10 October 2022

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Hon. J Maswanganyi

Chairperson: Standing Committee on Finance (National Assembly)

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Dear Hon. Maswanganyi

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

1. Introduction

The Johannesburg Stock Exchange ('JSE') welcomes the opportunity to make a submission to the Standing Committee on Finance on the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill ('GLAB').

The JSE is ranked as the 19th largest stock exchange in the world by market capitalisation and the leading stock exchange on the African continent. The JSE is at the center of the South African capital markets and is the prime platform for financial trading and capital raising in Africa. The JSE connects global investors through our platform which delivers secure, efficient primary and secondary capital markets access across a diverse range of securities, supported by our post-trade and regulatory functions. This makes the JSE a market of choice for investors looking to gain exposure to South Africa, and for local and international companies to raise capital.

The GLAB has not been subjected to a public consultation period in advance of the call for public comments by the Standing Committee on Finance. As we have been provided with a very short period in which to formulate our submission since the Standing Committee on Finance's call for public comments on 27 September 2022, we have focused our attention on finding a pragmatic solution to some of the key challenges in the GLAB for listed companies, that will enable compliance with FATF Recommendation 24 (Transparency and beneficial ownership of legal persons) and will improve South Africa's effectiveness rating in respect of Immediate Outcome 5 (Beneficial Ownership), while ensuring that the perhaps unforeseen and unintended consequences of the proposed amendments do not result in undue and impossible burdens being placed on companies listed on a South African exchange. In the limited time afforded to us, we have therefore focused our attention on the proposed amendments to the Companies Act, particularly with the potential impact on listed companies in mind.

The JSE has engaged in constructive discussions with the government departments responsible for the GLAB and we will continue to work with these departments to ensure an optimal outcome. The JSE hosted a workshop on 5 October 2022 for companies listed on the JSE to discuss the proposed amendments to the Companies Act. The 34 companies that attended the workshop expressed their broad support for the JSE's position and recommendations set out in this submission.

2. Executive Summary

The JSE recognises the importance of, and is supportive of, South Africa's role in the global effort to address anti-money laundering and the financing of terrorism. We also recognise the urgency to implement measures to demonstrate progress towards increasing the effectiveness ratings of the Immediate Outcomes, and to improve technical compliance with the FATF 40 Recommendations.

We fully support the introduction of a central beneficial owner register of companies that will be maintained by the Companies and Intellectual Property Commission ('the Commission'). However, the proposed amendments to the Companies Act ('proposed amendments') are unworkable for publicly listed companies; the vast majority of companies listed on a South African exchange will not be able to comply with the proposed `beneficial owner' disclosure and reporting requirements for the reasons stated in this submission.

The proposed amendments are not aligned to transparency and disclosure practices in developed markets, in relation to publicly listed companies, and, if implemented, could discourage companies from raising capital on a South African exchange, and could lead to listed companies moving their primary listing from South Africa to a jurisdiction with sensible, practical and effective disclosure requirements.

The vast number and geographical spread of direct and indirect owners of shares in a listed company, the frequency at which the shareholding in a listed company changes, and the structure of the shareholder register of a listed company, with registered shareholders acting as nominees for other persons, are all important practical considerations and factors that preclude a listed company from being able to collect and report accurate and complete beneficial ownership information in respect of its shareholders..

Onerous and impractical regulatory and administrative burdens on listed companies disincentivize companies from raising capital on an exchange or remaining listed, which consequently has negative outcomes for the growth, vibrancy, transparency and global attractiveness of the South African markets. We therefore need to find a solution that is practical, that companies will be able to comply with and implement, and that will substantially achieve the objectives of the GLAB in relation to transparency of ownership of juristic persons, but in a manner that supports the competitiveness and effective operation of the South African capital markets.

The JSE acknowledges the conflicting policy objectives between remedying South Africa's FATF Mutual Evaluation Review shortcomings by necessarily increasing the compliance obligations imposed on legal persons, and encouraging economic growth through domestic and foreign investment. Our recommendations seek to find an appropriate balance between these policy objectives, as we recognise that a failure to remedy the FATF shortcomings would, in any event, have a devastating impact on the South African economy and South Africa's attractiveness as an investment destination.

A further broad concern with the GLAB relates to how a 'beneficial owner' has been defined and how the concept of 'beneficial ownership' has been inserted into a statute that currently deals with 'legal ownership', with the resultant erroneous conflation of two very different and distinct concepts. The proposed definition of 'beneficial owner' in the Companies Act, with its incorporation, by reference, of the revised definition of a 'beneficial owner' in the Financial Intelligence Centre Act ('FIC Act'), is not fit for purpose for the Companies Act, and will not, in its proposed form, achieve the objective of identifying those natural persons who FATF regard as ultimately owning or exercising ultimate effective control over a company, when read with other provisions in the Companies Act regarding 'control'.

