Companies Act, 2008, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, 1998 (Act No. 89 of 1998), the Financial Intelligence Centre Act, 2001, the Financial Markets Act, 2012 (Act No. 19 of 2012), Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004), or the Tax Administration Act, 2011 (Act No. 28 of 2011); or (f) is an unemancipated minor, or is under a similar legal disability. (2) A person who is disqualified, as set out in this section, may not— (a) be appointed or elected as an office-bearer of a nonprofit organisation, or consent to being appointed or elected as an office-bearer; or (b) act as an office-bearer of a nonprofit organisation. (3) A disqualification in terms of subsection (1)(d) or (e) ends at the later of— (a) five years after the date of removal from office, or the completion of the sentence imposed for the relevant offence, as the case may be; or	(d) the office-bearer fails to perform satisfactorily any duty imposed upon the office-bearer by or under this Act or to comply with the requirements of this Act or any lawful request of the director.". BASA • Section 25A(1)(e)- The insertion of the paragraph "...fined more than the prescribed amount" implies that the body imposing the fine is acting beyond the scope of the law as the body must be guided by and act within the prescripts of the law. The following wording for section 25A(1)(e) is proposed: "has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined ~~more than the prescribed~~ ~~amount~~ **in accordance with the applicable legislation**, for theft, fraud, forgery, perjury or an offence—" • It is understood that the grounds for exemption will be dealt with in the regulations. BASA would appreciate confirmation of the understanding. Southern African Catholic Bishops' Conference 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.	• The proposal is not supported. The reference to the prescribed amount is set in terms of section 69 of the Companies Act. Where the fine imposed is in access of prescribed amount then the section will apply. In terms of the Companies Regulations the prescribed minimum value of a fine upon conviction for certain offences, which would result in automatic disqualification as a director in terms of section 69 (8) (*b*) (iv), is R 1 000. • The definition of 'office bearer' in the NPO Act is: office-bearer" means a director, trustee or person holding an executive position • Consideration will be given to deleting paragraph(f) referring to an unemancipated minor, or is under a similar legal disability.

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(b) one or more extensions, as determined by a court from time to time, on application by the Directorate in terms of subsection (4). (4) At any time before the expiry of a person's disqualification in terms of subsection (1)(d) or (e)— (a) the Directorate may apply to a court for an extension contemplated in subsection (3)(b); and (b) the court may extend the disqualification for no more than five years at a time, if the court is satisfied that an extension is necessary to protect the public, having regard to the conduct of the disqualified person up to the time of the application. (5) A court may exempt a person from the application of any provision of subsection (1)(a), (c) or (e). (6) The Registrar of the Court must, upon— (a) the issue of a sequestration order; (b) the issue of an order for the removal of a person from any office of trust on the grounds of misconduct involving dishonesty; or (c) a conviction for an offence referred to in subsection (1)(e), send a copy of the relevant order or particulars of the conviction, as the case may be, to the Directorate. (7) The Directorate must notify each nonprofit organisation which has an office-bearer to whom the order or conviction relates, of the order or conviction. (8) (a) The Directorate must establish and maintain in the prescribed manner a public register of persons who are disqualified from serving as an office-bearer, in terms of an order of a court pursuant to this Act or any other law. (b) The prescribed requirements referred to paragraph (a) must be prescribed after consultation with the Minister of Finance and the	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. Many schools encourage the formation of charitable organisations among their pupils, for example. It is also conceivably the case that someone with a legal disability stemming from, for example, a mental condition, could be a perfectly capable office-bearer in an NPO. Both these categories of person will summarily be disqualified from holding office in an NPO if this clause is adopted – a conclusion that is clearly unfairly discriminatory and which can only serve to undermine the spirit of voluntary service and community involvement. And, once again, there is no indication whatsoever of a link between the proposed limitation and the objective of combating terrorism financing.	

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Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001). (9) A nonprofit organisation may not knowingly permit a disqualified person to serve or act as an office-bearer. (10) A person who becomes ineligible or disqualified while serving as an office-bearer of a nonprofit organisation ceases to be entitled to continue to act as an office-bearer immediately. (11) An office-bearer of a nonprofit organisation may at any time be removed from office by the director if— (a) the person becomes disqualified to be an office-bearer in terms of subsection (1); (b) the office-bearer's estate is sequestrated or liquidated or placed under judicial management; or (c) the office-bearer fails to perform satisfactorily any duty imposed upon the office-bearer by or under this Act or to comply with the requirements of this Act or any lawful request of the director.''.		
Clause 14 Section 29 of the Nonprofit Organisations Act, 1997, is hereby amended in subsection (2)— (a) by the deletion in paragraph (b) of ''or''; (b) by the substitution in paragraph (c) for the full stop of ''; or''; and (c) by the insertion of the following paragraph after paragraph (c): ''(d) to fail to perform any duty imposed or requirement in terms of section 12 or 18(1)(bA);''.	Webber Wentzel We note that the new offences proposed by the Omnibus Bill have the potential to serve to deter persons from acting as office-bearers of nonprofit organisations. BASA • The blanket criminalisation of obligations often has unintended consequences. It is suggested that consideration in future be given to whether the contraventions can be penalised via administrative sanctions as dissuasive sanctions would assist in enforcing compliance with the provisions of section 29. • It is not clear from the proposed clause, read with section 30 of the NPO Act, what the possible fine or imprisonment would be and	• The concerns raised in relation to compulsory registration are endeavoured to be taken into account in proposed amendments that are submitted to the Committee for consideration.

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	whether these would be dissuasive enough to encourage compliance, especially with the new reporting requirements around beneficial ownership (office bearers, etc). Clarity is therefore requested as to the potential fines and/or imprisonment. FOR SA The effect of the Bill would be to send religious leaders to jail for failing to adhere to administrative requirements. These administrative requirements have been proposed 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 and have not been afforded sufficient to comment on the Bill. Social Change Assistance Trust Criminalising the failure to comply with registration and reporting requirements in legislation such as The Trust Property Control Act, The Companies Act and the NPO Act and imposing fines up to R10M and/or imprisonment for 5 years. will discourage participation in the good work of NGO's.	
FINANCIAL INTELLIGENCE CENTRE ACT		
Virtual Assets Service Providers	amaBhungane and Corruption Watch The Bill does not attempt to introduce any regulation around the use of virtual assets. This, despite the fact that the National Treasury's Crypto Assets Working Group published a detailed paper on 11 June 2021 containing 25 recommendations on how crypto assets should be regulated within South Africa. Given the work that has been done on this issue, it appears to be a missed opportunity	• Virtual Assets Service Providers are brought into the scope of the FIC Act through the amendment of Schedule 1 of the FIC Act which is currently before the Select Committee of Finance for approval • Furthermore, in view of the updates to recommendations

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	not to use this Bill to ensure that the most recent FATF risks are properly addressed.	10 and 25 of the 2012 FATF Recommendations in June 2019 with respect to obligations applicable to virtual asset service providers and the subsequent publication of the Crypto-Asset Reporting Framework (CARF) by the OECD, it will be proposed to the Minister of Finance that CARF be adopted by South Africa. This will ensure that the "most recent FATF risks", which the CARF gives effect to, are addressed.
Public Private Partnership	BASA suggests the following definition, which is a combination of National Treasury's definition included in its 2017 budget review (albeit in the context of project-related PPPs), the Royal United Services Institute (RUSI) and a definition from HM Treasury (albeit dated 2010 and in the context of construction). "A public private partnership is defined as partnership that brings together both public-sector and private-sector institutions, for mutual benefit where the private party(ies) performs a function that is usually provided by the public-sector."	• The proposal is not supported as defining the term may restrict the ability for the public private partnerships to function if parameters are set through a specific definition of what the public private partnership entails
Clause 15 ''(i) an investigative division in **[an organ of state**] a national department authorised by the head of [**the organ of state**] that national department to act under this Act;	ASISA To ensure consistent interpretation, it is suggested that "national department" should be defined in the Financial Intelligence Centre Act, 2001. Clause 15(g) of the Bill currently contains a definition and could then be adapted accordingly. Proposed wording: 'national department' means a national department listed in Schedule 1 to the Public Service Act, 1994 (Act No. 103 of 1994);	• The proposal is not supported as the definition of 'Investigative division in a 'national department' in paragraph 1(1)(g) contains reference to Schedule 1 to the Public Service Act. Adding a definition of 'national department' will merely repeat what is contained in paragraph 1(1)(g)

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	amaBhungane and Corruption Watch • The substitution of "organ of state" with "national department" does not eliminate confusion as the Bill suggests. Instead, it introduces a far narrower definition and excludes certain critical state functionaries from being able to participate in critical information sharing. • We note with concern that the definition of "national department" is unnecessarily restrictive and that the "organ of state" definition should be preferred. Our view is that use of the term "national department" will create ambiguity, as there will be confusion around the inclusion of provincial and local government divisions of national bodies (e.g. provincial treasuries or regional SAPs offices). The "organ of state" definition is well-established in our law and should be used.	• The ability of the FIC to share intelligence information it holds is set out in section 40 of the FIC Act. This list where the agencies are specified includes the law enforcement agencies, SARS, IPID, Pubic Protector, NPA, intelligence services etc. The proposed amendment is to one item on the list which is an investigative division in an organ of state.
Clause 15 " 'beneficial owner'— (a) means a natural person who directly or indirectly— (i) ultimately owns or exercises effective control of— (aa) a client of an accountable institution; or (bb) a legal person, partnership or trust that owns or exercises effective control of, as the case may be, a client of an accountable institution; or (ii) exercises control of a client of an accountable institution on whose behalf a transaction is being conducted; and (b) includes— (i) in respect of legal persons, each natural person contemplated in section 21B(2)(a); (ii) in respect of a partnership, each natural person contemplated in section 21B(3)(b); and (iii) in respect of a trust, each natural person contemplated in section 21B(4)(c), (d) and (e);	Open ownership: • Revise the definition in terms of missing some key components to constitute a robust definition and the approach taken to rely on an AML-framing of a definition which multiple Acts refer to • 'Person' should be plural to account for senarios where more than one person is a beneficial owner • The absence of a specified threshold or reference to this being specified in regulations could be interpreted to mean all Bos should be reported, which may create undue administrative burden. A specified threshold should be prescribed based on risk based approach NGOLAW, Milk Matters, True North With-member NPCs and voluntary associations must have members and:	• Proposed revisions to the definition of beneficial owner will be submitted to the Committee, taking into account comments received • In terms of the Interpretation Act "words in the singular number include the plural, and words in the plural number include the singular". • The intention is not to hard code a threshold amount in the various Acts but to rather provide best practice through guidance. As noted above in the comments on the Trust Property Control Act, it is relevant to bear in mind that the setting of thresholds has a fairly limited usefulness in relation to appropriately determining "beneficial ownership"

