

5 October 2022

Hon. J. Maswanganyi, MP

Chairperson: Standing Committee on Finance (National Assembly)

For attention: Mr Allen Wicomb awicomb@parliament.gov.za

Ms Teboho Sepanya tsepanya@parliament.gov.za

Dear Mr Maswanganyi

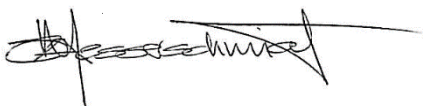
General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill

The Association for Savings and Investment South Africa (ASISA) represents the collective interests of the country's asset managers, collective investment scheme management companies, linked investment service providers, multi-managers, and life insurance companies. Our members are accountable institutions subject to the Financial Intelligence Centre Act, 2001.

ASISA members in general support the object of the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill ("the Amendment Bill") to address the deficiencies identified in the FATF Mutual Evaluation Report on South Africa.

ASISA members submit the comments in the attached table.

Yours sincerely



Adri Messerschmidt
Senior Policy Advisor



ASISA members in general support the object of the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill ("the Amendment Bill") to address the deficiencies identified in the FATF Mutual Evaluation Report on South Africa. ASISA members wish to submit the following comments:

Clause in the Bill	Wording of clause in the Bill	Comment
5 Inserting section 11A in the Trust Property Control Act	<p><u>Beneficial ownership</u></p> <p><u>11A. (1) A trustee must—</u></p> <p><u>(a) establish and record the beneficial ownership of the trust;</u></p> <p><u>(b) keep a record of the prescribed information relating to the beneficial owners of the trust;</u></p> <p><u>(c) lodge a register of the prescribed information on the beneficial owners of the trust with the Master's Office; and</u></p> <p><u>(d) ensure that the prescribed information referred to in paragraphs (a) to (c) is kept up to date.</u></p> <p><u>(2) The Master must keep a register in the prescribed form containing prescribed information about the beneficial ownership of trusts.</u></p> <p><u>(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.</u></p> <p><u>(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).</u></p>	<p>ASISA members support the introduction of an obligation on trustees to maintain records of beneficial ownership and that such records must be made available to prescribed persons. 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 information on beneficial ownership of trusts.</p>



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12(d) Insertion of subsection (4) in section 24 of the Nonprofit Organisations Act	<p><u>(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.</u></p> <p><u>(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).</u></p>	<p>ASISA members support the introduction of an obligation on nonprofit organisations to include in a register prescribed information about its office-bearers, control structure, governance, management, administration and operations and that such records must be made available to prescribed persons. 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.</p>
15(b) Amending a definition in section 1 of FICA	<p>Amending (i) of the definition of 'authorised officer' in FICA</p> <p>(i) an investigative division in [an organ of state] <u>a national department</u> authorised by the head of [the organ of state] <u>that national department</u> to act under this Act; or'';</p>	<p>National Treasury indicated that the definition of authorised officer is being amended to remove any ambiguity as to with whom the Financial Intelligence Centre may share information. 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.</p> <p><i>Proposed wording:</i></p>



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		<p><u>'national department' means a national department listed in Schedule 1 to the Public Service Act, 1994 (Act No. 103 of 1994);</u></p>
<p>15(i) Adding a definition to section 1(1) of FICA</p>	<p><u>'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;</u></p>	<p>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.</p> <p><i>Proposed wording:</i> <u>'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 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, trans-shipment, 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;</u></p>



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19(b) Substitution of section 21B(4)(c) of FICA	(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) <u>in respect of the founders of the trust, establish the identity of—</u> (i) [the] <u>each founder; and</u> (ii) <u>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;</u>	It appears as if a reference to “trust” was omitted from the amendment to section 21B(4)(c)(ii) of FICA and that the clause should be amended. <i>Proposed wording:</i> <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 agreement, the beneficial owner of that legal person, or partnership or trust;</u>
21 Amending section 21D of FICA	<p><u>Doubts about veracity of previously obtained information and when reporting suspicious and unusual transactions</u></p> <p>When an accountable institution, subsequent to entering into a single transaction or establishing a business relationship[.], = <u>(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</u> <u>(b) makes a suspicious or unusual transaction report in terms of section 29,</u></p>	<ol style="list-style-type: none"> 1. It is proposed that the heading of the section should be aligned with the amended content of the section: <u>Doubts about veracity of previously obtained information and or when reporting suspicious and unusual transactions</u> 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



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	<p>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] <u>previously obtained</u>.</p>	<p>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.</p> <p><i>Proposed wording:</i></p> <p><u>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.</u></p>



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25 Amending section 26A(3) of FICA	(3) [Following a notice contemplated in subsection (1) the] <u>The</u> Director must, [from time to time and] by appropriate means of publication, give notice of—	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. <i>Proposed wording:</i> [Following a notice contemplated in subsection (1) the] <u>The</u> Director must, [from time to time and] by appropriate means of publication, give immediate notice of—
50 Insertion of Schedule 3C in FICA	<p>PROMINENT INFLUENTIAL PERSON</p> <p><u>A prominent influential person is an individual who holds, or has held at any time in the preceding 12 months, the position of—</u></p> <p><u>(a) chairperson of the board of directors;</u></p> <p><u>(b) chairperson of the audit committee;</u></p> <p><u>(c) executive officer; or</u></p> <p><u>(d) chief financial officer,</u></p> <p><u>of a company, as defined in the Companies Act, 2008 (Act No. 71 of 2008), if the company provides goods or services to an organ of state and the annual transactional value of the goods or services or both exceeds an amount determined by the Minister by notice in the Gazette.</u></p>	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.



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59 Insertion of section 159B in the Financial Sector Regulation Act	<p><u>(1) In addition to the powers in Part 2 of Chapter 7 to make standards, a financial sector regulator may make standards applicable to—</u></p> <p><u>(a) beneficial owners with respect to—</u></p> <p><u>(i) fit and proper requirements, in particular honesty and integrity; and</u></p> <p><u>(ii) reporting of relevant information regarding the beneficial owner to the financial sector regulator; and</u></p> <p><u>(b) financial institutions with respect to the—</u></p> <p><u>(i) identification and verification of beneficial owners; and</u></p> <p><u>(ii) reporting relevant information in respect of beneficial owners to the financial sector regulator.</u></p> <p><u>(2) Standards referred to in subsection (1) may—</u></p> <p><u>(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;</u></p> <p><u>(b) exclude specified persons from the definition of beneficial owner as contemplated in section 159A; and</u></p> <p><u>(c) distinguish between different types and categories of beneficial owners.</u></p>	<p>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.</p>



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62 Short title and commencement	(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.	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.