To address our concerns on the likely impact of the proposed amendments on listed companies, and various other concerns that we have on the manner in which the proposed amendments deal with the concept of beneficial ownership of companies, the JSE's recommendations on further amendments to the Companies Act are, in summary, as follows:

a) Refinement of the definition of 'beneficial owner' to provide clarity in the practical application of the definition;
b) 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;
c) Proposed amendments to the JSE Listing Requirements to provide more transparency regarding the holders of a significant beneficial interest in a listed company;
d) Replacement of the provision that requires a company to record beneficial ownership information in its security register with a provision that requires the establishment and maintenance of a separate register of beneficial ownership; and
e) Providing for a correct and appropriate distinction between the concepts of legal ownership and beneficial ownership of a company.

3. Impact of beneficial ownership disclosure on South African listed companies

The proposed amendments that will require a listed company to identify any natural persons who ultimately own or exercise ultimate effective control over the company, usually through a chain of juristic persons (such as companies and trusts), are unworkable for listed companies. Listed companies know who their registered shareholders are through the information in their share registers, but it is simply not possible for a listed company to pierce every direct and indirect owner of its shares that is a juristic person to identify the natural persons 'at the end of the ownership chain'. The vast number of local and foreign shareholders, the frequency at which a listed company's share register changes (daily), and the structure of a typical listed company's share register, simply renders that task impossible for all but a few listed companies. The vast majority[1] of companies listed on a South African exchange will, therefore, not be able to comply with the proposed `beneficial owner' disclosure and reporting requirements. (In Section 4 below we explain further why the structure of the shareholder registers for listed companies would impede compliance if the obligation to obtain beneficial owner information was imposed on the listed company).

Imposing onerous requirements on listed companies and their shareholders, when these requirements are not imposed by relevant international peers, could potentially be harmful to the strength and competitiveness of South Africa's financial markets, and for relatively little benefit. It is our view that onerous regulatory burdens on a small and discrete set of companies[2] would not remedy nor improve South Africa's poor ratings and would have a negative impact on the effectiveness and competitiveness of the South African capital markets. Increasing regulatory burdens on publicly listed companies has contributed to the number of delistings on the JSE[3]; onerous burdens on listed companies disincentivize companies from raising capital on an exchange or remaining listed, which consequently has negative outcomes for the growth, vibrancy, transparency and global attractiveness of the South African markets.

Although our concerns about the onerous regulatory burden that would be imposed on listed companies and their shareholders if they were obliged to obtain and disclose beneficial ownership information apply to all listed companies, our concerns are amplified in relation to listed companies incorporated in South Africa with a secondary listing on a foreign exchange[4]. An obligation that requires a listed company to maintain and disclose beneficial ownership information of its shareholders, when that company is not subject to similar requirements in the other jurisdiction(s) where it is listed, could lead to the company moving its primary listing from South Africa to a jurisdiction with sensible, practical and effective disclosure requirements.

[1] Companies with restricted shareholders (e.g., BEE listed companies) will be able to comply with the proposed amendments
[2] 311 listed companies versus in excess of 2 million registered companies
[3] The number of JSE listed companies has declined from 529 in January 2002 to 311 in July 2022
[4] Of the 311 companies listed on the JSE, 89 are dual-listed on an exchange in a foreign market

We propose that due consideration be given to how our peer jurisdictions have dealt with this important issue. In this regard, we have provided some information on how certain relevant peer jurisdictions have approached the disclosure of beneficial ownership in Section 7 below.

4. Securities register structure

The South African registers of shareholders are fragmented; some securities are dematerialised (uncertificated), for which the record of shareholding is held by a central securities depository ('CSD'), and some securities are held in certificated form, for which the record of shareholding is held by a transfer secretary or the company secretary.

Only uncertificated securities may be traded on a South African exchange, and the central securities register of uncertificated securities, established and maintained by the CSD, reflects the registered holders of those uncertificated securities. However, the majority of the registered holders are nominees who act as the registered holder of the securities on behalf of underlying beneficial interest holders. These nominees are typically operated by banks, brokers and investment managers, acting on behalf of their clients. In this context, a beneficial interest holder is a natural or juristic person who enjoys the ultimate rights of ownership of the relevant security registered in the name of the nominee. Importantly, it is different to a beneficial owner (or ultimate beneficial owner) in the context of the FATF Recommendations or the FIC Act, which means specifically the natural persons who ultimately own or exercise ultimate effective control over a juristic person.

Nominee companies acting in that capacity as registered shareholders of public companies are required by Section 56 of the Companies Act to submit the details of the beneficial interest holders on whose behalf they are acting to the public company, at prescribed intervals. (For the sake of this submission, we will hereafter refer to a 'public company' as a 'listed company', although we acknowledge that these terms are not synonymous). This disclosure takes place through a periodic, electronic download of beneficial interest holder details by the registered nominees to the CSD (which currently occurs weekly), and which is made available by the CSD to the listed companies. The disclosures required by the Companies Act do not include the requirement for a nominee to disclose the identity of the ultimate beneficial owner (in a FATF or FIC Act context) of a juristic person who is a beneficial interest holder of securities registered in the name of the nominee. Listed companies therefore only know who the beneficial interest holders of their securities are, through the periodic disclosures made by the nominee registered shareholders, and those prescribed disclosures provide no information to the listed company regarding who the natural persons are who are the ultimate beneficial owners of the beneficial interest holders, if the beneficial interest holder is a juristic person, and therefore provide no information to the listed company on who the ultimate beneficial owners of the listed company may be.

