**TABLE OF COMMENTS ON GENERAL LAWS (ANTI-MONEY LAUNDERING AND COMBATING TERRORISM FINANCING) AMENDMENT BILL [B18-2022] EXTENDED COMMENT PERIOD**

**LIST OF COMMENTATORS**

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| 1) National Automobile Dealers’ Association (NADA) | 8) Dominique Pitot | 15) Free Market Foundation(FMF) |
| 2) Citizen Leader Lab | 9) Christian View Network | 16) BASA |
| 3) Fish Hoek Valley Ratepayers and Residents Association | 10) Bio watch |  |
| 4) The Fiduciary Institute of Southern Africa (FISA) | 11) Intellidex |  |
| 5) Kingfisher | 12) Anna Vayanos |  |
| 6) 4Hope | 13) NPO Act Working Group/NGOLaw |  |
| 7) Word of Grace Ministries | 14) South African Institute of Race Relations(IRR) |  |

| **CLAUSE IN BILL** | **COMMENT** | **RESPONSE** |
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| **General comments** |
| Extension of time period for public consultation | A further extension for public consultations was requested from a number of commentators | It is believed that any further extensions will result in a repetition of comments already received as seen in some of the comments received in the second round of comments. |
| Sanction screening for the targeted financial sanctions for Parts and Workshop Environment  | NADANADA requests clarity and guidance from the FIC as to how to apply the single transactions, in addition to all the Parts and Workshop clients who would be required to be fully sanction-screen against the TFS list. These additional processes would be quite cumbersome and will take a lot of time to set up if every person who comes into a motor vehicle dealer’s Workshop and /or Parts Department | The FIC has developed guidance to assist accountable institutions to interpret the amendments to the Schedule 1 of the FIC Act, including bringing motor vehicle dealers as accountable institutions under the Item related to high value goods |
| A report was commissioned by Business Leadership South Africa (BLSA) on the likelihood and consequences of South Africa being greylisted | INTELLIDEXThe report was submitted to Parliament during the extended public comment phase | The report appears to have been submitted for information purposes as no specific comments on the Bill itself could be identified |
| Definition of beneficial owner | CITIZEN LEADER LAB* Duplication of agencies collecting information and the drilling down to the natural person is objected to
* Banks will police up-to-date disclosure and freeze accounts if non-compliant
* The beneficial owner requirements are onerous
 | * Comments highlighting the potential for the fragmentation of the registers is noted. This is a policy issue that will be referred to the Interdepartmental Committee (IDC) chaired by National Treasury that is responsible for AML/CFT/PF policy.
* Bank have an obligation to comply with the FIC Act requirements in respect of customer due diligence(CDD) measures as well to have measures in place if they are unable to complete the CDD measures
* Noted – it should, however, be borne in mind that all jurisdictions seeking FATF compliance bear the same burden
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| Socio Economic Impact Assessment (SEIA) | IRR* As no SEIA accompanied the Amendment Bill’s publication – likely due to the urgency with which it was proposed – South Africans have little to go on when it comes to evaluating whether the legislation is beneficial or harmful. They and the IRR can only speculate, and regrettably, as far as the NPO provisions in the Amendment Bill are concerned, the consequences of this legislation’s adoption could be dire.
* A socio-economic impact assessment process must be followed on the totality of the Amendment Bill.
 | An exemption from the SEIA requirement was granted due to the urgency of the Bill and the consequences of not proceeding with the Bill on an urgent basis |
| Transitional period | BASAIt is important that a sufficient transitional period be allowed for as it relates to the implementation of the BO requirements as contemplated by the various pieces of legislation being amended by the GLAB for the following reasons:* BASA and members agree that the obligation to identify and reasonably verify the BO of its clients, subsequent to the contemplated amendments to the definition of BO in the FIC Act, remains and that access to BO registries will assist in verifying BO information as provided by its respective clients;
* BASA and members can however not agree that the ‘additional time’ required to implement and access BO information in BO registries, would be minimal, as the ‘how’ of gaining access to such information has not been discussed and decided. We are of the view that technical developments/system enhancements would be required to enable BASA’s members (and other AIs) to access BO registries (noting the commentary provided by NT regarding the design of the national BO on transparency registries framework). The technical developments/system enhancements would take time and require user acceptance testing to ensure the multiple interfacing systems within a bank remain stable if one or more is enhanced and that the interfaces between the banks’ systems and the various BO registries are functioning/running effectively.
