**Report of the Standing Committee on Finance on the General Laws (Anti-Money Laundering and Combatting of Terrorism Financing) Amendment Bill (B18B-2022), dated 11 November 2022**

**Having considered the General Laws (Anti-Money Laundering and Combatting of Terrorism Financing) Amendment Bill (B18B-2022), the Standing Committee on Finance reports as follows**:

1. **Introduction and Background**
	1. On 31 August 2022, the Standing Committee on Finance was briefed by the National Treasury and the Financial Intelligence Centre (“the Centre” or “FIC”) on the General Laws (Anti- Money Laundering and Combatting of Terrorist Financing) Amendment Bill (B14- 2022), hereinafter GLAB 2022. The GLAB 2022 is an omnibus Bill aimed at amending various pieces of legislation to address deficiencies related to combatting money laundering and terrorism financing and bring South Africa into compliance with the global standards set by the Financial Action Task Force (FATF), the global regulator of anti-money laundering and counter terrorism financing.
	2. South Africa is a member of FATF, which in 2019, conducted a peer review and produced a Mutual Evaluation Report (MER) (October 2019) on the country’s implementation of FATF’s 40 Recommendations (FATF Standards) against money laundering and terrorism financing. South Africa was rated poorly in the MER as it was found to have not complied with 20 of the 40 FATF Standards.
	3. The FATF Standards that South Africa was found to be partially compliant or non-compliant on were: Recommendation 1: Assessing risk and applying a risk based approach to compliance; Recommendation 2: National cooperation and coordination; Recommendation 5: Terrorism financing offence; Recommendation 6: Targeted financial sanctions- proliferation; Recommendation 8: Non-profit organisations; Recommendation 10: Customer due diligence; Recommendation 12: Politically exposed persons; Recommendation 14: Money or value transfer services; Recommendation 15: New technologies; Recommendation 17: Reliance on third parties; Recommendation 18: Internal controls and foreign subsidiaries; Recommendation 22 and 23: Designated non-financial bodies and persons’ (DNFBP’s) customer due diligence and other measures; Recommendation 24 and 25: Transparency and beneficial ownership (BO) of legal persons and legal arrangements; Recommendation 26: Regulation and supervision of financial institutions; Recommendation 27: Powers of supervisions; Recommendation 28: Regulation and supervisions of DNFBPs; and Recommendation 32: cash couriers.
	4. FATF had also measured the effectiveness of the implementation of its Standards by South Africa and found this had not yielded the intended outcomes on all the 11 immediate outcomes that it examines. These eleven outcomes can be described as follows: Immediate Outcome 1: Risk, policy and coordination; Immediate Outcome 2: International cooperation; Immediate Outcome 3: Supervision; Immediate Outcome 4: Preventive measures; Immediate Outcome 5: Legal persons and arrangements; Immediate Outcome 6: Financial intelligence on money laundering and terrorism financing; Immediate Outcome 7: Money laundering investigations; Immediate Outcome 8: Confiscation; Immediate Outcome 9: Terrorism financing investigations and prosecutions; Immediate Outcome 10 Terrorism financing preventive measures and financial sanctions; and Immediate Outcome 11: Proliferation financing sanctions.
	5. As a result of these findings by the MER 2019, South Africa was placed under International Cooperation Review Group observation for a period of one year. This observation ended in October 2022, where South Africa submitted reports on technical compliance and effectiveness outcomes. This gave South Africa a chance to rectify the deficiencies identified during the peer review process.
	6. In February 2023, South Africa’s performance in rectifying its deficiencies will be considered at the FATF Plenary Meeting, whereby the FATF will decide whether to place South Africa on a “grey-list” of countries that need continued monitoring and observation or not.
	7. During the briefing and deliberations by the Committee, the National Treasury and the FIC assured the Committee that significant progress was being made in addressing South Africa’s technical compliance issues raised by FATF in the 2019 MER. They explained that technical compliance basically refers to the adequacy of the country’s AML/CFT laws and regulatory framework. Technical compliance deficiencies mean that the country must amend its laws or introduce new provisions so that the country’s legal and regulatory framework complies with FATF Standards.
	8. The National Treasury and FIC however stated that while it would seem easy to rectify the technical compliance deficiencies, achieving the 11 effectiveness measures would be difficult as they depended on the actions of many other role-players such as the police, the AFU and prosecution authorities, not the National Treasury and FIC alone.
	9. To deal with the technical deficiencies which require legislative amendments and development, a working group was established comprising of National Treasury, FIC, Department of Justice and Constitutional Development, Department of Social Development, Civilian Secretariat for Police Service, Department of Trade, Industry and Competition, Companies and Intellectual Property Commission, South African Reserve Bank, South African Revenue Service, Prudential Authority, and the Financial Sector Conduct Authority. This working group came up with the GLAB 2022 which addresses 14 technical compliance deficiencies (Recommendation 7,8,12,15,17, 18, and 22-28) through amending the following laws: the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997); the Trust Property Control Act, 1988 (Act No. 57 of 1988); the Companies Act, 2008 (Act No. 71 of 2008), and the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017).