In the current environment, listed companies are entirely reliant on nominee registered shareholders to 'push' the prescribed information to them, and on the Companies Act that imposes an obligation on the registered nominees to do so. There is no requirement for juristic persons who are either registered shareholders or beneficial interest holders to provide any details regarding the beneficial ownership information of the juristic person to the relevant listed company. Imposing an obligation on listed companies to 'pull' the details of the ultimate beneficial owners of all of their issued securities from their registered shareholders and beneficial interest holders, without a concomitant and enforceable obligation being imposed on the registered shareholders and beneficial interest holders to 'push' the required information to the issuer, creates an impossible task for a select group of companies who have no ability to ensure compliance with these onerous obligations, given that they exercise no control over their shareholders in a matter such as the collection of ultimate beneficial ownership information.

5. Disclosure of beneficial interest and significant ownership

The definition of 'beneficial interest' in the Companies Act essentially refers to those persons who participate in any distributions in relation to the company's securities, exercise rights attaching to the company's securities, or can direct the disposition of the company's securities. A beneficial interest holder enjoys the economic benefits attaching to the company's securities in those instances where the relevant securities are registered in the name of another person (typically a nominee).

The Companies Act grants various rights to the holders of a beneficial interest in a company's securities, and a listed company is required, in terms of Section 56 of the Act, to maintain a register of the disclosures of beneficial interest that have been made in terms of the Act, in order for the company, *inter alia*, to know who those rights accrue to. Section 56 of the Companies Act requires all registered holders of a listed company's securities who are not the holders of a beneficial interest in the relevant securities to disclose the identity of the person on whose behalf such securities are held and the identity of all persons with a beneficial interest in those securities. These disclosures by registered holders of listed securities who are acting as nominees provide significant transparency of the ownership of listed securities, down to the level of each beneficial interest holder. Through these disclosures, a listed company will know, at regular intervals (in practice, weekly), who all of its beneficial interest holders are.

Although Section 56 of the Companies Act already facilitates the collection and recording of a significant amount of information on the direct and indirect shareholders of a listed company, Section 122 of the Act goes further and requires a person who acquires or disposes of a threshold percentage beneficial interest in a listed company's securities to disclose, within 3 business days, their breach of the relevant threshold. The thresholds begin at 5% of the issued securities and increase in further 5% multiples. Therefore, any significant holders of a beneficial interest in a listed company's securities (5% or more) are required to 'self-identify' that they are a holder of a significant beneficial interest in the company's securities and to disclose the extent of their beneficial interest to the company.

This requirement imposed on significant beneficial interest holders for self-disclosure applies regardless of the obligation imposed on nominee registered holders to disclose the identity of the beneficial interest holders on whose behalf they hold securities. Therefore, in relation to significant beneficial interest holdings in listed companies, there is both a 'pull' and a 'push' of information on the identity of beneficial interest holders – nominee registered shareholders are required to 'pull' the relevant information from the persons on whose behalf they hold securities as a nominee and 'push' that information up to the listed company, and significant holders of a beneficial interest in the listed company's securities are themselves required to 'push' the information regarding their ownership up to the listed company. There is, therefore, a comprehensive set of existing requirements in the Companies Act to ensure that listed companies have extensive information on the identity of the direct and indirect owners of their securities.

Section 56 of the Companies Act also requires a listed company to publish in its annual financial statements the identity of all persons who hold beneficial interests equal to or in excess of 5% of the number of securities issued by the company. Therefore, there is currently an annual public disclosure by all listed companies of the identity of their significant beneficial interest holders. Furthermore, and importantly, section 3.83 of the JSE Listings Requirements requires a listed company to publish the information on significant beneficial interest holdings that has been disclosed to the company in terms of Section 122 of the Companies Act on the Stock Exchange News Service, within 48 hours of the receipt of the disclosure. Therefore, through a combination of the provisions in the Companies Act and the JSE Listings Requirements, there is timeous public disclosure of all significant beneficial interest holdings in all JSE listed companies that anyone can readily access.

6. Using 'beneficial interest' to derive 'beneficial ownership'

The objective of the GLAB, and specifically the proposed amendments to the Companies Act, with regard to the identification of the beneficial owners of companies, is presumably to ensure that the beneficial owners of <u>all</u> companies can be identified by those competent authorities and law enforcement agencies who require that information for investigation and enforcement purposes. This objective applies equally to listed companies. The current provisions in the Companies Act and the JSE Listings Requirements regarding the disclosure of beneficial interests take us a long way towards identifying the beneficial owners of listed companies, but not necessarily all the way. Many of the holders of a beneficial interest in a listed company, including the significant holders, will be juristic persons who do not meet the definition of a 'beneficial owner'. Those juristic persons need to be pierced to identify any natural persons who may qualify as a 'beneficial owner' of a listed company.