* For other regulated entities BO will be a new concept and these persons may require sufficient time, support, guidance, and assistance to enable them to comply with the new requirements. We submit that non-compliance of these persons/regulated entities with the applicable legislation could have further (unintended) consequences, which could include credit and financial risk for clients and the banking sector.
* The final wording of the amendments to the various pieces of legislation would inform the dependency on regulations being developed to give effect to the provisions of the FIC Act/various pieces of legislation (once enacted). In the absence of such dependency or the effective date of such provisions being proclaimed, regulated entities may well not be able to comply with the requirements of the FIC Act/various pieces of legislation from day one/the effective date.
* We therefore submit and request that consideration be given to making provision for adequate transitional arrangements (or effective date to be proclaimed) to allow sufficient time for, amongst other, companies (including listed companies, noting the complexities involved.
* If the FIC Act/various pieces of legislation in their final form do indeed recreate a dependency on regulations prior to it becoming effective/enforceable, sufficient lead time (in the absence of transitional periods) for consultation and implementation would be required to not automatically cause regulated entities to be non-compliant.
 | * 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.
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| **TRUST PROPERTY CONTROL ACT** |
| Scrapping of the Trust Property Control Act | FISH HOEK VALLEY RATEPAYERS AND RESIDENTS ASSOCIATIONBy doing away with trusts and having every business owner or large conduit funder organisation register with CIPC, then changes to the FIC Act, Companies Act and Financial Sector Regulation Act may not be needed. | This is not a feasible option as trust law and trusts are integral in the South African legal system and deleting the legislation dealing with trusts is not a viable optionA Regulation of Trust Property Bill is in an advanced stage of development which will replace the Trust Property Control Act. There will still need to be specific legislation that needs to deal appropriately with trusts.  |
| Minister’s power to make regulations | FMF* Neither the Trust Property Control Act nor the Amendment Bill lay down any criteria to limit or define the Minister’s power to make regulations regarding these matters.
* This means that the Minister will have a more or less unfettered discretionary power to make regulations specifying any “prescribed information” regarding beneficial owners of trusts that trustees, and the Master, will be required to keep and to make available to any person.
* These clauses of the Amendment Bill thus violate the Rule of Law and the Bill of Rights.
* It is neither reasonable nor justifiable in a democratic society to confer on the Minister of Justice a more or less unfettered discretionary power to make regulations specifying any “prescribed information” regarding beneficial owners of trusts, that trustees and the Master will be required to keep and to make available to any person.
* The right to privacy is a right to be free from intrusion or publicity of information or matters of a personal nature. It is central to the protection of human dignity and forms the cornerstone of any democratic society
 | The Department of Justice and Constitutional Development as a practice consistently publish all subordinate legislation for public comment, whether or not the primary legislation specifically requires a process of public consultation. The Regulations in terms of this Bill will definitely all be published for public comment.Accessibility to BO registers will be provided for in terms of regulations. |
| 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 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.’’. | FISA* The definition of “beneficial owner” in clause 1 of the Bill is in conflict with the provisions of section 9 of the Act.
* The definition of “beneficial owner” in clause 1 of the Bill proposes to insert into the Act, together with the proposed insertion of section 11A into the Act, contains provisions which may open the door for premature vesting/; of certain rights on

beneficiaries of the trust. This will encroach on the discretion afforded to trustees and severely limit existing rights of trustees and the founder of a trust. * The Bill, in clause 1, defines “beneficial owner” in relation to a trust in terms which are either impractical or impossible to comply with, or both, in certain respects.
* The proposed insertion of section 11A into the Act by clause 5 of the Bill refers to “beneficial ownership” (as opposed to beneficial owner), a term which is not defined in the Act or in the FIC Act.
* The proposed insertion of section 11A into the Act imposes a burden on trustees in language that can only be described as vague and should, for that reason alone, be rejected.