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	• 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 subgroups 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 Add clause 1(1)(c): which reads: "(c) excludes, in the case of non-profit companies or voluntary associations members and 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." Adding the definition: "conduit voluntary association	• The proposals are not supported as the definition cannot be based on the risk that a particular category of persons poses • How will this be determined/verified if such entities are excluded?
Clause 15 '' 'proliferation financing' or 'proliferation financing activity' means an activity which has or is likely to have the effect of providing property, a financial or other service or economic support to a non-State actor, that may be used to finance the manufacture, acquisition, possessing, development, transport, transfer or use of nuclear, chemical or biological weapons and their means of delivery, and includes any activity which constitutes an offence in terms of section 49A;	ASISA ASISA members propose that the definition should be more closely aligned with the FATF definition. The FATF definition is a universally accepted and known definition and deviation from its wording may cause uncertainty in the interpretation of the definition. Alternatively, ASISA members respectfully request an explanation of the reasons for deviating from the FATF definition. Proposed wording: 'proliferation financing' or 'proliferation financing activity' means an activity which has or is likely to have the effect of providing ~~property, a financial~~	• A distinction is to made between the concept of 'weapons of mass destruction proliferation' and 'financing of proliferation' The FIC Act provisions are aimed at dealing with targeted financial sanctions which includes the financing of proliferation. The commentator's proposals are proposing incorporating elements of WMD proliferation. In addition, the proposed definition in the Bill

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	~~or~~ ~~other service or economic support~~ funds or financial services to a non-State actor, that may be used, in whole or in part, to finance the manufacture, acquisition, possessing, development, export, transshipment, brokering, transport, transfer, stockpiling or use of nuclear, chemical or biological weapons and their means of delivery and related materials (including both technologies and dual use goods for non-legitimate purposes), and includes any activity which constitutes an offence in terms of section 49A; BASA It is proposed that the wording be aligned to the FATF definition: "(i) 'proliferation financing' or 'proliferation financing activity' means an activity which has or is likely to have the effect of providing property, a financial or other service or economic support, in whole or in part to a non-State actor, that may be used to finance the manufacture, acquisition, possessing, development, export, transhipment, brokering, transport, transfer, stockpiling or use of nuclear, chemical or biological weapons and their means of delivery, and includes any activity which constitutes an offence in terms of section 49A;".	is adapted to take in to account terminology used in the FIC Act
Clause 17 4(c) by the substitution for paragraph (e) of the following paragraph: "(e) annually review the implementation of this Act and submit a report **[thereon]** that includes information that is necessary to demonstrate the implementation of the Act, to the Minister;	amaBhungane and Corruption Watch • The Bill will need to be accompanied by inter-departmental coordination committees, adequate staffing, tools and budget allocations as well as a demonstrable track record in sanctioning non-compliance. • At a bare minimum, the number of reports and the actions taken on them should be recorded. To this effect, we submit that Clause 17 should	• The FIC's annual report which includes information relating to the work performed by the FIC annually is publicly available and tabled in Parliament

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	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. The following wording is proposed: "(e) annually review the implementation of this Act and submit a report [thereon] that includes information that is necessary to demonstrate the implementation of the Act, to the Minister. Upon receiving the report, the Minister is required to publish it and present an implementation update based on the report before Parliament."	
Clause 18 Section 5 of the Financial Intelligence Centre Act, 2001, is hereby amended— (a) by the insertion in subsection (1) after paragraph (h) of the following paragraph: ''(hA) enter into public private partnerships for the purposes of achieving any of the objectives of the Centre in section 3;''; and (b) by the insertion after subsection (1) of the following subsection: ''(2) The Centre may, for the purposes of this Act and to perform its functions effectively— (a) request information from any organ of state; (b) request access to any database held by any organ of state; or (c) have access to information contained in a register that is kept by an organ of state in the execution of a statutory function of that organ of state.''.	BASA Reference is made throughout the section to "organ of state" whereas the definition section has been amended to remove reference to "organ of state" and substitute same with "a national department listed in Schedule 1 to the Public Service Act, 1994 (Act No. 103 of 1994), having a function by law to investigate unlawful activity within [the organ of state] that national department". It is suggested that a similar amendment should be included in section 5 to create consistency.	• The proposal is not supported as the context of the term 'organ of state' in clause 18 is different from the reference to 'organ of state' in paragraph 1(1)(j) and (g). The FIC requires the ability to collect information from various sources in order to function effectively. Having access to information held in organs of state creates a bigger pool rather than restricting the access to only national departments
Clause 19 Section 21B of the Financial Intelligence Centre Act, 2001, is hereby amended—	Open Ownership The law should include provisions on what to do in instances where there is no identifiable BO BASA	• The determining of beneficial owner contemplated in section 21B(2) provides for the ongoing process on elimination which accountable institutions must

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(a) by the substitution in paragraph (a) of subsection (2) for subparagraph (ii) of the following subparagraph: ''(ii) if in doubt whether a natural person contemplated in subparagraph (i) is the beneficial owner of the legal person or no natural person has a controlling ownership interest in the legal person, determining the identity of each natural person who exercises control of that legal person through other means, <u>including through his or her ownership or control of other legal persons, partnerships or trusts</u> 21B(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— *(c)* in respect of the founders of the trust, establish the identity of— (i) **[the]** <u>each</u> founder; <u>and</u> <u>(ii) if a founder of the trust is a legal person or a person acting on behalf of a partnership or in pursuance of the provisions of a trust</u>	Section 21B(2)(a)(ii)- The wording is too broad and not specific to the legal person prospective client/client and we recommend that the sub-section be reworded to create clarity. The following rewording to section 21B is proposed: ''(2)(a)(ii) if in doubt whether a natural person contemplated in subparagraph (i) is the beneficial owner of the legal person or no natural person has a controlling ownership interest in the legal person, determining the identity of each natural person who exercises control of that legal person through other means, including through his or her ownership or control of other legal persons, partnerships or trusts <u>associated to that legal person</u> or''; and". It is suggested that section 3(ii) be reworded as follows: "if a partner in the partnership is a legal person, or a natural person acting on behalf of a partnership or in pursuance of the provisions of a trust agreement, the beneficial owner(s) of that legal person, partnership or trust; ASISA and BASA In section 21B(4) It appears as if a reference to "trust" was omitted and that the clause should be amended. Proposed wording: (ii) if a founder of the trust is a legal person or a person acting on behalf of a partnership or in pursuance of the provisions of a trust agreement, the beneficial owner of that legal person, [**or]** partnership or <u>trust;</u> Section 21B(d((i)iA) be amended as follows:	follow to determine who the beneficial ownership of a legal person is until the natural person is determined • The proposal is not supported as the section read in context, ie. the reference to 'that legal person' will make the proposed wording a repeat of what is already contained in the paragraph • See Interpretation Act above relating to singular and plural • Agreed – clause will be amended accordingly

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agreement, the beneficial owner of that legal person or partnership;	"if a founder of the trust is a legal person or a person acting on behalf of a partnership or in pursuance of the provisions of a trust agreement, the beneficial owner of that legal person or partnership or trust". NGOLAW, Milk Matters, True North Adding the duty to establish the gross income so that reports may be made. Adding 21(2)(c) to read : (c) if the client is a conduit voluntary association establish the gross income in each year of that conduit voluntary association. 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. 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. Amend 21B(4)(c) to read: (i) each founder or initial donor which is still living; and 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.	• The proposal is not supported. Alternative drafting proposals are being considered to deal with compulsory registration of NPOs • The proposal is not supported as a risk based approach according to an accountable institution's Risk Management and Compliance Programme is used to determine the beneficial owners of trusts. Adding alternative parties not recognized in law as parties to a trust agreement will defeat the intention of the clause • The AI must determine the *living* natural person who is the BO irrespective of status under the trust instrument – this is implicitly an ongoing process of elimination under s21 & 21A

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	Add as section 4(e) (iii): (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.	
Clause 20 Section 21C of the Financial Intelligence Centre Act, 2001, is hereby amended by the addition of the following subsection, the existing provision becoming subsection (1): ''(2) If an accountable institution suspects that a transaction or activity is suspicious or unusual as contemplated in section 29, and the institution reasonably believes that performing the customer due diligence requirements in terms of this section will disclose to the client that a report will be made in terms of section 29, it may discontinue the customer due diligence process and consider making a report under section 29.''.	amaBhungane and Corruption Watch Clause 20 provides for the submission of suspicious transaction reports (STRs) by accountable institutions. The current 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. BASA 1. The proposed section 21C(2) 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. Whilst the proposed section 21D(b) as per clause 21 requires that an accountable institution repeat its customer due diligence requirements when it has made a section 29 report to the FIC. This provision does not consider that accountable institutions may have no doubt over the veracity of its information when it files a section 29 report. 3) An institution could report a section 29 report based on unusual transaction/activity yet the information it has relating to its customer is relevant. It is therefore proposed that the amendment be deleted. 4) There is therefore an incongruency between the two sections– in one instance you may forfeit the	• The FIC's Annual Report contains statistics relating to the number of STRs received as well as disseminated reports • The proposed wording provide for instances where the accountable institution suspects that a transaction or activity is suspicious in terms of section 29 (STR) and the institution reasonably believes that performing the customer due diligence (CDD) measures in terms of section 21C will disclose to the client that a STR will be made to the Centre, 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

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	refresh, but in another similar situation the refresh is enforced. BASA proposes that the proposed section 21C(c)(2) be deleted in its entirety.	• 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 • Clause 21 is dealt with below
Clause 21 **''Doubts about veracity of previously obtained information and when reporting suspicious and unusual transactions** 21D. When an accountable institution, subsequent to entering into a single transaction or establishing a business relationship[,] — (a) doubts the veracity or adequacy of previously obtained information which the institution is required to verify as contemplated in sections 21 and 21B; or (b) makes a suspicious or unusual transaction report in terms of section 29, the institution must repeat the steps contemplated in sections 21 and 21B in accordance with its Risk Management and Compliance Programme and to the extent that is necessary to confirm the information [in question] previously obtained.''.	ASISA 1. It is proposed that the heading of the section should be aligned with the amended content of the section: Doubts about veracity of previously obtained information ~~and~~ or when reporting suspicious and unusual transactions 2. 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. Although the need for the FIC to obtain accurate and up-to-date information in a section 29 report is understood, the risk of tipping off should be provided for similar to the proposed amendment of section 21C(2) of FICA. It is therefore suggested that another subsection should be added to section 21D of FICA. Proposed wording:	• The proposal is not supported as the context of the proposals in the Bill are different in clause 20 and the same wording cannot be applied to clause 21 • 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 • 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 • The extent to which the accountable conducts this exercise will depend on the risk and as set out in its RMCP

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	If an accountable institution suspects that a transaction or activity is suspicious or unusual as contemplated in section 29, and the institution reasonably believes that performing the customer due diligence requirements in terms of this section will disclose to the client that a report will be made in terms of section 29, it may discontinue the customer due diligence process and consider making a report under section 29. BASA 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. 3) Furthermore, there may be practical implications when legislating this requirement as accountable institutions may have no doubt about the veracity of its information when filing a section 29 report, which report would have been filed with the information at the accountable institution's disposal. The need to re- evaluate or confirm the correctness of the information already submitted offers no practical value and may also result in tipping off as a result of gathering information from customer. BASA proposes that the provision, prior to this suggested amendment, should be retained. The obligation on the accountable institution to ensure the veracity of the information remains as contemplated under the current section 21D.	• 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 • 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.
Clause 24 Amendment of section 21H of Act 38 of 2001, as inserted by section 10 of Act 1 of 2017	BASA BASA's concerns are not related to the proposed amendments to this section, but to what is not	• Examples of best practice to determine known close associates is set out in guidance.