Although the disclosure of beneficial interest holders of a listed company does not get us all the way to the identification of beneficial owners, the significant benefit of the existing provisions in the Companies Act and the JSE Listings Requirements is that the comprehensive disclosure of holders of beneficial interests points the way for competent authorities and law enforcement agencies to identify the beneficial owners. Bearing in mind that a

beneficial owner is a natural person who exercises ultimate effective control over a company, a beneficial owner of a listed company will be an individual with a controlling interest in the company. These will be individuals who directly or indirectly ultimately own a substantial portion of the listed company's shares, thereby giving them 'effective control' of the company. If the objective is to identify these individuals, scrutiny of the register of beneficial interest holders and of the public disclosures of beneficial interest made by listed companies will reveal all beneficial interest holders with a material number of shares. Those beneficial interest holders will either be natural persons, or they will be juristic persons who will themselves be subject to disclosure requirements regarding their beneficial owners. A picture will easily emerge from the company's register of who the natural persons are who directly or indirectly own a significant beneficial interest in a listed company, and which juristic persons own a significant beneficial interest in the company and need to be probed further to identify the natural persons who control those entities. Once the beneficial owners of the juristic persons with a significant beneficial interest have been identified, it is then a case of putting the pieces together to identify the one or more natural persons whose ownership stake in the listed company is significant enough to amount to exercising effective control.

Identifying the beneficial owners of a listed company would therefore be a two-step process for the competent authorities and law enforcement agencies of, firstly, identifying the significant holders of a beneficial interest, and, secondly, to the extent that such holders are juristic persons, identifying who their beneficial owners are. The identification of one or more beneficial owners of the listed company will emerge from combining the two steps. It would require a bit more effort on the part of the relevant authorities and agencies than would be required in respect of private companies with a small number of shareholders, but given the impossible task facing listed companies of identifying the natural persons who may exercise ultimate control over the company, for the reasons mentioned above, it seems like a reasonable and effective solution. Importantly, it appears to be the solution adopted in many other jurisdictions, as discussed further in section 7 below.

7. International approach to beneficial ownership disclosure

Many countries have implemented a beneficial owner registry and reporting requirements applicable to all registered/licensed companies, but provide exemptions from reporting to the beneficial owner registry for publicly listed companies, where other mechanisms provide adequate transparency of ownership information.

This approach recognises that it is unrealistic and ineffective to require that listed companies obtain, maintain and disclose beneficial ownership information of their shareholders, as listed companies have significantly more shareholders than non-listed companies, and share ownership of listed companies changes on a more frequent basis.

7.1 United States of America

The United States, in a bid to remedy the findings of their 2006 FATF Mutual Evaluation, promulgated the Corporate Transparency Act 2021 ('CTA'). Section 6403 of the CTA, *inter alia*, amends the Bank Secrecy Act by adding a new Section 5336, 'Beneficial Ownership Information Reporting Requirements', to Subchapter II of Chapter 53 of Title 31, United States Code[5]. The CTA establishes a beneficial ownership registry within the US Treasury Department's Financial Crimes Enforcement Network (FinCEN), and requires corporations, partnerships, limited liability companies and other businesses to file beneficial ownership reports. The term 'beneficial owner', as defined in the CTA, means *"with respect to an entity, an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise— (i) exercises substantial control over the entity; or (ii) owns or controls not less than 25 percent of the ownership interests of the entity"*[6]. In its final rule, with an effective date of 1 January 2024, FinCEN defines 'substantial control' with a 'facts and circumstances' test, that looks at the individual's ability to control or influence the decisions of the company[7].

Public companies (defined as issuers of a class of securities under section 12 of the Securities Exchange Act 1934 ('SEA')[8] or issuers that are required to file information under section 15(d) of that Act are exempt from the obligation to file a FinCEN report, on the basis that public companies are already subject to federal regulation that gives federal law enforcement visibility into their ownership[9]. Furthermore, in the circumstances where an exempt public company has a direct or indirect ownership in a 'covered entity' (such as a non-public subsidiary), the covered entity is required to report the legal name of the exempt public company but is not required to report the other information generally required on the beneficial owners of the public company, and therefore potentially of the covered entity (i.e., full legal name, date of birth, current residential or business street address, and a unique identifying number)[10].

Similar to the disclosure requirements in other jurisdictions, in terms of section 13 (d)(1) of the SEA, any person who acquires directly or indirectly more than 5% beneficial ownership of the securities of a public company is required to file a report with the Commissioner. The term 'beneficial owner' is not specifically defined in the SEA, but 'person' is defined as *'a natural person, company, government, or political subdivision, agency, or instrumentality of a government'*. Consequently, the term 'beneficial owner' as contemplated in the SEA does not align with the CTA definition, nor indeed the FATF definition of 'beneficial

[5] William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Corporate Transparency Act ('CTA') from Page 1218 to 1239 https://www.congress.gov/116/plaws/publ283/PLAW-116publ283.pdf
[6] CTA § 5336(a)(3)(A)
[7] https://www.fincen.gov/beneficial-ownership-information-reporting-rule-fact-sheet
[8] Securities Exchange Act, 1934. https://www.govinfo.gov/content/pkg/COMPS-1885/pdf/COMPS-1885.pdf
[9] CTA § 5336(a)(11)(B)
[10] CTA § 5336(b)(2)(B)

owner'. The definition of 'beneficial owner' in the SEA is, however, similar to the definition of 'beneficial interest' in the South African Companies Act, and the disclosure requirements on beneficial ownership in the SEA align substantially with the requirements in the Companies Act.