The existing definition of “trust” in section 1 of the Act makes it clear that atrustee does not own or hold trust property for own benefit.* To include a trustee under the proposed newly introduced definition of “beneficial owner” is in direct conflict with the ordinary meaning and context of the existing definition of “trust”.
* The existing definition of “trust” is correctly reflecting the legal position in South African trust law. A trustee cannot be, by virtue only of the office of trustee, be a beneficial owner of the trust property. The trust property is always owned (in the case of a trust as defined in par (a) of the definition) for the benefit of the beneficiaries or the impersonal object of the trust (in the case of, e.g. charitable trusts). This type of trust is known as an ownership trust. In a par (b) trust, also known as a “bewind”, the trust property is owned by the beneficiary, but placed under control of the trustee.
* The core idea of a trust in South African law is the separation of control and enjoyment of the trust property.
* While a trustee may also be a beneficiary of the trust, any beneficial interest stems from being a beneficiary, and not from being a trustee. As beneficiaries are included in the proposed definition of “beneficial owner” a trustee who is also a beneficiary will therefore already fall under the disclosure requirements to be brought about by the other proposed amendments.
* Including a trustee under the definition of “beneficial owner” in the Bill is incompatible with the fiduciary duty required of a trustee as envisaged by section 9.
* If a beneficiary learns from the disclosure required by the proposed amendments that s/he is a beneficiary, that beneficiary can notify the trustees in writing that the benefit is accepted and can then never be removed as beneficiary without his/her agreement. This is an undesirable outcome infringing on the rights of citizens to manage their own affairs in a way they choose.
* The definition of “beneficial owner” in certain circumstances this may be impractical or impossible to determine, for instance where the founder, trustee or beneficiary is a juristic person of which the shares are held by another juristic person which is a listed, or unlisted for that matter, public company or a private company.
* The definition places the burden on the trustee to record the “beneficial ownership” of the trust. This implies that in the case as set out above, the proposed amendments to the Act requires a trustee not only to acquire the share registers of such companies, but also to keep the records of such share registers up to date. This is an unfair burden on professional trustees and an even more unfair burden on private trustees who have to appoint a professional trustee as independent trustee to comply with requirements of the Master of the High Court. Surely, if the juristic person’s details are available, the FIC or other state and law enforcement agencies can do the checking to determine the identity of the natural persons.
* If a professional trustee takes on the trusteeship of an existing trust which was formed thirty years ago, all that information must now be obtained about the founder of the trust. This is impractical, unfair and could well be impossible. Yet, failure to comply makes a criminal out of an ordinary citizen.
* A trustee is not a beneficial owner of a trust and should not be included in the definition.
* A trustee in South African law cannot be legally “controlled” by another person. Any attempt at such “control” is null and void, regardless of