	10. There is also the Protection of Constitutional Democracy Against Terrorist and Related Activities Act 2004 (POCDATARA) Amendment Bill currently in Parliament which is being processed by the Portfolio Committee on Police, which addresses technical deficiencies relating to Recommendations 5 and 6 of FATF Standards. The remaining four deficiencies (Recommendations 1, 2, 14 and 32) will be addressed through regulatory and policy interventions.
2. **SUMMARY OF PROPOSED AMENDMENTS**
	1. The Bill has got 62 clauses which seek to amend the following pieces of legislation:
		1. the Trust Property Control Act, 1988, (clause 1 to 7) by inserting definitions of ‘‘accountable institution’’ and ‘‘beneficial owner’’; by imposing certain requirements on trustees; by specifying matters that would disqualify a person from being appointed or continuing to act as a trustee; by providing for the removal of a trustee who becomes disqualified to continue to act as a trustee; by specifying information that must be kept by trustees in relation to beneficial owners in relation to trusts; by requiring the Master to maintain a register containing information relating to beneficial ownership of trusts, and providing for access to information regarding beneficial ownership; and by specifying certain offences;
		2. the Nonprofit Organisations Act, 1997, (clause 8-14) by requiring registration in terms of the Act; by enabling the Nonprofit Organisations Directorate, in order to perform its functions, to collaborate, co-operate, co-ordinate and enter into arrangements with other organs of state; by requiring nonprofit organisations to submit prescribed information about the office-bearers, control structure, governance, management, administration and operations of nonprofit organisations to the director; to require prescribed information relating to the office-bearers, control structure, governance, management, administration and operations of nonprofit organisations to be included in the register that the director must keep, and by providing for access to that information; by providing for grounds for disqualification for a person to be appointed or continuing to act as an office-bearer of a nonprofit organisation; by providing for the removal of an office-bearer; and by providing for certain offences;
		3. the Financial Intelligence Centre Act, 2001, (clause 15-51) through amending the definitions of ‘‘beneficial owner’’, ‘‘domestic prominent influential person’’ and ‘‘foreign prominent public official’’, and inserting a definition of ‘‘prominent influential person’’; by amending the objectives of the Financial Intelligence Centre (‘‘Centre’’); by amending the functions of the Centre to include the provision of forensic information; by empowering the Centre to request information held by other organs of state; by providing for additional and ongoing due diligence measures, and by amending the process followed when there are doubts about the veracity of information; by aligning certain provisions and Schedules 3A and 3B to appropriately refer to domestic and foreign ‘‘politically exposed persons’’, as distinct from ‘‘politically influential persons’’, who will be dealt with in a new Schedule 3C; by amending certain provisions relating to resolutions of the Security Council of the United Nations; by amending the powers of access by authorised representatives to records of accountable institutions; by enabling the Centre to renew a direction not to proceed with a transaction; by providing for the safeguarding of information; by amending the provisions relating to the disclosure of information to the Centre and access to information by the Centre; by empowering the Minister to prescribe appropriate requirements relating to the access to personal information to ensure that adequate safeguards are in place as required by section 6(1)(c) of the Protection of Personal Information Act, 2013; by amending certain provisions relating to the risk management and compliance programme; by amending the offences provisions to empower the imposition of an administrative sanction; by amending the provision relating to the amendment by the Minister of Schedule 2; by amending Schedules 2, 3A and 3B, and by inserting a new Schedule 3C; and by substituting the index for an arrangement of sections;
		4. the Companies Act, 2008, (clause 52-57) through inserting a definition of ‘‘beneficial owner’’; by providing for a comprehensive mechanism through which the Companies and Intellectual Property Commission can keep accurate and updated beneficial ownership information; by requiring a company to keep a record of a natural person who owns or controls the company in terms of the definition of ‘‘beneficial owner’’, and by providing for specified timelines within which the company must record any changes in this information; by requiring a company to file a record of any natural person who owns or controls the company in terms the definition of ‘‘beneficial owner’’, with the Commission; and by specifying that persons who are convicted of offences relating to money laundering, terrorist financing, or proliferation financing activities are prohibited from registering as company directors; and
		5. the Financial Sector Regulation Act, 2017, ( 58-61) through providing that a financial institution, key person, representative or contractor to which a regulator’s directive in terms of Part 2 of Chapter 10 has been issued must comply with the directive; by inserting a new Chapter dealing with beneficial owners into the Act, which provides a definition of ‘‘beneficial owner’’ and empowers standards and regulator’s directives to be made in relation to beneficial owners; and to provide for matters connected therewith.