The US therefore appears to adopt the two-step approach to identifying the beneficial owners of public companies, achieved through the disclosure of significant holders of beneficial interest (using the SA Companies Act terminology).

7.2 United Kingdom

The United Kingdom ('UK') Companies Act 2006, requires that a UK incorporated company must identify, confirm, and maintain an up-to-date register of people with significant control over the company, known as the 'people with significant control ('PSC') register'[11]. A PSC is defined as 'an individual who meets at least one of the specified conditions[12], namely -

i. the person holds, directly or indirectly, more than 25% of the company's shares;
ii. the person holds, directly or indirectly, more than 25% of the company's voting rights;
iii. the person holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of the company;
iv. the person has the right to exercise, or actually exercises, significant influence or control over the company;
v. the trustees of a trust or the members of a firm that, under the law by which it is governed, is not a legal person meet any of the other specified conditions (in their capacity as such) in relation to the company, or would do so if they were individuals, and the person has the right to exercise, or actually exercises, significant influence or control over the activities of that trust or firm.

A company's PSC register must be available for inspection by any person (free of charge) and a copy of the register, or any part of it, must be made available to any person (on payment of a fee). A company is required to provide and update this information publicly by filing it in the Central Public Register held and maintained by Companies House, within 14 days of any changes or additions to its PSC register. At least once a year, as part of the company's confirmation statement, the company is required to confirm that the PSC information contained on the public register is accurate and up to date. Private companies may elect to keep information in the Central Public Register instead of entering it in their own PSC register[13].

[11] UK Companies Act 2006, as amended. Part 21A. https://www.legislation.gov.uk/ukpga/2006/46/part/21A
[12] UK Companies Act 2006, as amended. Scedule1A. https://www.legislation.gov.uk/ukpga/2006/46/schedule/1A
[13] https://www.gov.uk/government/publications/guidance-to-the-people-with-significant-control-requirements-for-companies-and-limited-liability-partnerships

The PSC Register requirements are not applicable to -

(a) companies with voting shares admitted to trading on a UK regulated market or an EU regulated market; and

(b) certain specified companies, provided for in regulations, where those companies are bound by disclosure and transparency rules contained in international standards and are equivalent to those applicable to companies referred to in (a) above.[14]

The equivalent disclosure and transparency rules contained in international standards are the G20/OECD Principles of Corporate Governance[15], which sets out, inter alia, the basic rights of investors to be informed about the ownership structure of listed companies and the principles regarding disclosure and transparency of major shareholders.

The UK Listing Authority, the Financial Conduct Authority ('FCA'), requires, *inter alia*, that a person must notify the issuer (listed company) of the percentage of its voting rights he holds as shareholder, or holds or is deemed to hold through his direct or indirect holding of related financial instruments (or a combination of such holdings), if the percentage of those voting rights:

i. reaches, exceeds, or falls below 3%, 4%, 5%, 6%, 7%, 8%, 9%, 10%, and each 1% threshold thereafter up to 100% (or in the case of a non-UK issuer on the basis of thresholds at 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%), as a result of an acquisition or disposal of shares or related financial instruments; or

ii. reaches, exceeds, or falls below the applicable threshold in (i) as a result of events changing the breakdown of voting rights and on the basis of information disclosed by the issuer; and

iii. in the case of an issuer which is not incorporated in the United Kingdom, a notification under (ii) must be made on the basis of equivalent events and disclosed information.[16]

A 'person' is defined as *'any person, including a body of persons corporate or unincorporate (that is, a natural person, a legal person and, for example, a partnership)'*. The FCA disclosure requirements for listed companies are therefore not applicable to 'beneficial owners', but are instead similar to the US significant holding disclosure regime and are aligned to the South African Companies Act requirements in respect of disclosure of significant holders of a beneficial interest.

[14] UK Companies Act 2006, as amended. Part 21A, Section 790B(1). https://www.legislation.gov.uk/ukpga/2006/46/part/21A
[15] https://www.oecd.org/corporate/principles-corporate-governance/
[16] FCA Handbook DTR 5.1.2. https://www.handbook.fca.org.uk/handbook/DTR/5/1.html

7.3 European Union

The EU Directive on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing ('EU AML Directive') [17] explicitly requires Member States to ensure that beneficial ownership information of corporate and other legal entities incorporated within their territory is held in a central register in each Member State (Article 30(3)). Within the definition of 'beneficial owner', the EU AML Directive provides an exclusion for *'a company listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information'*.

The definition of 'beneficial owner' sets thresholds of *'shareholding of 25 % plus one share or an ownership interest of more than 25 %'* held by a natural person as an indication of direct ownership, and the same thresholds in respect of shareholding or ownership interest held by a corporate entity, under the control of a natural person, or by multiple corporate entities, under the control of the same natural person, as an indication of indirect ownership.

Provision is also made, in the definition of 'beneficial owner', that in those circumstances where all possible means to identify the natural person who is the beneficial owner have been exhausted, the beneficial owners are deemed to be the *'the natural person(s) who hold the position of senior managing official(s)'*.