whether it is written into a trust instrument or not. * The term “beneficial ownership” is not defined anywhere in the Bill, but is used in the proposed section 11A which is to be inserted into the Act.
* There is no indication as to how far a trustee must go to “establish” the “beneficial ownership”.
 | Comments from DoJCD colleagues will be most beneficial!Section 9 of the TPCA requires trustees to act with care, diligence and skill when they perform their duties. The comment does not state how the requirement to exercise of care, diligence and skill and the definition of who a beneficial owner of a trust is are in conflict. The comment does not state how would defining who a beneficial owner is and requiring a trustee to establish a register of beneficial owners open the door to premature vesting of certain rights. Vesting of rights should continue to happen as provided for in the trust instrument or the law. It should also be noted that when there are new developments in the law it is prudent for affected persons to review their affairs (in this instance their founding instruments) to ascertain how they will be affected, and to make the changes that might be necessary. We submit that it is not impossible or impractical to comply with the provision, but in cases where there are layers of “legal distance” between the beneficial owner and the trust property it will take more effort to comply with the provisions.Beneficial ownership has a corresponding meaning to a beneficial owner (according to the rules of statutory interpretation).The words in the provision have been used in their ordinary meaning.A trustee is not included in the definition of a beneficial owner on the basis that he or she own or hold the trust property for his or her benefit, but rather on the basis that he or she administers the property and/or exercises control over the property.Beneficial ownership registers seeks to establish the identity of the natural persons that control the trust property and the natural persons that enjoy the trust property.Section 9 of the TPCA requires trustees to act with care, diligence and skill when they perform their duties. The comment does not state how the requirement to exercise of care, diligence and skill and the definition of who a beneficial owner of a trust is are in conflict. The amendments do not provide for who will have access to the BO register, this will be addressed in regulations. It should be noted that there are other avenues that a person can use to access information, for instance, the Promotion of Access to Information Act, 2000. Furthermore there is a view that it is an incorrect conclusion that the acceptance of a benefit results in the beneficiary becoming a party to the original contract, thus rendering it impossible to amend the trust deed without the beneficiary’s consent. The matter may have to be dealt with in the Regulation of Trusts Bill. We submit that the same principles applicable to the establishment of beneficial owners of companies will be applicable. The comment is noted, however there is n’t a less cumbersome method of establishing beneficial ownership.Noted. We are of the view that a new trustee must, besides the proposed amendments, obtain the trust information in order for him or her to perform his or her duties properly.A trustee is included because he or she administers the property and/or exercises control over the propertyControl in the provisions is used with reference to the administration of a trust, a legal person, a partnership and a trust. There is no reference to the control of a trustee.Beneficial ownership has a corresponding meaning to beneficial owner (according to the rules of statutory interpretation).The criteria set in the amendments. A trustee must identify the natural person that **ultimately** owns the trust property or that exercises effective control of the trust property. |
| **NONPROFIT ORGANISATION ACT** |
| Objection to compulsory registration of NPOs | CITIZEN LEADER LAB* Registration for all NPOs does not assist and undermines the risk-focused approach: so much irrelevant data will make it harder to find useful information
* Independence of civil society undermined
* government permission required to ‘operate’ in SA
* Scaring off/donor flight for foreign organisations
* Attack on freedom of association
* NPO and systems breaks down under additional requirements

FISH HOEK VALLEY RATEPAYERS AND RESIDENTS ASSOCIATION* FAFT's Recommendation 8 says we need “focused and proportionate measures” aligned with a “risk-based approach” when protecting civil society from financial abuse. That is, we need not go overboard again with too blunt and too wide ranging actions.
* Our concern is these changes to the Nonprofit Organisations Act will make registration compulsory for every nonprofit church group, sports club and ratepayer organisation. The main problem here is that the NPO Directorate doesn’t have any of the systems or the abilities to do the audit and the watchdog work. The NPO registry is currently about 10 years out of date. Effectively, these changes will criminalise most NPOs.
* The R1-million per year organisations (and trusts) should be registered with CIPC as nonprofit companies as the
* CIPC’s systems are better capacitated for collecting and finding data than those at the NPO Directorate.

BIO WATCH* Given the extremely short time for public comment, it has not been possible for Biowatch South Africa (and many others) to review this Amendment Bill. We, however, add our voices to those calling for warding off grey-listing, but also ensuring that the critical work of the non-profit sector is not impeded. We trust that the Standing Committee will apply their minds and resources to ensuring this and that the Bill will pass constitutional muster.

KINGFISHER, 4HOPE, WORD OF GRACE MINISTRIES, DOMINIQUE PITOT, CHRISTIAN VIEW NETWORK* Object to compulsory registration especially because of the onerous administration required of smaller NPOs

ANNA VAYANOS* Advises against linking the definition of the type of funding entity in question to “domicile” as this has always been a very difficult concept to pin down legally and there will be little clarity on which individuals fall within the definition of having a foreign domicile or not. I would suggest omitting reference to the funding of foreign individuals in South Africa. If it cannot be excluded then just to point out that funding organisations often “distribute” rather than “donate” and so the definition should include the wording “distribute and/or donate” for philanthropic purposes.