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Section 21H of the Financial Intelligence Centre Act, 2001, is hereby amended by the substitution for subsection (1) of the following subsection: "(1) Sections 21F and 21G apply to immediate family members and known close associates of [a person in] a foreign or domestic [prominent position] politically exposed person or a prominent influential person, as the case may be.	amended. Section 21H provides some explanation of who is an immediate family member, but it does not elaborate who are known close associates. We would welcome it if the legislature could in these amendments to the FIC Act provide greater clarity on known close associates to assist accountable institutions.	
Clause 25 (2) This section does not apply to resolutions of the Security Council the United Nations contemplated in section 25 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004). (3) [Following a notice contemplated in subsection (1) the] The Director must, [from time to time and] by appropriate means of publication, give notice of— Aa) the adoption of a resolution by the Security Council of the United Nations contemplated in subsection (1); (a) persons and entities being identified from time to time by the Security Council of the United Nations pursuant to a resolution contemplated in subsection (1); [and] (b) a decision of the Security Council of the United Nations to no longer apply a resolution contemplated in subsection (1A) to previously identified persons or entities; and (c) a decision of the Security Council of the United Nations to no longer apply a resolution contemplated in subsection (1A). 26A(3) [Following a notice contemplated in subsection (1) the] The Director must, [from time to time and] by appropriate means publication, give notice of— Aa) the adoption of a resolution by the Security Council of the United Nations contemplated in subsection (1);	BASA In terms of the Protection of Constitutional Democracy against Terrorist and Related Activities Act 33 of 2004 Amendment Bill, section 25 will be repealed and is replaced by a reference to section26 of the FIC Act. It is therefore proposed that the repeal be preempted in this Bill and that Section 26A(2) be deleted. Section 26A(3)- considering the proposed amendments to section26A (1) and 26B(1), it is BASA's view that the notice referred to will become superfluous. We therefore suggest that section 26A(3) be deleted. ASISA 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. Proposed wording: [Following a notice contemplated in subsection (1) the] The Director must, [from time to time and] by appropriate means of publication, give immediate notice of—	• The proposed amendments provided by BASA 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 • 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 • 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.

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(a) persons and entities being identified from time to time by the Security Council of the United Nations pursuant to a resolution contemplated in subsection (1); [and] (b) a decision of the Security Council of the United Nations to longer apply a resolution contemplated in subsection (1A) previously identified persons or entities; and (c) a decision of the Security Council of the United Nations to longer apply a resolution contemplated in subsection (1A).		
Clause 26 Section 26B of the Financial Intelligence Centre Act, 2001, is hereby amended— (a) by the substitution for the words following paragraph (e) of the following words: "intending that the property, financial or other service or economic support, as the case may be, be used, or while the person knows or ought reasonably to have known or suspected that the property, service or support concerned will be used, directly or indirectly, in whole or in part, for the benefit of, or on behalf of, or at the direction of, or under the control of a person or an entity identified pursuant to a resolution of the Security Council of the United Nations contemplated in [a notice referred to in] section 26A(1).";"	BASA BASA would appreciate it if guidance could be provided to accountable institutions to clarity on how the FIC expects practical compliance with the provision, so that they can understand what is required and can comply therewith.	Noted
Clause 29 Section 28A of the Financial Intelligence Centre Act, 2001, is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph: "(c) a person or an entity identified pursuant to a resolution of the Security Council of the United Nations contemplated in [a notice referred to in] section 26A(1).".	BASA The concern is not with the amendment but with the rest of the section. Given the amendments to section 26A of the FIC Act and the proposed amendments to the Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004 (POCDATARA) repealing section 25 thereof, it is recommended that consideration be given in future to amending section 28A(3) of the FIC Act.	• See comment above on the POCDATARA Amendment Bill

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	NGOLAW, Milk Matters, True North Building in a reporting duty to facilitate enforcement of mandatory registration. Also to counter voluntary associations from splintering into more than one once registration point is reached. Adding a definition of conduit voluntary association to create a mechanism for reporting a conduit voluntary association which has a gross income over R5million a year.	• The issue of compulsory registration of NPOs is being considered and revised wording is being developed
Current section 29	BASA BASA proposes that the legislature consider amending the FIC Act and the Regulations thereto to provide for a duty to report known or suspected proliferation financing in alignment with the amendments proposed by this Bill. In this regard, it is proposed that: a) section 29 of the FIC Act be amended to create the reporting obligation; and b) the Regulations to the FIC Act be updated to detail the reporting requirements for reporting proliferation financing transactions and activities, such as already exist for suspicious and unusual transaction reports ("STRs"), suspicious activity reports ("SARs"), terrorist financing transaction reports ("TFTRs") and terrorist financing activity reports ("TFARs").	• The proposal is not supported as the obligation to report contraventions relating to section 26B which includes proliferation financing contraventions in included in section 29(1)(b)(vi) and section 28A(1)(c) and (3)(b)
Clause 30 Section 34 of the Financial Intelligence Centre Act, 2001, is hereby amended— (a) by the substitution in paragraph (a) of subsection (1) for subparagraph (ii) of the following subparagraph: ''(ii) property owned or controlled by or on behalf of, or at the direction	BASA BASA proposes the rewording of section 34(1A) as the word "extend" is more appropriate in the circumstances. It is proposed that section 34(1A) be reworded as follows: ''The Centre may ~~renew~~ **extend** the period of the direction to an accountable institution not to proceed with a transaction referred to in subsection (1) for a further period not longer than	• Taking into account the possible unintended consequences of the proposed amendment in clause 30, it is proposed that the amendment be withdrawn

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of a person or entity identified pursuant to a resolution of the Security Council of the United Nations contemplated in [a notice referred to in] section 26A(1); or''; and by the insertion after subsection (1) of the following subsection: ''(1A) The Centre may renew the period of the direction to an accountable institution not to proceed with a transaction referred to in subsection (1) for a further period not longer than 10 days, if exceptional circumstances exist that warrant a renewal.''.	10 days, if exceptional circumstances exist that warrant **such extension** ~~a renewal.~~''.	
Clause 35 41A(3) The Minister may prescribe requirements for the protection of personal information to facilitate the sharing of information between accountable institutions when acting on behalf of the Centre, and when the sharing is necessary to achieve the purposes of this Act, to ensure that adequate safeguards are in place as required by section 6(1)(c) of the Protection of Personal Information Act, 2013.	Open ownership There is no reference in the text to data protection legislation - consider data minimization at the point of collecting data and layered access for data publication BASA 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. BASA will appreciate it if this understanding can be confirmed. 3) Considering the aforementioned, clarity is requested in respect of the following: a) In which instances will accountable institutions be "acting on behalf of the Centre" and what does it mean to act on behalf of the Centre?	• Noted and will be considered in the development of regulations on this issue • POPIA gives effect to the constitutional right to privacy which applies in any event without needing referencing. • • Further consideration will be given to whether appropriate revisions of the wording of the clause should be proposed to the Committee. • Appropriate guidance can also potentially be provided in relation to certain aspects.

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	b) Will this only apply to information sharing within the SAMLIT structures or the Fusion centre? c) The words “and when the sharing is necessary”. BASA proposes that the following wording section replace the proposed) section 41A(3): “Upon Notice provided to the Centre as prescribed, two or more financial institutions and any association of financial institutions may share information with one another regarding individuals, entities, organisations, and countries suspected of possible money laundering, terrorist or proliferation financing activities. A financial institution or association that transmits, receives, or shares such information for the purposes of identifying and reporting activities that may involve money laundering, terrorist or proliferation financing activities or shall not be liable to any person under any law or regulation of South Africa, any Constitution, law, or regulation of any State or political subdivision thereof, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure, or any other person identified in the disclosure, except where such transmission, receipt, or sharing violates this section or regulations promulgated pursuant to this section.” 2) Alternately should the above not be deemed appropriate, BASA proposes that section 41A(3) be reworded as follows to allow the sharing of information between accountable institutions: “The Minister may prescribe requirements for the protection of personal information to facilitate the sharing of information between accountable institutions: a) when acting on behalf of the Centre, and;	

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	b) when the sharing of information between accountable institutions is necessary to achieve the purposes of this Act, to ensure that adequate safeguards are in place as required by section 6(1)(c) of the Protection of Personal Information Act, 2013.''.	
Clause 36 by the substitution in subsection (2) for paragraph (i) of the following paragraph: ''(i) provide for the manner in which and the process by which the institution will confirm information relating to a client when the institution has doubts about the veracity of previously obtained information and when reporting suspicious and unusual transactions in accordance with section 21D;''; (f) by the substitution in subsection (2) for paragraph (q) of the following paragraph: ''(q) provide for the manner in which— (i) the Risk Management and Compliance Programme is implemented in branches, subsidiaries or other operations of the institution in foreign countries so as to enable the institution to comply with its obligations under this Act; (ii) the institution will determine if the host country of a foreign branch, [or] subsidiary or other operation permits the implementation of measures required under this Act; [and] (iii) the institution will inform the Centre and supervisory body concerned if the host country contemplated in subparagraph (ii) does not permit the implementation of measures required under this Act; and (iv) taking into consideration the level of risk of the host country, the institution will apply appropriate additional measures to manage the risks if the host country does not permit the implementation of measures required under this Act;''; and	BASA For the reasons set out in relation to clauses 21 and 22 (section 21D) above, BASA disagrees with the amendment to 42(1)(c) and suggests that the original wording of section 42(1)(c) be retained. 3) We propose that section 42(2)(q)(iv) should be amended as follows to cater for the absence of risk: "taking into consideration the level of risk of the host country, the institution will apply appropriate additional measures to manage the risks (if any) if the host country does not permit the implementation of measures required under this Act;'' 4) To create certainty and reflect the purpose of the amendment as per the memorandum of objects for the Bill, BASA suggests that section 42(2)(gA) be amended as follows: "provide for the manner in which and the processes by which an accountable institution's group-wide anti money laundering, counter terrorist financing and proliferation financing and sanctions programmes ~~of an accountable~~ institution for all its branches, and ~~majority-owned~~ subsidiaries or other operations ~~situated in the Republic~~ are ~~is~~ implemented so as to enable the institution to— (i) comply with its obligations under this Act; (ii) exchange information ~~with its branches or subsidiaries~~ relating to the customer due diligence requirements in terms of this Act;	• See explanation above in respect of clauses 20 and 21 and a revised wording is not supported • 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 or required by the 2012 FATF recommendations, and the proposal is therefore not supported • 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