The disclosure requirements consistent with Union law, referred to in the exemption for companies listed on a regulated market, are provided for in the EU Directive on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market ('EU Transparency Directive')[18]. Article 9 of the EU Transparency Directive provides for the obligation on a shareholder ('*natural person or legal entity governed by private or public law*') 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 below certain thresholds (e.g., 5 %, 10 %, 15 %, 20 %, 25 %, 30 %, 50 % and 75 %).

The EU approach to the exemption of a company listed on a regulated market is therefore aligned to the approach in the UK and the US, and the major holding disclosure requirements are substantially aligned to the approach in the US, the UK, and indeed the disclosure requirements provided for in section 122 of the South African Companies Act.

[17] EU Directive (EU) 2015/849, as amended. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02015L0849-20210630&from=EN

[18] EU Transparency Directive 2004/109/EC, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02004L0109-20210318&from=EN

8. JSE proposals

8.1 Definition of 'beneficial owner'

We have two principal concerns with the proposed definition of 'beneficial owner' in the Companies Act. Firstly, it incorporates, by reference, the revised definition of a 'beneficial owner' in the FIC Act, and, in doing so, renders the definition unclear and imprecise in its application to ownership of a company. And, secondly, in its current form, without further expansion in some manner, it does not adequately define what constitutes the exercise of effective control of a company, in a manner that aligns with the relevant FATF recommendations and guidance, whilst taking into account the existing meaning of 'control' in the Companies Act. We expand on these concerns below.

The proposed definition of 'beneficial owner' in the Companies Act, with its incorporation, by reference, of the revised definition of a 'beneficial owner' in the FIC Act, does not provide the necessary legal clarity as to who a 'beneficial owner' of a company is. The definition of a 'beneficial owner' in the Companies Act, although needing to be substantially aligned to the revised definition in the FIC Act, should be 'fit for purpose' for the Companies Act and should not require a contextual application of the definition in the FIC Act.

The proposed revised definition of 'beneficial owner' in the FIC Act is applicable, and specifically refers to, 'clients' of 'accountable institutions' (terms that are specific to the FIC Act), and is therefore inappropriate in defining the beneficial owners of a company. The definition of 'beneficial owner' in the Companies Act should deal explicitly with ultimate ownership and control of a company, and the wording of the definition should reflect that. We have proposed an amended version of the definition of 'beneficial owner' in Annexure A, which deletes the reference to the revised definition of 'beneficial owner' in the FIC Act.

The definition of a 'beneficial owner', together with any supporting provisions in the Act and any regulations issued under the Act, must also achieve the objective of identifying those natural persons who FATF regards as exercising ultimate effective control over a company, and the proposed definition does not, on its own and with its current proposed wording, achieve that objective.

In FATF's non-binding 'Guidance on Transparency and Beneficial Ownership', the FATF emphasizes that the *"definition of beneficial owner in the context of a legal person must be distinguished from the concepts of legal ownership and control".* This is a critical point to acknowledge and address when incorporating the concept of a 'beneficial owner' in the Companies Act. Registered shareholders and the holders of a beneficial interest in a company's securities fall into the category of 'legal ownership and control', as they are afforded various rights by statute and are formally recorded as having a particular status in a statutory register. However, in terms of the FATF guidance, the FATF definition of a beneficial owner "extends beyond legal ownership and control to consider the notion of ultimate (actual) ownership and control". By definition, a

'beneficial owner' of a company is always a natural person who "actually" owns the company or who "really" exerts effective control over the company, but that natural person may not (and is often not) in a position of 'legal ownership and control'.

The Companies Act currently deals only with 'legal ownership and control', and the GLAB introduces the new concept of 'beneficial ownership' into the Act. But 'control' of a company in the current provisions of the Companies Act, and the 'exercise of ultimate effective control' of a company in the context of 'beneficial ownership' from a FATF point of view, are materially different concepts. For example, in relation to a shareholding in a company, the Companies Act contemplates a person being in 'control' of the company if the person is able to exercise the majority of the voting rights associated with the securities of the company, whereas the FATF recommendations and Interpretive Notes thereto state that if a controlling shareholding is to be determined based on a risk-based threshold, the threshold should not exceed an effective 25% shareholding. FIC Guidance Note 7 also states that in determining whether a natural person has a controlling interest in a legal person, *"ownership of 25 per cent or more of the shares with voting rights in a legal person is usually sufficient to exercise control of the legal person"*. Therefore, there is a clear difference in expectations as to what constitutes 'control' of a company in the Companies Act and what constitutes 'effective control' or a 'controlling interest' in a company in the various anti-money laundering instruments; with the Companies Act setting control at 50% or more and the anti-money laundering instruments implicitly (through interpretation notes and guidance) setting it at not more than 25%.

The introduction of provisions on 'beneficial ownership' in the Companies Act clearly have an anti-money laundering objective in mind. If that objective is to be achieved, and the meaning of a 'beneficial owner' in the Companies Act is to be aligned with what is contemplated in the FATF Recommendations and the FIC Act, any reference to 'exercising control' in the definition of a 'beneficial owner' in the Companies Act cannot mean the same as the general meaning of 'control' as it applies to any other provision in the Companies Act. In numerical terms, the general references to 'control' in the Companies Act will continue to mean 50% or more of the voting rights, whereas the references to 'exercising control' in the context of 'beneficial ownership' will have to mean no more than 25% of the voting rights (or whichever other percentage is adopted). This distinction could be achieved by narrowing the meaning of 'exercising control' in the definition of 'beneficial owner' so that it is not confused with the general meaning of 'control' in the Companies Act. Our recommendation is that the relevant threshold of ownership to qualify as 'exercising control' in the definition of a 'beneficial owner', in terms of the effective percentage of voting rights exercised by a natural person, be defined in the regulations rather than in the Act itself. This will allow for flexibility as the South African authorities continuously apply a risk-based approach to setting thresholds of ownership, and as international standards on transparency and disclosure of beneficial ownership evolve.