IRR* Common law and other legislation, like section 4 of the Prevention of Organised Crime Act and section 3 of the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, already prohibit South African NPOs, registered or not, from engaging in money-laundering or the financing of terrorism. This is true even in the absence of the NPO Act itself.
* The Amendment Bill is therefore not necessary to prohibit NPOs from engaging in money-laundering or the financing of terrorism because existing legislation already caters to this requirement. If South Africa is to be greylisted, in other words, it will not be because the NPO space is somehow free to launder money or finance terror.
* An independent civil society is a crucial pillar of South Africa’s constitutional democracy. This independence ought not be lost by way of omnibus amendment legislation that focuses on a different matter entirely.
* It is furthermore likely that, should the Amendment Bill be adopted with the compulsory

registration requirement, it will be unenforceable, and therefore only detrimental tothose few NPOs that government decides to enforce it upon. By 2020 there were 228,822 registered NPOs in South Africa, of which more than half (58.44%) were apparently not complying with relevant legislation. It is likely that many hundreds of thousands more unregistered NPOs are in fact in operation. * The Department of Social Development does not possess the resources to enforce a substantive set of regulatory standards upon such a diverse assortment of organisations, nor should it seek to. If it attempts to, however, it will come down to selective enforcement, which harms the Rule of Law doctrine at the centre of SouthAfrica’s constitutional democracy.

FMF* The compulsory registration requirement would apply to all organisations established for a public purpose whose income is not distributable to their members
* The proposed requirement, that no association may operate unless registered, would violate the fundamental right in the Bill of Rights of everyone to freedom of association.
 | 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. These further submissions from NPO colleagues are greatly appreciated, and have been given careful consideration in developing the detailed proposed refinements to the Bill that will be presented to the Commtitee.These further submissions from NPO colleagues are greatly appreciated, and have been given careful consideration in developing the detailed proposed refinements to the Bill that will be presented to the Committee.The General Laws Amendment Bill specifically addresses specific FATF recommendations, including in relation to the legislative framework for NPOs, and the Bill needs to address the specific recommendations in relation to the NPO legislative framework. |
| Inappropriateness for the DSD to accommodate the Non-Profit Directorate | NPO ACT WORKING GROUP/NGOLAW* The DSD is not the appropriate place for the Non-Profit Directorate to sit
* Support an Independent Body to serve non-profit organisations.
* A credible and effective Registry or oversight body which serves and enables the full scope and ambit of non-profit work should not be housed under a government department but should be established and given the status of an Independent statutory body reporting to Parliament. This could be achieved either by shifting and upgrading the current NPO Directorate, or by beginning afresh.
* There is broad support in the sector for an oversight body which is independent of DSD and which has the funding, staffing and systems to effectively serve the sector, and play a responsive and supportive role.
* A wide consultative process would have to be followed in setting up such an independent registry.
* To consider adding a definitions to the FIC Act of a cross-border non-profit entity”(OR: “at-risk non-profit entity’ OR ‘external flow non-profit entity’) as the current unsuitability of the NPO Directorate for the gathering, secure storage and separation out of the data required we suggest that the mandatory registration of the at-risk class of non-profits takes place under FICA.
* The reporting institution structure already in

place refers to, and that list currently contains only car dealers and those who deal in Kruger Rands. Propose adding to Schedule 3 of the FICA this class of non profits is an effective way of exercising oversight, empowering intervention and in a neutral way which does not seem to vilify these organisations but places them in a category with others who are carrying on legitimate activities but whose way of operating may place them at greater risk of being used for money laundering, terrorist financing or fraud.ANNA VAYANOS* The proposal is that these organisations be required to register as NPOs under the NPO Act but that there be built in protection to prevent the Act from being used for sinister purposes via the threat of deregistration. It is not certain that the NPO Act is the right place for this registration considering its very particular purpose (to prevent money laundering and the financing of terrorist activities). It seems better placed for these organisations to be registered and regulated for this specific purpose under the FIC Act.
* The new Companies Act does not include an easy mechanism for the conversion of Voluntary Associations to NPCs as this certainly gives them more legitimacy and better governance requirements and this type of entity (voluntary association) needs this. It would be good to include a mechanism similar to what was available to the old S21 companies under the old Companies Act allowing a voluntary association to easily convert to an NPC without losing its history.
* However, if this route is taken it should under no circumstances force CIPC registration/NPC conversion on any trusts. To have them register as NPCs for this purpose would be inappropriate, forcing efficient, well-functioning entities to convert to an overly complex type of entity for their purpose and rendering a type of “funding charitable trust” largely obsolete.
 | * 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.