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(g) by the insertion in subsection (2) of the following paragraph after paragraph (g): "(qA) provide for the manner in which and the processes by which group-wide programmes of an accountable institution for all its branches and majority-owned subsidiaries situated in the Republic is implemented so as to enable the institution to— (i) comply with its obligations under this Act; (ii) exchange information with its branches or subsidiaries relating to the customer due diligence requirements in terms of this Act; (iii) exchange information with its branches or subsidiaries relating to the analysis of transactions or activities which the institution suspects to be suspicious or unusual as contemplated in section 29; and (iv) have adequate safeguards to protect the confidentiality of information exchanged in accordance with this paragraph and this Act.''.	(iii) exchange information ~~with its branches or subsidiaries~~ relating to the analysis of transactions or activities which the institution suspects to be suspicious or unusual as contemplated in section 29; and".	
Clause 37 49A(2) An accountable institution, reporting institution or any other person that fails to comply with a provision of section 26B is non-compliant and is subject to an administrative sanction.	Open Ownership The FIC Amendment Bill only includes administrative fines – best practice points to a combination of administrative, criminal, financial and non-financial sanctions	• While some sections in the FIC Act carry only administrative sanctions for non compliance with the FIC Act these include a a number of different sanctions such as a financial penalty, a caution, reprimand, restriction of business activity etc. Some acts of failure to comply where there is a possibility that the accountable institution itself is involved in illegal activities carry the option of an administrate penalty or a criminal offence
Clauses 37 to 42 (Penalties and Sanctions)	In the Bill, clauses 37 to 42 sets out administrative sanctions for non-compliance. These clauses refer to the FIC Act, in which, in section 45C, a fine is capped at R10 million for	• Over and above the financial penalties, there are other administrative penalties such as restricting the business activities or suspension

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	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. amaBhungane and Corruption Watch • We recommend that a record of companies that have been sanctioned and, where a monetary penalty was imposed, the amount they were fined should be kept and published. • In addition, to strengthen these sanctions, as part of the implementation monitoring, the fines should be commensurate taking into account the net worth / value / turnover of the individual / company. This, to ensure that there is no risk of wilful noncompliance. • Consequences for non-compliance should be clear and have a deterrent effect. There exists the possibility that the incorporation of an administrative sanction as a cost of doing business will not have the desired effect of preventing/deterring violations. • However, there is one element of the application of the administrative sanctions regime that concerns us. The amendment proposed in clause 39, section 52 of the FIC Act detrimentally impacts the practise of journalism. The amended provision would read: "An accountable institution, reporting institution or any other person that fails, within the prescribed period, to report to the Centre the prescribed information in respect of a suspicious or unusual transaction or series of transactions or enquiry in accordance with section 29(1) or (2) is non-compliant and is subject to an administrative sanction"	• Also, the penalties are per offence so if there are a number of contraventions the penalties will be commensurate with the number of contraventions • The penalty will differ based on the circumstances of each non-compliant natural person or entity and various factors that are typically taken into account such as the effectiveness of the fine (given size/turnover) to decide the quantum of the fine • Section 45C(11) provides that Director of the FIC or a supervisory body must make public the sanction imposed if a person does not appeal or if there is an appeal then when the Appeal Board confirms the decision. Previous sanctions are on the FIC website as well as on the website of supervisory bodies where they have imposed sanctions • Wilful noncompliance should generally result in criminal sanction, including common law offences such as fraud. • '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

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	39. 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. Given the critical role the media has played in uncovering State Capture and other instances of fraud and corruption in South Africa, this would be extremely detrimental to the country. We propose two possible solutions: 1. "Any other person" could be changed to "accountable person", which could be defined as any person with a relevant fiduciary or legal responsibility 2. "Any other person" could be qualified by including the phrase "not covered by the exemption for journalistic, literary or artistic purposes under section 7 of the Protection of Personal Information Act." • We also suggest that Parliament should consider retaining the wording which creates an offence, as opposed to an administrative sanction, the consequence for which could be a fine and or imprisonment.	transactions set out in the section is obliged to report the suspicion to the FIC • 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
Clause 42 42. Section 64 of the Financial Intelligence Centre Act, 2001, is hereby amended by the addition of the following subsection, the existing provision becoming subsection (1): "(2) An accountable institution, reporting institution or any other person that conducts, or causes to be conducted, two or more transactions with the purpose, in whole or in part, of avoiding giving rise to a reporting duty under this Act is non-compliant and is subject to an administrative sanction.''.	BASA BASA proposes that section 64(2) be reworded to align with the current section 64. 1) It is proposed that section 64(2) be reworded as follows: "~~An accountable institution, reporting institution or~~ **[A]**ny other person that **[who]** conducts, or causes to be conducted, two or more transactions with the purpose, in whole or in part, of avoiding giving rise to a reporting duty under this Act is non-compliant and is subject to an administrative sanction.	• The proposal is not supported as the clause is worded to take into account that administrative sanctions can only be imposed on accountable institutions, reporting institutions and to any person who has an obligation to report suspicious transactions

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Clause 48 Schedule 3A to the Financial Intelligence Centre Act, 2001, is hereby amended— (a) by the substitution for the heading of the following heading: ''DOMESTIC [PROMINENT INFLUENTIAL] POLITICALLY EXPOSED PERSON''; and (b) by the substitution for the words preceding paragraph (a) of the following words: ''A domestic [prominent influential] politically exposed person is an individual who [holds, including in an acting position for a period exceeding six months, or has held at any time in the preceding 12 months, in the Republic]—''; (c) by the substitution in paragraph (a) for the words preceding subparagraph (i) of the following words: ''holds, including in an acting position for a period exceeding six months, or has held a prominent public function in the Republic, including that of— (d) by the substitution in paragraph (a) for subparagraph (xiv) of the following subparagraph: ''(xiv) an officer of the South African National Defence Force above the rank of major-general; or''; (e) by the deletion of paragraph (b); and (f) by the substitution for paragraph (c) of the following paragraph: ''(c) holds, including in an acting position for a period exceeding six months, or has held the position of head, or other executive directly accountable to that head, of an international organisation [based in the Republic].''.	ASISA Clause 18 amends section 5 of FICA to enable the FIC to obtain information from any organ of state. Accountable institutions should also have access to information on persons of companies that provides goods or services to an organ of state. To date no amount has been determined by the Minister and therefore it has been a challenge to obtain information on prominent influential persons. Apart from asking clients to confirm whether they are officials of a company providing goods or services to the state, and using available information from service providers or information obtained through web searches, there is no full trustworthy source of this information. BASA • BASA notes that the introduction of the concept "once a PEP always a PEP" as a result of the proposed amendments and wishes to reconfirm that accountable institutions retain the ability to determine in accordance with their Risk Management and Compliance Programmes the identification and treatment of the parties as stipulated in section 21G of the FIC Act. • The confirmation of this obligation in terms of the FIC Act for an accountable institution to determine its own approach to dealing with these parties (save for risk categorisation upon which guidance has already been issued per the FIC Act (PCC 51 read with Guidance Note 7) is integral to ensure that accountable institutions will adjust their AML/CFT/CPF response to reflect the identification of risk presented by individual PEP customers, applying more scrutiny where appropriate and diverting required enhanced due diligence resources as warranted. • It is submitted that guidance reflecting the South African context and more particularly the wide-	• Noted and further guidance will be provided once the paragraph comes into operation once the Minister sets the threshold amount • It is agreed that verification by AIs is necessary to ensure identity and BO information is adequate, accurate and up-to-date as required under FATF Rec 24 (as updated). • CDD measures in relation to domestic PEPs will be in accordance with the risk identified in line with an accountable institution's risk management and Compliance Programme • The request for additional guidance on 'once a PEP always a PEP is noted • The reference to international organisations needs to remain under Schedule 3A due to the reference 'in the Republic' in the first paragraph of Schedule 3A

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	ranging nature of the definition of PEPs is warranted to ensure that those high or very high-risk PEPs retain their "once a PEP, always a PEP" status on a permanent (or at least indefinite) basis after they leave office, whilst others may be re-evaluated based on a holistic consideration of different factors which will be elaborated upon in individual accountable institution's RMCPs. • It is respectfully requested that further confirmation be published in guidance issued under the auspices of the FIC Act providing clarity on how accountable institutions should apply the definitions of a PEP taking into consideration the ambit of the definition of PEPs where section 21H of the FIC Act provides that the measures for prominent persons also apply to their immediate family members and known close associates. • BASA proposes that the content of item number (a)(xiii) be moved to Schedule 3B.	
Clause 49 Schedule 3B to the Financial Intelligence Centre Act, 2001, is hereby amended— (a)by the substitution for the heading of the following heading: ''FOREIGN [PROMINENT PUBLIC OFFICIAL] POLITICALLY EXPOSED PERSON''; and (b) by the substitution for the words preceding paragraph (a) of the following words: ''A foreign [prominent public official] politically exposed person is an individual who holds, or has held [at any time in the preceding 12 months], in any foreign country a prominent public function including that of a—''.	BASA • BASA notes that the introduction of the concept "once a PEP always a PEP" because of the proposed amendments and wishes to reconfirm that accountable institutions retain the ability to determine in accordance with its Risk Management and Compliance Programme the identification of these parties as stipulated in section 21F of the FIC Act. • The confirmation of the obligation in section 21F on an accountable institution to "determine in accordance with its RMCP", the approach to these parties (save for risk categorisation upon which guidance has already been issued per the FIC Act (PCC 51 read with Guidance Note 7) is integral to ensure that accountable institutions will adjust their AML/CFT/CPF response to reflect the identification of risk presented by individual PEP customers,	• Noted see response on guidance