The definition of 'beneficial owner' in the Companies Act would therefore need to incorporate a reference to regulations in which the relevant threshold for 'exercising control' can be set.

We have proposed suggested wording for a revised definition of 'beneficial owner', which allows for thresholds of effective control (and any other relevant and specific criteria on ownership and control) to be set in regulations, in Annexure A. Importantly, we propose that any regulations that set specific criteria on ownership and control, in the context of 'beneficial ownership', only be issued by the Minister after consultation with the Minister of Finance and the Financial Intelligence Centre, in line with the other proposed amendments to the Companies Act that refer to prescribed requirements on beneficial ownership.

If the relevant threshold for 'exercising control' is set in a regulation, we propose that the initial threshold be set at 25% effective control of the voting rights associated with the securities of a company, in line with the thresholds currently contemplated in interpretive notes and guidance to the FATF Recommendations and the FIC Act, respectively. If the threshold was set at a percentage materially lower than 25% it would no longer amount to 'control', and would be in conflict with the general meaning of a 'beneficial owner', being a natural person who owns or exercises ultimate effective control over a company. A materially lower threshold could be regarded as representing a 'significant' or 'material' ownership interest, but it would not represent 'control'.

Given the limited time, we have not at this stage attempted to propose draft wording for the relevant regulation, but we will gladly assist to do so at the relevant time, if required.

8.2 Exemption for certain companies from recording and reporting of beneficial owner information

We have explained in the preceding sections why it is not possible for all but a few listed companies to identify their beneficial owners. This implies that the relevant listed companies would not be able to record the prescribed details of their beneficial owners in their securities registers, in terms of the proposed new Section 50(3A) of the Companies Act, and file a record of the prescribed information regarding their beneficial owners with the Commission, in terms of the proposed new Section 56(12). Therefore, in line with the approach in the other jurisdictions that we have mentioned, we propose that listed companies be granted an exemption from compliance with these proposed new sections of the Companies Act, because listed companies are subject to disclosure requirements which ensure adequate transparency of ownership information, being the disclosure requirements in relation to the holders of a beneficial interest in a listed company's securities in the extant provisions of the Companies Act and the JSE Listings Requirements.

If listed companies are granted an exemption from compliance with proposed new sections 50(3A) and 56(12) of the Companies Act, there will be a consequential impact on any company that is wholly or partially owned by a listed company ('an affected company'), in terms of the ability of such a company to identify its

beneficial owners and comply with sections 50(3A) and 56(12), if those beneficial owners would qualify as beneficial owners of the affected company by virtue of the inclusion of their beneficial ownership of the listed company. In other jurisdictions, such as the US, an affected company is only required to disclose the full legal name of the exempt public company that holds the affected company's securities. Therefore, these affected companies will also require some form of an exemption from compliance with the new sections 50(3A) and 56(12) of the Companies Act.

We propose that the relevant exemptions for listed companies and affected companies be fully defined in the regulations rather than in the Companies Act itself, although the Act will at least need to make provision for the exemptions. As with our proposal on the thresholds for 'control', the use of regulations to define the detailed exemptions will allow for flexibility as the South African authorities continuously apply a risk-based approach to the granting of exemptions, and as international standards on transparency and disclosure of beneficial ownership evolve.

An exemption for a listed company should only be granted through regulations if the company is subject to, and able to comply with, disclosure requirements which ensure adequate transparency of ownership information, such as the disclosure of holders of a beneficial interest in the company's securities. In addition, an exempt company should be required to provide certain core information regarding the company to the Commission for inclusion in the central registry maintained by the Commission. The guidance provided by an organization such as Open Ownership[19], a non-profit organization with expertise in supporting countries implementing beneficial ownership transparency, may be instructive in this regard as the relevant regulations are developed.

We propose that the provision for appropriate exemptions through regulations be incorporated in a new section 56A of the Companies Act, and we have proposed suggested wording for this new section in Annexure A, in our commentary on the proposed amendments to section 56. (We elaborate in section 8.4 of our submission on why we believe a new section 56A of the Companies Act should be created to incorporate the relevant provisions on beneficial ownership). Importantly, we propose that any exemptions only be granted by the Minister after consultation with the Minister of Finance and the Financial Intelligence Centre, in line with the other proposed amendments to the Companies Act that refer to prescribed requirements on beneficial ownership.

Given the limited time, we have not at this stage attempted to propose draft wording for the relevant exemptions in the regulations, but we will gladly assist to do so at the relevant time, if required.