These further submissions from NPO colleagues are greatly appreciated, and have been given careful consideration in developing the detailed proposed refinements to the Bill that will be presented to the Committee. |
| New definition to replace ‘office bearer’ | NPO ACT WORKING GROUP/NGOLAW* 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 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”.The amending and correcting of the definition of ‘office bearer’ is crucial for this to function as it should, and have the intended effect. | These further submissions from NPO colleagues are greatly appreciated, and have been given careful consideration in developing the detailed proposed refinements to the Bill that will be presented to the Committee.* The proposal is not supported and consideration of amending the definition will 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;
 |
| **Clause 8**Section 2 of the Nonproﬁt Organisations Act, 1997, is hereby amended by thesubstitution for paragraphs (b) and (c) of the following paragraphs:‘‘(b) establishing an administrative and regulatory framework within whichnonproﬁt organisations **[can]** must conduct their affairs;(c) [**encouraging]** requiring nonproﬁt organisations to maintain adequate standardsof governance, transparency and accountability and to improve thosestandards.’’. | IRRHad the clause simply noted that NPOs must maintain adequate standards, it would have been unobjectionable. However, a political and regulatory discretion, which will change alongside the political pressures and interpretations of the relevant functionaries, is apparent, and its presence would be detrimental to the independence of the NPO sector. The IRR believes that this clause ought to be removed from the Amendment Bill. | 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:‘‘(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—’’. | KINGFISHER, 4HOPE, WORD OF GRACE MINISTRIESRecommends 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.CHRISTIAN VIEW NETWORKIt would also weaken democracy by ensuring thatonly well-funded organisations would be allowed to operate. Nevertheless, over time it would slowly kill most of the sector because: Firstly, most large Non-Profits start small and grow bigger, thus the small but future large non-profits would be killed at birth. Secondly, Non-Profits within each sector tend to have a lifecycle with new organisations starting up and older ones dying off. If the bill passes as is, the older ones would continue to die off, but there would be few new ones growing to replace it. The bill would discriminate against smaller community-based Non-Profits that lack the administrative skill and resources, thus prejudicing the poor.NPO ACT WORKING GROUP/NGOLAW* Our first proposal and preferred outcome is that the compulsory registration of a limited and defined class of non-profits takes place not under the NPO Act, but under FICA, as a “reporting institution” OR under CIPC, as a second option.
* However, if this is not accepted, the pre-requisite for limited-ambit compulsory registration as an NPO would need to be that:

1. The NPO Directorate (internally) kept this list oforganisations separate from those of voluntaryNPO registrations, so that they can be separatelytracked; 2. The NPO Directorate systems are substantially upgraded and reinforced for security, stability and to allow data required to be found and extracted;3. The NPO Directorate is relocated as structure independent of DSD; 4. The staffing and skills at the NPO Directorate are overhauled and upgraded. People with legal, forensic and audit skills should be on the team. IRR* An intervention of this nature has the relationship between political authorities and NPOs as non-governmental organisations fundamentally backward. While the Rule of Law as a constitutional doctrine requires that all formations, including civil society and government, must be subject to the same law, it is out of bounds for government to suppose that it may (de novo) regulate those independent civil society organs entrusted with ensuring its own (government’s) transparency and law-abidance.
* Civil society formations like NPOs are already subject to the common law and laws of general application that regulate financial crimes.
* The IRR believes that this clause ought to be removed from the Amendment Bill.
 | The concerns raised in relation to compulsory registration are endeavoured to be taken into account in proposed amendments that will be submitted to the Committee for consideration. |
| **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:‘‘(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).’’. | IRR* The governance, management, and operations of NPOs are no business of government, whereas the governance, management, and operations of government are the business of civil society. Civil society cannot be sustainably independent of political interference when NPOs are required to submit information of this nature to political authorities.
* The IRR believes that this clause ought to be removed from the Amendment Bill.