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	applying more scrutiny where more appropriate and diverting required enhanced due diligence resources as warranted.	
Clause 51 Substitution of Index of Act 38 of 2001	BASA Relating to the heading of Chapter 3, BASA suggests that for completeness, "proliferation financing activities" be included.	• The proposal is not supported as the targeted financial sanctions provisions in the FIC Act are wider than only proliferation financing Resolutions as it includes certain Resolutions relating to human rights violations
COMPANIES ACT		
Nominee ownership	amaBhungane and Corruption Watch • 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. • Furthermore, we foresee significant implementation challenges for South Africa should it choose to follow this course. For one, compliance will be incredibly difficult to enforce and non-compliance will be even harder to detect. Our view is that this will serve to hinder the country's performance in FATF Mutual Evaluations, rather than to improve them - especially since South Africa's greatest weakness was found to be the effectiveness of its implementation. Open Ownership: Clearer consideration for the treatment of nominee ownership arrangements would be beneficial, particularly in the amendments to the Companies Act.	Nominees are mandated to disclose on whose behalf they acting/holdings interest for. This is a policy issue which requires in depth consideration and consultation which can be accommodated on the Companies Amendment Bill processes. We agree with Open Ownership comments and we think this can cannot be dealt in the GLAB Nominee arrangements are part of the Companies shareholding system to enable broad exposure to investment on Companies shares and equity. Scraping and cancelling nominee arrangement any have a negative impact on the company's investment scenario in general. Consideration for the treatment of nominee shareholders as suggested by Open Ownership can be considered in the Companies Amendment Bill process
Sanctions	Open ownership:	• Agree with the proposal. CIPC should be empowered to directly

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	It would be prudent to consider whether the legislation should include more appropriate sanctions that are enforceable by the Commission. CIPC cannot impose administrative fines for Companies Act violations but must refer such cases to court which seems a cumbersome process.	impose in cases of non-compliance, however this would be a matter that likely would be appropriate to address in the Companies Amendment Bill process.
Clause 52 'beneficial owner'— (a) has the meaning defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); and (b) for the purposes of this Act, in respect of a company, includes, but is not limited to, a natural person who, directly or indirectly, ultimately owns or exercises control of a company, including through— (i) ownership of the securities of the company; (ii) the exercise or control of the exercise of the voting rights associated with securities of that company; (iii) the exercise or control of the exercise of the right to appoint or remove members of the board of directors; (iv) ownership, or the exercise of control of— (aa) a holding company of that company; (bb) a juristic person other than a holding company of that company; (cc) a body of persons corporate or unincorporate; (dd) a partnership; or (ee) any other category or type of entity that may be specified in regulations for this purpose, that owns or is able to exercise control of, as the case may be, that company, including through a chain or network of ownership; or (v) the ability to otherwise materially influence the decision-making or policy of the company;	amaBhungane and Corruption Watch • This definition adds a significant degree of content to the overarching definition in the FIC Act. Furthermore, it is extremely convoluted and will create more loopholes rather than fix them. • The first concern is that paragraph (b) states that the definition "includes but is not limited to a natural person". By its internationally-accepted definition a beneficial owner should always mean a natural person and nothing else. In addition, in subparagraph (iv)(aa) reference is made to a "holding company of that company". This is a non-sequitur as no number of intermediary legal entities should matter when one is concerned with establishing the identity of the beneficial owner. • Under the proposed definition in the Bill, it is not clear what the beneficial ownership disclosure thresholds are, nor are the prohibitions clear. In the section that follows, we propose one such prohibition that should be considered, namely nominee arrangements that have been abused perniciously within the South African context. Open Ownership: • Broaden types of specific control beyond voting rights, noting that regulations and guidance may be used to have a more comprehensive list of forms of control(eg control directly or indirectly through an entity, contract, arrangement or relationship	• The concerns raised in relation to compulsory registration are endeavoured to be taken into account in proposed amendments that are submitted to the Committee for consideration. The issue of publicly listed companies is endeavoured to be addressed through framing the obligations of public companies in a way that is feasible and achieves the same objective of transparency of their beneficial ownership. • Types of beneficial ownership control can only be in line with the definition of beneficial ownership in FATF requirement. Further considerations can be catered for in future Companies Act reviews, as they may cause regulatory burden. • The proposal for including threshold is noted and will be considered, although it would not be desirable to specify a threshold in the Companies Act itself. • Definition of "true owner" versus "beneficial owner" will be

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	• Consider the inclusion of a prescribed threshold or capture of only instances of significant control either individually or where multiple individual act together to exercise BO • The definition should also capture indirect ultimate ownership or control through any entity, contract, arrangement, or relationship – consider expanding the catch all at to be more generally applicable. JSE, Shoprite • Refinement of the definition of 'beneficial owner' to provide clarity in the practical application of the definition • 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 thereto Section 1 of the Companies Act, 2008, is hereby amended by the insertion after the definition of ''beneficial interest'' of the following definition: 'beneficial owner'— means a natural person who, directly or indirectly, ultimately owns or exercises control of a company, including through— (a) ownership of the securities of the company; (b) the exercise or control of the exercise of the voting rights associated with securities of the company; (c) the exercise or control of the exercise of the right to appoint or remove members of the board of directors; (d) ownership, or the exercise of control of— (i) a holding company of the company;	reconciled in the finalisation of the Companies Amendment Bill. • Beneficial owner is only a "natural person" and any other suggested alignment to ensure that joint ownership result in the identification of the ultimate natural person in line with FATF requirements is noted.

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	(ii) a juristic person other than a holding company of the company; (iii) a body of persons corporate or unincorporate; (iv) a partnership; or (v) 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, the company, including through a chain or network of ownership; or (e) the ability to otherwise materially influence the decision-making or policy of the company; subject to any regulations issued, after consultation with the Minister of Finance and the Financial Intelligence Centre, on the specific criteria to be met for a natural person to be deemed to ultimately own or exercise control of a company; COSATU and SACTWA We propose the removal of this reference in section 52 to ensure the definition only refers to a natural person. The amendment to the GLAB is as follows: Section 1 of the Companies Act, 2008, is hereby amended by the insertion after the definition of ‘‘beneficial interest’’ of the following definition: ‘‘‘beneficial owner’— (a) has the meaning defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); and (b) for the purposes of this Act, in respect of a company, [includes, but is not limited to,] is a natural person who, directly or indirectly, ultimately owns or exercises control of a company…	

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	Without a reference to a natural person, only the first layer of ownership may be pierced and the actual owner may never be revealed. The Bill needs to ensure all layers are pierced to find the actual natural person who benefits from the shares. We would further propose that the Bill should only introduce a single definition of “beneficial owner” within the Financial Intelligence Centre (FIC) Act. This definition should be sufficiently broad to cater for the various scenarios within which it will be applied. Secondary legislation (such as the Companies Act, Trust Property Control Act, etc.) should not seek to alter or expand the definition as this introduces regulatory uncertainty and creates loopholes that can be exploited. Webber Wentzel • The Companies Amendment Bill, 2021 proposed to introduce the definition of "true owner", which was linked to the concept of beneficial interest in the definition and via section 56 of the Act. Unlike the proposed definition of "trueowner", the definition of "beneficial owner" proposed by the Omnibus Bill is not expressly linked to beneficial interest – which we understand is the intention, for the concepts to be different. • We submit that the two terms are distinct and, to avoid confusion, the provisions relating to "beneficial owner" should preferably be dealt with in a separate new section so as not to be confused with the concept of "beneficial interest". • We submit that the cross-reference to the Financial Intelligence Centre Act2001 (FICA) may not be ideal as FICA also includes the	

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	horizontal relationship between an entity and its clients. If the intention is not to require companies to also look at the horizontal relationships and clients' beneficial owners, the reference to the definition in FICA is too wide. • We submit that the legislator may wish to consider clarifying what is mean by the terms "effective control" and "control" (used in the definition of "beneficial owner") since while control in the company law context is generally determined with reference to, for example, a majority of the voting rights associated with a company's securities, for purposes of FICA ownership of 25% or more of the shares with voting rights in a legal person is understood to usually be sufficient to exercise control of it. On a plain reading of the definition, it would appear that the lower threshold is now also made applicable to the Act for purposes of the determination of beneficial ownership. However, the determination of "control" in accordance with section 2(2) of the Act is arguably applicable for all purposes of the Act given this discrepancy, there is potential for confusion as to who would be considered beneficial owners. • We further submit that the legislator may wish to consider providing for the threshold, if any, in regulations to the Act rather than hardcoding the percentage in the Act. Any such threshold should be determined in consultation / agreement with the Financial Intelligence Centre to ensure consistency throughout the market and in respect of different legal persons. • We also submit that if the legislator does not wish to provide for a threshold at present, it may wish to consider providing for the power (to prescribe a threshold) in the Act, should a threshold become desirable in future (so	

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	avoiding the process of amending the Act at that time). Computershare • In our view, it is not appropriate to have exactly the same definition of "beneficial owner" in the Companies Act as the FIC Act. • There is no definition of "control" in the new proposed definition and no provision for a threshold to be set. Currently section 2(2) of the Companies Act defines "control" as a person able to exercise or control the voting rights associated with securities of that company or to control the appointment of directors who control the majority of the votes at a meeting of the board, in other words 50%+1. While the FIC Act does not mention a threshold, Guidance Note 7 refers to a 25% threshold. This may lead to confusion regarding application of the requirements. BASA a) The term "natural person" is used which denotes a single natural person whereas FATF defines ultimate beneficial owner as "the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted." This may be commonly misinterpreted that a beneficial owner is a single natural person and cannot be more than one natural person. It is therefore suggested that the term "natural person" be amended to state "natural persons(s)" to make it clear that the beneficial owner can be more than one natural person. BASA proposes that the proposed definition of "beneficial owner" as reflected in Annexure A be adopted. 2) Alternatively, BASA proposes that wherever the term "natural person" appears, same be amended	

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	to state “natural persons(s)” to make it clear that it can be more than one natural person. NGOLAW, Milk Matters, True North NPC’s which work for public benefit are often accountable to members and: • 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. Add sub-section (c) to state: (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.	
Insert a new definition of conduit voluntary association	NGOLAW, Milk Matters, True North This proposed definition of a ‘conduit voluntary association’ refers to the regulations in the Companies Act which would lead to compulsory audit.	• The issue of compulsory registration is being considered, and the content of the submission is being carefully considered and is appreciated. However, it is not envisage propose the inclusion of a definition in the Companies Act. Detailed proposals will be provided to the Committee

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Amend definition of 'foreign company	NGOLAW, Milk Matters, True North 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. 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. This proposed amendment replaces the AML-CTF Bill proposal to make registration as an NPO compulsory for these entities. 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.	• Agreed, s23 provides for mandatory registration of foreign Non-Profit Companies in as far as they meet the defined criteria of Non-profit Company as contained in the Companies Act. • The Companies Act suffices in as far as registration of foreign companies is concerned. Any foreign institutions that wish to register with register in line with current provisions. No other amendment to the current section 23 is necessary.
Section 8 Categories of Companies	NGOLAW, Milk Matters, True North This 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	This comment is noted, and will be given consideration to. The comment does not directly relate to an existing provision in the Bill, and it would need consideration by the dtic, the CIPC, and SARS as to how this comment might potentially be addressed.