[19] https://www.openownership.org/en/publications/beneficial-ownership-transparency-and-listed-companies/

8.3 Proposed amendments to JSE Listing Requirements

The JSE recognises the necessity for competent authorities and law enforcement agencies to have access to adequate, accurate and current information on the beneficial ownership of companies. Section 6 of our submission sets out a two-step process to derive the identity of the beneficial owners of listed companies from the disclosures of significant holders of a beneficial interest, to the extent that such holders are juristic persons. 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 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.

We are of the view that these proposed amendments will enhance competent authorities' and law enforcement agencies' ability to derive adequate, accurate and current information on the beneficial ownership of listed companies.

8.4 Beneficial owner register

In our discussion on the structure of the securities register of a listed company in section 4 of this submission, we set out the purpose of, and the difference between, the securities register and the register of the disclosure of beneficial interests. The securities register reflects the registered holders of securities, many of whom are nominees who act as the registered holder of securities on behalf of underlying beneficial interest holders. The securities register does not include the record of the underlying beneficial interest holders – this information is provided separately to listed companies by nominee registered shareholders, at periodic

intervals, in a separate electronic download ('beneficial interest download'). The securities register is not structured to record the information of the underlying beneficial interest holders.

The purpose of the beneficial interest download is to provide the listed company with relevant information on the indirect owners of the company's securities to whom various important rights accrue, such as voting rights. A requirement to record information regarding the natural persons who are the beneficial owners of the company serves a different purpose, being to ensure that adequate, accurate and current information on the beneficial ownership of companies is available and can be accessed by competent authorities and law enforcement agencies in a timely manner.

Is important and necessary to ensure that the concepts of 'shareholder' (or 'registered shareholder'), 'beneficial interest', and 'beneficial owner', and the related registers or databases to record the respective information, are not conflated. As we have mentioned in 8.1 above, the concepts of 'legal ownership and control' and 'beneficial ownership' are materially different, with different legal effects and objectives. Registered shareholders and holders of a beneficial interest in a company's securities have important legal rights, conferred on them by the Companies Act, and a company's securities register and register of beneficial interests records the holders of these rights. Beneficial owners may ultimately control the exercise of these rights, but they enjoy no legal rights associated with the company's securities themselves. In our view, it is not appropriate to include beneficial ownership information in a company's securities register, which reflects the 'legal' owners of a company's securities, because this will result in the conflation of two materially different concepts in a single statutory register. We recommend that companies, other than exempt companies, be required to maintain a separate register of beneficial owner information.

To avoid the incorrect and misleading conflation of the concepts of 'legal' ownership and 'beneficial' ownership, we propose that the requirements for a company to maintain a register of beneficial owners and to provide the prescribed information on beneficial owners to the Commission be clearly separated in the Companies Act, and not be incorporated in the sections dealing with beneficial interests. Accordingly, we propose that these requirements are not inserted in Section 56 of the Companies Act, as proposed in the GLAB, but that a new section 56A be created to contain the relevant provisions on beneficial ownership.

In this regard, our proposed further amendments to section 33, our comments on the proposed amendments to section 50, and our proposed wording for a new section 56A, are set out in Annexure A

The Explanatory Note to the GLAB provides that Clause 55 amends section 33 of the Companies Act to provide for a comprehensive mechanism through which the Commission can keep accurate and updated beneficial ownership information. We question whether the submission of a copy of a company's securities register and beneficial interest register, at a point in time in the past, as contemplated in the proposed amendments

to section 33, would provide the Commission with 'accurate and updated beneficial ownership information'. In addition, whilst these registers can be provided by listed companies in an electronic form, the data files for most listed companies, particularly the beneficial interest registers, will be enormous. We have not proposed drafting amendments to section 33 in relation to the annual submission of a company's securities register and register of beneficial interests, but we merely wish to highlight the practical implications for listed companies and the Commission of the requirement for the submission of voluminous registers of ownership, as at an historical point in time, to the Commission.

However, given that we have proposed above that the information on a company's beneficial owners should not be recorded in the company's securities register, and that a separate register of beneficial owners should instead be maintained, we have proposed a further amendment to section 33, through the proposed insertion of a new subsection 33(1)(aC), to require a company to submit a copy of its beneficial ownership register to the Commission on an annual basis, on the assumption that the Commission would have assumed that this information would have instead been submitted within the copy of the company's securities register in terms of the new subsection 33(1)(aA).

The JSE appreciates the opportunity to engage with the Standing Committee on Finance and we are committed to continue working with the inter-governmental departments to find a pragmatic solution that substantially achieves the objectives of the GLAB in relation to transparency of ownership of juristic persons, in a manner that supports the competitiveness and effective operation of the South African capital markets.

Yours sincerely

Anne Clayton

Head: Public Policy & Regulatory Affairs

Annexure A: Summary JSE Proposed Amendments

Clause#	GLAB Provision	JSE Proposed amendment
52	**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, 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; (iv) 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;''.	**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; (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;

Clause#	GLAB Provision	JSE Proposed amendment
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; (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).’	**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).’
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).’’	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.

Clause#	GLAB Provision	JSE Proposed amendment
55	**Section 56 of the Companies Act, 2008, is hereby amended—** (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).'	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. (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).

Clause#	GLAB Provision	JSE Proposed amendment
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 (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);''.	None