FMF* This means that the Minister will have a more or less unfettered discretionary power to make regulations specifying any “prescribed information” regarding a nonprofit organisation’s officebearers, control structure, governance, management, administration and operations, which the organisation must provide to the Director.
* This clause of the Bill would violate the Rule of Law and the Bill of Rights.
* It is a principle of the Rule of Law that questions of legal liability should ordinarily be resolved by application of the law, and not the exercise of discretion. The broader and more loosely textured a discretion conferred on an official is, the greater the scope for subjectivity and hence for arbitrariness, which is the antithesis of the Rule of Law. A discretion should ordinarily be narrowly defined and its exercise capable of reasoned justification.
* It is neither reasonable nor justifiable in a democratic society based on human dignity to confer on the Minister of Social Development a more or less unfettered discretionary power to make regulations specifying any “prescribed information” regarding a nonprofit organisation’s office-bearers, control structure, governance, management, administration and operations, which the organisation must provide to the Director.
* The right to privacy is a right to be free from intrusion or publicity of information or matters of a personal nature. Another individual or group does not have the right to ignore their wishes or to be disrespectful of their desire for privacy without a solid and reasoned basis.
 | It s essential that key institutions that have a significant impact on members of the public, are well governed, and governance is a fundamental aspect of legislation in the public sector, the private sector, and the financial sector. In order fulfil its obligations as a member of FATF to ensure that the regulatory framework relating NPOs helps to prevent NPOs from being subject to abuse for the purposes of terrorism financing, information about governance, management, and operations are important to be able to determine when abuses might be occurring.The Powers of the Minister are not unfettered, and is directly related to the purposes of being able to detect when NPOs might potentially be being abused for the purposes of promoting terrorism financing. The scope of the discretion is subject to the Constitution and the PAJA, and regulations would be made after consultation. Subordinate legislation is recognized by the Constitutional Court as an essential component of a modern administrative law framework.  |
| **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 theFinancial Intelligence Centre Act, 2001 (Act No. 38 of 2001).’’. | IRRThe IRR believes that this clause ought to be removed from the Amendment Bill. | A rationale for the objection to the provision is not provided, so the comment is noted. |
| **Clause 13**Disqualiﬁcation and removal of office-bearers | IRRWhile much of this provision appears on the face of it benign, it would be unacceptable to allow government such a direct say in who may or may not occupy senior positions in organisations that are required to be independent of the State. If this is allowed on the strength of the present proposed provisions, nothing stops government in future, for instance, from adding additional grounds for disqualification. The IRR believes that this clause ought to be removed from the Amendment Bill. | It is essential to ensure that only fit and proper persons are able to occupy key positions such as being directors of companies, trustees, and office bearers of trusts. The critieria specified are objective, not subjective, and they are aligned with the existing section 69 of the Companies Act. In financial sector legislation, fit and proper requirements are also legislated, in order to ensure that financial institutions are run by persons who are not defined as being “disqualified”, and who have appropriate expertise and experience. It is quite appropriate to set such objective requirements, to ensure the appropriate running of such important entities. |
| **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);’’ | IRRThe IRR believes that this clause ought to be removed from the Amendment Bill. | A rationale for the objection to the provision is not provided, so the comment is noted. |
| **COMPANIIES ACT** |
| Foreign Voluntary Associations | NPO ACT WORKING GROUP/NGOLAW* The added clauses were initially proposed as an alternative to compulsory NPO registration. We still think that they would be preferable to compulsory registration of this class of organisations under DSD. It has been done with co-ops, so should not be impossible.
* We had seen compulsory registration as an NPC as appropriate and useful, bringing the class of organisations under the detailed regulatory requirements of the Companies Act, into the public visibility that the online BizPortal allows, and requiring the annual reporting (and data capture) on financials and details of compliance which the Companies Act and regulations require.
* However, the chief practical issue with the registration under CIPC is that it would require the ‘conversion’ of voluntary associations and trusts into NPCs. For voluntary associations this would work and be useful, but the conversion of trusts in this manner is more legally difficult and we think not appropriate.
* For this reason we have included in this update submission only those clauses which are necessary to include into the provisions of mandatory ‘external nonprofit company’ registration, those foreign voluntary associations which meet the CIPC test for ‘carrying on non profit activities in the Republic’.
* Add the following definition to section 1:

Section 1 definition of “foreign company"means an entity incorporated or unincorporated entity or organisation outside theRepublic, irrespective of whether it is—(a)a profit, or non-profit, entity; or(b)carrying on business or non- profit activities, as the case may be, within the Republic.* 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.
* Our 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 is needed to support the compulsory registration under FICA (or NPO), as one then has a local registration number, regardless of type of legal entity.
* For foreign voluntary associations or equivalent, we suggest that the provisions of section 23 of the Companies Act are broadened to reach these
 | The CIPC does not support this proposal, as this would involve taking over the mandate which falls in another department. The CIPC maintains that it will continue to cater for external Non-profit companies in as far as they meet the criteria set out in section 23. We do not think this is a matter which can be addressed in the current GLAB. The proposal to revise the definition of foreign companies is therefore not supported. |
| **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).’’. | FMF* The Minister will have a fairly unfettered discretionary power to make regulations specifying the “prescribed information” regarding natural persons who are the beneficial owners of a company that a company must record in its securities register.
* This clause of the Bill would violate the Rule of Law and the Bill of Rights.
* The same comments are made in respect of other clauses where the term ‘prescribed information’ appears
 | The power is not unfettered, the nature of the requirements relates specifically to the clearly defined category of “information relating to beneficial ownership”. This is to enable details to be specified in subordinate legislation, which will be published for public consultation, so that primary legislation does not need to contain an unnecessary level of detail. It also provides for the possibility for different requirements to be set in relation to different types of persons and entities, which would be difficult to achieve if it were sought to provide all of the detail in primary legislation.Subordinate legislation must be consistent with the primary legislation in terms of which it is enacted, and also the Constitution. The Constitutional Court has been very clear that subordinate legislation is an essential component of a modern legislative and administrative law framework. |
| **Clause 56**Section 69 of the Companies Act, 2008, is hereby amended in paragraph (b) ofsubsection (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 insection 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);’’. | CITIZEN LEADER LABAdds to the already quite comprehensive lists of human beings who are disqualified from being directors or officers of a company under the Companies Act. | The list is consistent with the list provided in section 69 of the Companies Act. |
| **FINANCIAL SECTOR REGULATION ACT** |
| **Clause 59**Standards in relation to beneﬁcial owners159B. (1) In addition to the powers in Part 2 of Chapter 7 to make standards, a ﬁnancial sector regulator may make standards applicableto—(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. | FMF* The provision confer on a regulator unfettered discretionary powers to make standards that prescribe what would or would not constitute ownership or control of a financial institution, or the ability to exercise such control and exclude specified persons from the definition of a beneficial owner of a financial institution.
* The provision unduly delegates to financial sector regulators the power to amend the proposed statutory definition of “beneficial owner” and its descriptions of what constitutes ownership or control, and to create exclusions from that statutory definition.
* Separation of powers is a cornerstone of South Africa’s constitutional dispensation.
* It would thus be preferable if stipulations about what constitutes or does not constitute ownership or control of a financial institution or ability to exercise such control, and stipulations to exclude anyone from the definition of beneficial owner of a financial institution, were introduced by way of statutory amendment rather than by mere delegated legislation in the form of standards issued by a statutory regulator.
 | Subordinate legislation cannot amend primary legislation, so subordinate legislation can elucidate the detail and provide guidance in relation to the primary legislation, but it cannot alter the primary legislation. The powers are also not unfettered, it is This is to enable the possibility for detail and guidance to be provided in relation to how beneficial ownership is applied in relation to different types of persons and financial institutions, so that the meaning of “beneficial ownership” can be appropriately applied in different contexts. This is an approach that is being adopted in relation to the application of “beneficial ownership” in legislative frameworks in other jurisdictions.Also, it is important to note that the standards will be published for comment and tabled in Parliament before they are finally published and become effective. |