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	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. Add 8(4) to read: Any association of persons which is or becomes a 'conduit voluntary association ' shall, within one year of so becoming, convert to being a non-profit company under this Act. 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. 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.	
Clause 53 Section 33 of the Companies Act, 2008, is hereby amended— (a) by the deletion in paragraph (a) of subsection (1) of ''and''; (b) by the insertion after paragraph (a) of subsection (1) of the following paragraphs: ''(aA)a copy of the company's securities register as required in terms of section 50;	amaBhungane and Corruption Watch • 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	• 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). • Public Access to information: The current Companies Act provides for making information kept in

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(aB) a copy of the register of the disclosure of beneficial interest as required in terms of section 56; and''; and (c) by the insertion after subsection (1) of the following subsection: ''(1A) (a) The Commission must make the annual return contemplated in subsection (1) available electronically to any person as prescribed. (b) The prescribed requirements referred to in paragraph (a) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).'	and members' register. We recommend an inclusion to subsection (1)(aA) so that it reads: "A copy of the company's securities register, or in the case of a non-profit company that has members its members' register, as required in terms of section [50] 24(4)." • 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. • Clause 53 of the Bill proposes amendments to section 33 of the Companies Act. In order to required proactive disclosure in respect of annual returns, we recommend section 1A be amended so that it reads: "(a) The Commission must annually publish all annual returns on a publicly accessible platform and make the annual return contemplated in subsection (1) available electronically to any person as prescribed." Open Ownership: • There is no explicit mention of a register of BO – to add a paragraph 33(aB) to provide for a register of BO • Regulations could specify any person as Prescribed as the general public access provision, and it would be in line with best practice to be explicit in mentioning that access is public. • In line with best practice, it would also be useful to specify that prescribed persons should be able to access the historical records from the Commission. • Not specific on how information will be made available to prescribed persons where there are changes to the BO information.	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 is applied in relation to the current disclosures of information that the CIPC make in terms of that section.

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	• Consider applying a limited and disclosable exemption where an adequate alternative mechanism exists eg exemptions for listed companies • Include provisions that make the disclosure of BO information part of the requirements for the registration or incorporation of a new company • Place a reporting obligation on BO to disclose their ownership or control interest to a declaring entity JSE, Shoprite Section 33 of the Companies Act, 2008, is hereby amended— (a) by the deletion in paragraph (a) of subsection (1) of ‘‘and’’; (b) by the insertion after paragraph (a) of subsection (1) of the following paragraphs: ‘‘(aA)a copy of the company’s securities register as required in terms of section 50; (aB) a copy of the register of the disclosure of beneficial interest as required in terms of section 56; and (aC) a copy of the register of beneficial ownership information as required in terms of section 56A’’; and (c) by the insertion after subsection (1) of the following subsection: ‘‘(1A) (a) The Commission must make the annual return contemplated in subsection (1) available electronically to any person as prescribed. (b) The prescribed requirements referred to in paragraph (a) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).	

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	COSATU and SACTWA • We note with disappointment that the Bill does not seem to seek to make beneficial ownership registers publicly available. • The Bill includes a reference in clause 53 to making annual returns available electronically but it is not clear that this would mean that such annual returns would then be publicly available. • Trade unions, shop stewards, workers, civil society and journalists continue to play an important role in uncovering commercial crimes and corruption. • By making beneficial ownership information publicly available, these groups and the public in general can continue to assist in the fights against tax evasion and corruption. This will help to effectively implement a beneficial ownership regime, not just to tick the box. 1. Clause 53 of the Bill proposes amendments to section 33 of the Companies Act. In order to require proactive disclosure in respect of annual returns, we recommend section 1A be amended so that it reads: "(a) The Commission must annually publish all annual returns on a publicly accessible platform and make the annual return contemplated in subsection (1) available electronically [to any person] as prescribed to any person." The Bill's formulation appears to be ambiguous as it could be read to mean that "any person" could be qualified in regulations (by for example allowing only certain classes of person access to the information). Patently, the information should be available to	

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	any person without qualification, although the information so made available may be qualified. Our proposal removes the ambiguity. 2. We also recommend an inclusion in subsection (b) to ensure public access to the information governed by this provision. so that it reads: "(b) The prescribed requirements referred to in this section must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001). The requirements provide for access for members of the public to the register." Except for the Companies Act, the government's central register of beneficial ownership available for use by government agencies, whether held by the CIPC or the Financial Intelligence Centre (FIC), should also be publicly available, for the reasons set out above. It is not clear to us that this is the case at the moment. We also support the information about trusts' beneficial ownership being made available publicly. Trusts' beneficial ownership records at the Masters' offices should mirror how companies' records are envisaged in the Bill to be published and made available – annually but also when updated. • Exclusion of foreign companies	

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	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. If this is correct, the differential treatment of local and foreign companies is problematic and the exclusion of foreign companies will create a loophole. This needs to be corrected with amendments made to clause 53 of the GLAB. Webber Wentzel • It is not clear from the proposed insertion of the new section 33(1)(aA) whether companies should file a copy of their members' register (and only a list of shareholders) as it stands at the same financial year end as the latest annual financial statements filed with the Commission, or whether it should provide historical shareholdings (and a complete copy of the securities register) too. If the latter, this proposal would present many practical challenges, especially in the case of listed companies as their registers could be out of date soon after filing. • As regards the amendments proposed to be made to section 33 by the Omnibus Bill, the annual return (which will include copies of a company's annual financial statements, its securities register and its register of the disclosure of beneficial interest) will contain confidential information, commercially sensitive and potentially competitive information, to which any prescribed person will have access, including, for example, a major competitor of a company who falls within a category of	

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	prescribed persons. Granting rights to access such information to persons other than registered shareholders, holders of beneficial interests in securities issued by the company, accountable institutions that require specific prescribed information and regulatory authorities would be inappropriate (and potentially unconstitutional) having regard to the policy objectives which the proposed amendments in the Omnibus Bill are intended to achieve and the privacy rights enshrined in the Constitution. • In light of the foregoing, we submit that the prescribed persons to whom the annual return should be made available electronically should be restricted to registered shareholders, holders of beneficial interests in securities, accountable institutions that require specific prescribed information and regulatory authorities. • If the persons who are prescribed are not limited as suggested above, a company should have the right, within reason, to require: ○ that the company should be advised of the request for the annual return; ○ any person requesting the annual return to provide reasons for the request, to be made available to the company, and that the company should be entitled to request the Commission to refuse to make the annual return available if reasonable reasons are not provided by such person; and ○ signature of a confidentiality and non-disclosure agreement to protect the company's legitimate interests (and those of parties listed in the documents). • We submit that there is a risk that information contained in the registers maybe used for fraudulent purposes if too widely available,	

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	without safeguards as proposed, and that there is also a risk of exposure of persons listed in the registers to unsolicited contact. • We also caution that companies and the Commission may be required to disclose personal information of registered shareholders and beneficial owners where the disclosure of this information may be prohibited under foreign legislation. Computershare 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. The amended section 50 of the Act prescribes that the company's securities register must include beneficial ownership information so we do not understand the requirement in the amended section (aB) to provide "a copy of the register of the disclosure of beneficial interest as required in terms of section 56" as well as a copy of the securities register. Significant system development would be required to record beneficial owner information in the Strate BND and company securities register for each registered shareholder.	

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	BASA The proposed amendments to the Companies Act provide for the filing of annual returns as well as a company's security register and a copy of the register of beneficial interests. Section 33(1A) should similarly provide for the availability of the annual return, securities register and register of beneficial interest and not be curtailed to the availability of only the annual return. Alternately, the availability of the securities register is paramount as it will contain the prescribed information regarding beneficial owners as contemplated under section 50 (3A). For the reasons set out above relating to the availability and accessibility of information, BASA proposes that amendments be made to the draft section to ensure accessibility of the registers to include all accountable institutions as defined under the FIC Act. 1) BASA proposes the insertion of a new (a) above by the insertion of the following at the beginning of subsection (1): **"Unless exempted in th e Regulations from any of the requirements bel ow, every company must fil e … ",** 2) Should BASA's proposal be accepted, sections (a), b) and (c) will be required to be renumbered (b), (c) and (d) respectively 3) It is proposed that section 33(1A) (a) be amended to read: 4) "The Commission must make ~~a~~ copies of the company's securities register as required in terms of section 50, register of the disclosure of beneficial interest as required in terms of section 56A, and annual return contemplated in subsection (1) available electronically to	

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	accountable institutions as defined in the FIC Act and any other person as prescribed." 5) Alternatively, it is proposed that accountable institutions be included as prescribed persons in the Regulations.	
Clause 54 Section 50 of the Companies Act, 2008, is hereby amended by the insertion after subsection (3) of the following subsection: ''(3A) (a) A company must record in its securities register prescribed information regarding the natural persons who are the beneficial owners of the company, in the prescribed form, and must ensure that this information is updated within the prescribed period after any changes in beneficial ownership have occurred. (b) The prescribed requirements referred to in paragraph (a) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).''.	JSE, Shoprite We propose that new section 50(3A) not be inserted, as the register of beneficial ownership should be separate from the securities register. We propose instead that a new section 56A be inserted which contains the requirement for a company to maintain a register of its beneficial owners and to file that information with the Commission. Webber Wentzel • It is questionable how far up the structure a company can reasonably be expected to extend its enquiry, eg: o as regards foreign shareholders and foreign beneficial owners, the proposed amendments may be practically difficult (if not impossible) for companies to enforce in many respects, as foreign registered holders of securities and foreign beneficial owners are generally not bound by the Act to provide such information to the company. Under the Act: registered holders of securities in public companies are obliged in terms of section 56(3) of the Act to disclose the identities of persons on whose behalf securities are held, the identity of each person with a beneficial interest in the securities so held, registered holders of securities and holders of beneficial interests in any company (whether public or private) are	The proposal to insert a new section 56A is noted to differentiate between "Beneficial Owner" and "beneficial interest holders" is noted, and will bee further considered. "Beneficial ownership" is about disclosure and there is not any other enforcement requirement or obligation against the individual so declared. Any other obligation will arise when competent authorities do investigations on money laundering and terrorism. The only local obligation is to ensure true and correct disclosure. Ultimate beneficial holders in public listed companies are not prone to change with frequent buying and selling of shares as they are ultimate owners and majority shareholders of companies.