3. **PUBLIC PARTICIPATION**
	1. The Committee was briefed on the Bill by the National Treasury and the FIC on 31 August 2022 and held public hearings on 11 October 2022. The comment period was subsequently unanimously extended by the Committee to 25 October 2022, following from most commentators raising concerns about the short period that was allowed for the public to comment on the Bill.
	2. National Treasury and the FIC presented their detailed responses on the Bill to the Committee on 18 October 2022 and on 28 October 2022, addressing all the comments made during the public hearings, Committee briefings and deliberations.
	3. A combined total of 59 public submissions were received during the public participation process. A total of 43 comments were received for the period up to 11 October 2022, and a further 16 after the deadline was extended to 25 October 2022.
	4. The written and oral submissions were received from the following organisations and/or individuals: Cosatu, amaBhungane and Corruption Watch, NPO Working Group, Freedom of Religion South Africa, Cause for Justice (CFJ), Media Monitoring Africa (MMA), Open Ownership, Johannesburg Stock Exchange (JSE), Afrikaanse Protestante Kerk, Alliance of Pentecostal & Charismatic Churches in SA, Apostolic Faith Mission of SA, ASISA, Badisa, Banking Association of South Africa (BASA), Carol Korner, Christian Family Church International, Church of the Holy Spirit, Creativity Will Save Us, Fellowship of Community Churches NPC, Full Gospel Church South Africa, Harvest Christian Church, Joshua Generation Church, Kweco, Maranatha, Mr Majola, R2K, Shoprite Checkers (Pty) Ltd, Social Change Assistance Trust, Association of Vineyard Churches SA, True-North, Computershare (Pty) Ltd, Webber Wentzel, Helen Suzman Foundation, Inkululeko Yesizwe Association, Milk Matters, Law Society South Africa (LSSA), Free State Care in Action, South African Institute of Stockbrokers, Dear SA, Free Market Foundation (FMF), Institute of Race Relations (IRR), Southern African Catholic Bishops’ Conference, Anna Vayanos, Sakeliga, Biowatch, Christian View Network, National Automobile Dealers’ Association, Word of Grace Ministries, Intellidex Pty Ltd., Dominique Pitot, Citizen Leader Lab NPC, Kingfisher FM, Fiduciary Institute of Southern Africa (FISA), Fish Hoek Ratepayers and Residents Association (FHVRRA), Virgil Hill, 4Hope, [Mikhulu Child Development Trust](https://protect-za.mimecast.com/s/92bqCZ4yBNh5JAnPcz8eQL?domain=mikhulutrust.org/), Outsurance, Southern African Institute of Business Accountants (SAIBA).
4. **ISSUES RAISED DURING PUBLIC HEARINGS AND RESPONSES FROM NATIONAL TREASURY AND THE FINANCIAL INTELLIGENCE CENTRE**
	1. **General Comments**
		1. The Committee received general comments regarding the time period for public comments. Almost all commentators submitted that the time period of just over one month (between 31 August and 11 October 2022) given for public comments was not enough. As a result of this the Committee unanimously extended the time period for public comments to 25 October 2022. It is noted that many comments received on the second deadline were repetitive of the comments that had been received on 11 October 2022.
		2. Comments were received by the Committee regarding the lack of a Socio-Economic Impact Assessment Study (SEIAS) on the GLAB. It was submitted that without the National Treasury and the FIC conducting an impact assessment study, it would be difficult to assess the costs and benefits of the GLAB. The National Treasury responded that it had received an exemption from conducting a SEIA on this Bill due to the consequences of not processing the Bill on an urgent basis. After addressing correspondence to the Minister of Finance on 2 November, the Minister of Finance responded on 03 November to clarify the issues of SEIAS. The Minister stated that:

“…The National Treasury requested the Presidency to exempt the draft Bill from the application of SEIAS due to urgency to address some of the deficiencies to avoid grery listing by the Financial Action Task Force and because such grey listing may result in the financial institutions abroad severing or limiting transactions with South African financial institutions. Following this request and the submission of the completed SEIAAS significant test template, the Presidency, on 26 July 2022, exempted the application of the SEIAS to the draft Bill…

In obtaining approval for tabling the Bill, I presented to Cabinet the socio-economic implications on being grey listed and therefore the need for the Bill. In my submission I outlined the Bill, if enacted, would assist in strengthening the country’s Anti-Money Laundering and the Combating of the Financing of Terrorism (AML/CFT) system and support Medium-Term Strategic Framework priority 2 on Economic Transformation and Job Creation, and priority 6 on social cohesion and safer communities. It would also support the fight against corruption and the implementation of the National Anti-Corruption Strategy (NACS) approved by Cabinet on 18 November 2020…”

* + 1. Issues were raised in the hearings that there needs to be a sufficient transitional period for the implementation of “Beneficial Ownership” requirements as contemplated in the various pieces of legislation being amended. The main reason given for this was that it will, for instance, take some time to implement and access Beneficial Ownership registers and information as this may also require technical system enhancements. The National Treasury and the FIC assured the commentators that regulators will assist accountable institutions in ensuring that they receive the necessary support to implement the new requirements before any enforcement action is taken for non-compliance with the new obligations.