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	obliged in terms of section 56(5) of the Act to make a disclosure in respect of beneficial interests only where the company requires a disclosure to be made by notice in writing; and □ persons must notify regulated companies of acquisitions and disposals of beneficial interests in securities in the circumstances contemplated in section 122 of the Act; and ○ as regards trusts, each natural person contemplated in subsection (a) of the definition of "beneficial owner" introduced into the Act by the Omnibus Bill will be a beneficial owner, resulting in administratively onerous requirements being placed on companies. • We submit that, in many instances, it will be extremely difficult for companies to establish the beneficial owners of securities in the company. • In relation to ease of doing business and the administrative burden associated with performing the exercise of updating the prescribed information at prescribed intervals, where companies make use of service providers such as Strate (Pty) Ltd to manage their registers there is a cost implication associated with discharging an obligation to routinely request information from potentially thousands of registered shareholders. This exercise will increase the cost of doing business in South Africa, and this cost is a cost that will ultimately be passed on to shareholders. • All accountable institutions that are companies will be required to list the broad groups of natural persons contemplated in section 21B of	

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	FICA in their securities register as beneficial owners and record the same information with the Commission. It is unclear how a company should report in its securities register and record with the Commission certain "once-off" beneficial owners, eg persons who are authorised to represent an entity in a specific transaction or to establish a relationship. • We submit that the legislator may wish to consider clarifying whether the incorporation of the meaning of "beneficial owner" in FICA will, for purposes of the Act, only apply to companies that are accountable institutions (ie listed Computershare That listed companies be exempted from the requirements in section 50 to record beneficial ownership information in its securities register.	
New amendment: Section 52(2)	COSATU and SACTWA Inspecting uncertificated securities registers We propose an amendment to section 52(2) of the Companies Act, a section dealing with the inspection of uncertificated securities registers. To ensure public access to up-to-date details of companies' securities registers, we recommend including a provision requiring the proactive publication of this data. This is not unprecedented: in the past, the central securities depository provided third-party access to uncertificated securities register data. An amendment to section 52(2) would make that disclosure mandatory and would ensure that such disclosure is not prohibited by POPIA.	Agree with the submission made by BASA in that what will contained in the securities register may not always qualify as BO information. The same principle would apply in relation the register of beneficial interests' holders, as they do not fully meet the FATF BO definition. This may be considered and catered for in the Companies Act Amendment Bill, which is also currently going through the relevant processes.

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	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. We proposed an amendment to section 52(2), so that it reads: “A person who wishes to inspect an uncertificated securities register may do so [only] - (a) Through the relevant company in terms of section 26; [and] or (b) [in accordance with the rules of] through the central securities depository in accordance with its rules.” amaBhungane and Corruption Watch Although not addressed in the Bill, we also proposed an amendment to section 52(2) of the Companies Act. This section addresses the inspection of uncertificated securities registers. To	

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	ensure public access to up-to-date details of companies securities registers, we recommend including a provision requiring the proactive publication of this data. This is not unprecedented: in the past, the central securities depository provided third-party access to uncertificated securities register 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. We proposed an amendment to section 52(2), so that it reads: "A person who wishes to inspect an uncertificated securities register may do so [only] (a) Through the relevant company in terms of section 26; [and] or (b) [in accordance with the rules of] through the central securities depository in accordance with its rules." BASA 2) Should the legislature not be amenable to accepting BASA's proposal relating to the deletion of this section and its incorporation into section 56A, the following is noted: a) In view of this proposed amendment, for completeness, it is proposed that the heading of section 50 be amended to include "beneficial ownership". b) The securities register under section 50 speaks to the "names and addresses of the persons to whom the securities were issued". The ultimate	

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	beneficial ownership definition being inserted via clause 52 from (b)(i) to (b)(iv) speaks to ownership derived through shareholding, which may not be the "natural person" that owns the security. Practically, for listed companies in particular, this may be difficult to include in the securities register due to the speed at which transactions happen shareholding changes daily. In BASA's view, section (3A)(a) will be impractical, if not impossible, to implement on a continuous basis). Based on this and the reasons relating to the exclusion of listed entities, it is therefore suggested that section 50(3A)(a) be amended as reflected in the next column. c) In an "or" statement under "v", refers to control of a company that is not through shareholding. It is very possible that an individual that controls a company is not a shareholder, and their inclusion in the section 50 securities register may be misrepresenting the shareholding of the company. 1) BASA proposes that the heading of section 50 be amended as follows: "Securities and beneficial ownership register and securities numbering." 2) BASA proposes that section 50(3A)(a) be amended to read as follows: "Unless exempted in the Regulations from complying with this requirement, a company, must record in its securities register prescribed information regarding the natural persons who are the beneficial owners of the company within the prescribed period within the prescribed period after any changes in beneficial ownership have occurred."	
Clause 55 Section 56 of the Companies Act, 2008, is hereby amended—	Open Ownership Amended section 50 would suggest that these changes are already captured in the companies securities which in turn must	• The intention is for "Beneficial ownership" requirements to include profit and non-profit

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(a) by the substitution for the heading of the section of the following heading: ''Beneficial interest in securities and beneficial ownership of company''; and (b) by the addition of the following subsections: ''(12) A company must file a record with the Commission, in the prescribed form and containing the prescribed information, regarding the natural persons who are the beneficial owners of the company, and must ensure that this information is updated by filing Notices with the Commission within the prescribed period after any changes in beneficial ownership have occurred. (13) The prescribed requirements referred to in subsection (12) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).	be filed with the Commission per amended section. Unclear if this is a duplication in effort and if so, for what purpose. JSE, Shoprite We propose that the requirements regarding beneficial ownership of a company are not inserted in section 56, but that a new section 56A be inserted which contains the content of the proposed new sections 50(3A), 56(12) and 56(13). Section 56A could also make provision for the exemption for certain companies, including listed companies, from recording information on their beneficial owners, subject to prescribed conditions. The heading of section 56 would accordingly remain as "Beneficial interest in securities". New section 56A could read as follows: 56A Beneficial ownership of a company (1) A company must establish and maintain a register of prescribed information regarding the natural persons who are the beneficial owners of the company, in the prescribed form, and must ensure that this information is updated within the prescribed period after any changes in beneficial ownership have occurred. (2) A company must file a record with the Commission, in the prescribed form and containing the prescribed information, regarding the natural persons who are the beneficial owners of the company, and must ensure that this information is updated by filing Notices with the Commission within the prescribed period after any changes in beneficial ownership have occurred.	companies. There is a difference between a "beneficial owner" and a "beneficial interest holder". Alignment has to be effected in that registers of "beneficial interest holders" are not to be confused and treated the same as "beneficial ownership" registers. • Any additional requirement for "Beneficial Owner" registers is noted and will be considered further. • "Beneficial ownership registers will available to competent authorities when investigating cases of Money laundering and Terrorism finance. Any other access to the beneficial ownership registers will be subject to the prescribed regulations that will be promulgated. • The proposed insertion of new section 56A is noted to differentiate between "Beneficial Owner" and "beneficial interest holders" and will be considered.

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	(3) The Minister may make regulations exempting a company from compliance with subsections (1) and (2) under prescribed conditions. (4) The prescribed requirements and conditions referred to in subsections (1), (2) and (3) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001). COSATU and SACTWA There is no provision for disclosure of this information or for access to that information. We therefore recommend an additional provision be added, and that the provisions be amended to read: "(12) A company must file a record with the Commission, in the prescribed form and containing the prescribed information, regarding the natural persons who are the beneficial owners of the company, and must ensure that this information is updated by filing Notices with the Commission within the prescribed period after any changes in beneficial ownership have occurred. (13) The Commission must make any updates received in subsection 12 available on a publicly accessible platform in the prescribed form and containing the prescribed information for publication. (14) The prescribed requirements referred to in subsections (12) and (13) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001). The requirements must	

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	provide for access for members of the public to the register." These amendments will create a two track-system for access to information about companies' beneficial ownership: • through the publication by the Commission of companies' annual returns and • through the publication by the Commission of updated information as and when it is received This does not remove the rights of individuals to apply for access to information through the Promotion of Access to Information Act but creates a proactive and up-to date record which will be accessible to any interested person. Webber Wentzel • Given the proposed amendments to other sections of the Act to require a company to include details of beneficial owners in its securities register (section 50) and to include a copy of its securities register and a copy of its register of disclosure of beneficial interest in its annual return (section 33), it is not clear why a separate record (the record containing prescribed information relating to beneficial owners contemplated in section 56(12)) is required. • Please see our comments above relating to the practical difficulties and administrative burden associated with performing the exercise of updating the prescribed information at prescribed intervals, particularly for listed companies. • We note that the reference to "Notices" in section 56(12) should rather be to "notices". • Unlike the definition of "true owner" proposed by the Companies Amendment Bill, 2021, the definition of "beneficial owner" proposed by the	

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	Omnibus Bill has not been expressly linked to the definition of beneficial interest in the Companies Act in the definition or via section 56. The interaction between the two terms is therefore not clear. We submit that this should be clarified –and that it should be stated that the two records are distinct. • Unlike the Companies Amendment Bill, 2021, again, the Omnibus Bill does not seek to amend the provisions of section 56 to extend the obligation placed on regulated companies to disclose beneficial interests in their annual financial statements to all companies, but rather has proposed a change in the title of the section to include beneficial ownership and the addition of requirements to file a record of beneficial owners with the Commission and update such record. It therefore appears that if the Omnibus Bill's proposed amendments are introduced, two distinct sets of disclosure obligations will exist under the Act: o one of disclosure of beneficial interests (equal to or in excess of 5% of the total number of securities of a class of securities issued by a company) by regulated companies in their annual financial statements, as is the case currently; and o one of disclosure of beneficial ownership by all companies in their annual return and register of prescribed information filed with the Commission. • We submit that the legislator may wish to consider clarifying its intention that there be two distinct records and that, under the present amendments, the beneficial owner record is required to be filed. We submit that the legislator may also wish to provide expressly that shareholders are obliged to provide the required	

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	information (similar to the obligations in respect of beneficial interests). We submit that there should be an interim period to enable listed companies to put in place the necessary systems, personnel, etc to be able to comply with this obligation within a specified time period. Computershare • It is proposed that the Companies Act, 2008 be aligned with the requirements of the Promotion of Personal Information Act, 2013 and that the Information Regulator give approval for the Strate BND to be disclosed to the market, as this will improve transparency. • It is recommended that South Africa should align with international practice and amend section 56 to allow an exemption for listed companies from having to provide a beneficial ownership register to CIPC. • The obligation should be on a beneficial interest holder (shareholder) to disclose to the company any underlying shareholders/ultimate beneficial owner/true owner to ensure that the register of the disclosure of beneficial interest is complete. amaBhungane and Corruption Watch • There is no provision for disclosure of this information or for access to that information. We therefore recommend an additional provision be added, and that the provisions be amended to read: "(13) The Commission must make any updates received in subsection 12 available on a publicly-accessible platform in the prescribed form and containing the prescribed information for publication.	

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	(14) The prescribed requirements referred to in subsections (12) and (13) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001). The requirements must include, at a minimum, the full name and contact details of the beneficial owner to ensure unambiguous identification, a disclosure of any additional information recorded but not available for public access and a justification as to why such information has been withheld. And must provide for access for members of the public to the register." BASA In the alternative, should the legislature not be amenable to accepting BASA's proposal relating to the deletion of this section and its incorporation into section 56A: a) For the reasons stipulated in our general comments, BASA suggests that section 56(12) be amended to provide for an exemption of certain companies in the Regulations. b) For the reasons set out in line-item number above, we suggest that the words "adequate and accurate" be incorporated into section 56(12). c) Please also refer to the additional provisions proposed in Annexure A under the new proposed section 56A. Should the legislature not be amenable to accept the new proposed section56A, we propose that all those additional provisions also be included in section 56 following section 56(12). Whilst BASA supports the creation of a central register, we would like to seek clarity on how the parallel reporting requirements that may be created will be managed. For example, the	

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	proposed changes to the JSE Listing Requirements, the PA's Directive 6/2022and clause 59 of the Bill relating to entities that are registered under the FSR Act. 1) It is proposed that section 56(12) be reworded as follows: ''**Unless exempted in the Regulations from the provisions of sub- section (12)**, a company must file a record with the Commission, in the prescribed form and containing the prescribed information, regarding the natural persons who are the beneficial owners of the company, and must ensure that this information is **adequate, accurate and up to date** ~~updated~~ by filing Notices with the Commission within the prescribed period after any changes in beneficial ownership have occurred.	
Clause 56 Section 69 of the Companies Act, 2008, is hereby amended in paragraph (b) of subsection (8) by the substitution for subparagraph (iv) of the following subparagraph: ''(iv) has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury or an offence— (aa) involving fraud, misrepresentation or dishonesty, money laundering, terrorist financing, or proliferation financing activities as defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); or (bb) in connection with the promotion, formation or management of a company, or in connection with any act contemplated in subsection (2) or (5); or	Webber Wentzel □ We note that the citation of legislation referenced in section 69(8)(b)(iv)(cc) should be consistent throughout, ie: "under this Act, the Insolvency Act, 1936, (Act No. 24 of 1936), the Close Corporations Act, 1984 (Act No. 69 of 1984), the Competition Act, 1998 (Act No. 89 of 1998), the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), the Financial Markets Act, 2012 (Act No. 69 of 2012), Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), the Protection of Constitutional Democracy Against Terrorism and Related Activities Act, 2004 (Act No. 33 of 2004), or the Tax Administration Act, 2011 (Act No. 28 of 2011);.". □ We note, with reference to our comment above, that section 69(8)(b)(iv)(cc) should conclude with a full stop rather than a semi-colon.	• This proposal is not supported as once an Act is referenced in full it does not need to be referenced in full again if it is referred to again

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(cc) under this Act, the Insolvency Act, 1936[,] (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001 **[(Act 38 of 2001)**], the Financial Markets Act, 2012, [or] Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), the Protection of Constitutional Democracy Against Terrorism and Related Activities Act, 2004 (Act No. 33 of 2004), or the Tax Administration Act, 2011 (Act No. 28 of 2011);''.		
Current section 122	JSE, Shoprite To support the application of an exemption for listed companies from the recording and reporting of beneficial ownership information, the JSE proposes to make amendments to its Listing Requirements to enhance the accessibility and transparency of information on the holders of a significant beneficial interest in a listed company's securities. In terms of the extant JSE Listing Requirements, a listed company is required to – a) establish and maintain a register of the disclosures made in terms of Section 56 of the Companies Act (section 3.83(a)); b) publish the information on significant beneficial interest holdings that has been disclosed to the company in terms of Section 122 of the Companies Act (section 3.83(b)); and c) publish in its annual financial statements the identity of major shareholders who hold beneficial interests equal to or in excess of 5% of the number of securities issued by the company (section 8.63) If provision is made in the Companies Act for an exemption for listed companies from the requirement to obtain and report details of their beneficial owners, the JSE will propose to amend its Listing Requirements to require listed companies to maintain and publish the register of	• The request for the exemption of listed companies will be considered, however, sufficient requirements and measures are will need to be put in place to ensure that that Beneficial Ownership information is collected and made available to Competent Authorities and Law Enforcement Agencies. The current criteria for Beneficial Interest Holders does not meet the FATF definition of BO and therefore the exchange will have to 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.

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	major shareholders who hold beneficial interests equal to or in excess of 5% of the number of securities issued by the company, on the company's web-site, on an ongoing basis, and require that updates to the published register are made in a timely manner. Computershare We support the JSE's proposal that it amends its Listing Requirements to require that listed companies, publish the register of disclosures of beneficial interest (as required in section 122) on its website on a continual basis (i.e., securities holdings above the 5% threshold) and to provide law enforcement or regulators with an updated copy of the full register of the disclosure of beneficial interest, on request. BASA • Whilst the need for a register of beneficial ownership is required and supported, an exemption, or alternate mechanism is suggested as regard companies listed on a recognised securities exchange in South Africa, to maintain and disclose beneficial ownership information of their shareholders. There is no evidence of international listing authorities imposing requirements on listed companies to maintain and disclose beneficial ownership information of their shareholders particularly where there exists a comprehensive legal framework containing disclosure requirements that oblige a shareholder (natural or legal person) to notify an issuer (whose shares are admitted to trading on a regulated market) of an acquisition or disposal of shares of that issuer when the proportion of voting rights of the issuer held by the shareholder reaches, exceeds or falls	

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	below certain thresholds. Similar disclosure requirements are provided for in section 122 of the Companies Act. • Considering the disclosure requirements already contained in the Companies Act, it is respectfully submitted that an exemption for a reasonable period be provided for listed companies, alternatively that an alternate mechanism to the registration on an ultimate beneficial ownership register be applied. In this regard, it is suggested that a register containing prescribed information either be held at the exchange where the entity is listed or alternatively be published by the respective listed entity on its website.	
FINANCIAL SECTOR REGULATION ACT		
Clause 59 Beneficial owners 159A. (1) For the purposes of this Chapter, 'beneficial owner'— (a) has the meaning defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); and (b) for the purposes of this Act, includes, but is not limited to, a natural person who directly or indirectly ultimately owns or is able to exercise control of a— (i) financial institution; or (ii) natural person, legal person, partnership or trust that owns or is able to exercise control of, as the case may be, a financial institution. (2) The Minister, the Reserve Bank and a financial sector regulator are not, in those capacities, beneficial owners of a financial institution.	Open Ownership: As with other sections of the Bill, the definition could be expanded to give further clarity on reporting obligations by defining the circumstances under which owners or control may apply BASA 1) BASA proposes that the proposed definition of "beneficial owner" as reflected in Annexure A be adopted. 2) Alternatively, BASA proposes 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.	• Proposed amendments to the definitions of "beneficial owner: in the Bill are submitted to the Committee for consideration. See comment above in relation to singular and plural
Clause 59 Standards in relation to beneficial owners	Open Ownership: Provide certainty on the creation of standards for critical areas of implementation and consider	Noted and will be taken into account in the drafting of the standards

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159B. (1) In addition to the powers in Part 2 of Chapter 7 to make standards, a financial sector regulator may make standards applicable to— (a) beneficial owners with respect to— (i) fit and proper requirements, in particular honesty and integrity; and (ii) reporting of relevant information regarding the beneficial owner to the financial sector regulator; and (b) financial institutions with respect to the— (i) identification and verification of beneficial owners; and (ii) reporting relevant information in respect of beneficial owners to the financial sector regulator. (2) Standards referred to in subsection (1) may— (a) prescribe what would or would not constitute direct or indirect ultimate ownership or control, or the ability to exercise such control, as contemplated in the definition of beneficial owner for purposes of section 159A; (b) exclude specified persons from the definition of beneficial owner as contemplated in section 159A; and (c) distinguish between different types and categories of beneficial owners.	mechanism for access for (at minimum) law enforcement and competent authorities ASISA ASISA members wish to record that it is foreseen that there is likely to be confusion between requirements applicable to significant owners and beneficial owners and that cognisance should be taken of unintended consequences in this regard. In general, beneficial owners are identified for transparency purposes and significant owners are designated by an Authority. Ownership and control in the context of a beneficial owner should be substantial and some minimum level should be set to avoid a significant burden to identify, apply fit and proper requirements to and comply with reporting requirements for beneficial owners with insignificant levels of ownership, not giving rise to control. It is recognised that a standard made by a financial sector regulator is subject to public consultation and ASISA members will have the opportunity to submit comments on a proposed standard in this regard. BASA 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).	This comment is noted, and will be endeavoured to be ensured is clarified in the standards that are issued.
Clause 59	amaBhungane and Corruption Watch	The Financial Sector Regulation Act provides for various enforcement

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Regulator's directives in relation to beneficial owners 159C. (1) (a) A financial sector regulator may issue to a beneficial owner a written directive requiring the beneficial owner to take action specified in the directive if the beneficial owner has contravened or is likely to contravene a financial sector law for which the financial sector regulator is the responsible authority. (b) A directive in terms of paragraph (a) must aim to stop the beneficial owner from contravening the financial sector law, or reducing the risk of such a contravention, and may include requiring the beneficial owner to take steps to cease being a beneficial owner. (2) A beneficial owner of a financial institution must comply with a directive issued in terms of subsection (1).''.	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 would be: "A person who contravenes sections 46(1) or (2), 52, 69(1) or (2) or 74 or 159C commits an offence and is liable on conviction to a fine not exceeding R5 000 000 or imprisonment for a period not exceeding five years, or to both a fine and such imprisonment." BASA By the insertion of a new section 159C (and the renumbering of the current section 159C as the new section 159D 159C Duty of beneficial owners to provide information (1) Each beneficial owner, or person reasonably considered by the financial institution to be a beneficial owner of the financial institution ("deemed beneficial owner"), must upon receipt of a notice by the financial institution, provide all information requested by the financial institution in order to ensure compliance with this section 159B and/or any standards issued in terms of section 159B. (2) A beneficial owner or deemed beneficial owner must comply with a request from a financial institution within the period prescribed by the financial institution." Amend section 159C (renumbered 159D) by including a new subsection 3 as follows:	measures that may be undertaken in relation to a contravention of a directive. It will be further considered if it is desired to make a contravention of section 159C an offence. • Further consideration will be given to this proposal, although it is possible that this requirement would be envisaged to be provided for in standards. pppppppppp

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	(3) A failure to comply with the written directive of the financial sector regulator constitutes an offence.	
Clause 62 (1) This Act is called the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act, 2022, and takes effect on a date determined by the President by proclamation in the Gazette. (2) Different dates may be determined by the President in respect of the taking effect of different provisions of this Act.	ASISA 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. BASA • BASA submits that 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. • We kindly request that timeframes for the implementation of the various amendments be clearly communicated so that both the public and private sectors have a common understanding of what is required and the timeframes applicable. We will also appreciate it if the relevant Regulators provide guidance and engage in appropriate awareness sessions to ensure that all industries are aligned with the expectations of the Regulators.	• Beneficial ownership obligations already exist on all accountable institutions (AIs) and they are requried 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 requried to implement any access by AIs to the BO information from any contemplated BO registries. • 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. • 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. • Requests for communication and engagement regarding the implementation of the legislation is well noted.