		2. It was submitted that the Bill almost gives the executive arm of government unfettered powers to make regulations on access to information that is mainly private, particularly in respect of trusts. It was argued that this may violate the right to privacy of trustees and beneficiaries. The National Treasury and the FIC assured the commentators and the Committee that any future regulations in respect of this Bill will be published for public comments. It was also added that access to information on the Beneficial Ownership registers will be controlled in terms of regulation.
		3. Several comments were made in relation to the definition of Beneficial Ownership and other concepts such as “Beneficial Interest” and “Legal Ownership”. The National Treasury accepted some of these comments and made some refinements two the concept of “Beneficial Owner” in the final version of the Bill.
		4. A comment was received that instead of amending FIC Act, the Companies Act and the Financial Sector Regulation Act, the Bill should scrap of the Trust Property Control Act. National Treasury responded that this will not be feasible as trust law and trusts are an integral part of South Africa’s legal system. It was also stated that the Regulation of Trust Property Bill, which will replace the Trust Property Control Act, was at an advanced stage of development.
	1. **Trust Property Control Act amendments in the Bill**
		1. Several comments were received in respect of the definition of “Beneficial Ownership” and its ambit in the amendment to the Trust Property Control Act (TPCA). It was submitted that the definition in the Bill conflicts with some provisions of the TPCA. Several comments were also received regarding the inclusion of trustees, who are not beneficiaries, under the definition of Beneficial Ownership. The National Treasury and the FIC clarified that the trustees were not included in the definition on the basis that they owned or held the property for their own benefit, but on the basis that they administered or exercised control over the property.
	2. **Nonprofit Organisation Act amendments in the Bill**
		1. Many commentators opposed the compulsory and blanket requirement for all non-profit organisations to register. The National Treasury and the FIC conceded, after engagements with the NPO sector to adjust the initial proposal of a blanket registration requirement. The new proposed amendment in the B version of the Bill now focuses on the registration of a limited subset of NPOs that make donations or provide services beyond South Africa’s borders, where they could potentially be used, intentionally or unwittingly, to finance terrorism.
		2. Commentators submitted that it would be inappropriate for the Department of Social Development to accommodate the Non-Profit Directorate that will perform activities envisaged in the Bill. Some argued that a body independent of the DSD and well capacitated be established. The main reasons for this opposition were issues of capacity and that the Bill intends to fight against money laundering and terrorism financing, which are not the activities of the DSD. The National Treasury appreciated these comments and has made refinements to the initial proposals in the Bill.
	3. **Companies Act amendments in the Bill**
		1. A submission was made for the expansion of the definition of “foreign company” in the Bill to also include “foreign voluntary associations” that may be carrying out non-profit activities in South Africa with the Companies Intellectual Property Commission (CIPC). This proposal was not accepted by the National Treasury, which stated that CIPC did not support taking over the mandate which falls under another Department. The CIPC however continues to cater for foreign non-profit companies operating in South Africa.
		2. An objection was received in relation to giving the powers, through regulation, to specify the “prescribed information” regarding natural persons who are beneficial owners of a company that a company must record in its securities register. It was said that this clause was too broad and may violate the Rule of Law and the Bill of Rights. However National Treasury clarified that the power of the Minister will relate to “information relating to beneficial ownership” and will be governed by regulations which the public will be consulted on. National Treasury also reminded the commentators that subordinate legislation (regulations) cannot amend primary legislation but is aimed at elucidating the detail and providing guidance.
		3. Concerns were raised about clause 59 of the original Bill which sought to allow regulators to set standards on beneficial ownership. It was submitted that this clause unduly delegated to financial regulators the power to amend the statutory definition of beneficial ownership. It was submitted that this will enable regulators to create exclusions.
1. **Amendments to the Bill submitted**
	1. The Standing Committee received, on 03 and 10 November 2022, the A- list of proposed amendments to the original version of the Bill that was tabled. The Bill was also amended to reflect the changes in the A list, which the Committee considered on 11 November 2022.
2. **COMMITTEE OBSERVATIONS AND RECOMMENDATIONS**
	1. The Committee notes the interest by the public in this Bill. This is shown in the number of comments received from the public and the Committee having to extend the submission deadlines. The Committee appreciates this participation and the invaluable public comments which have led to the refinements of the Bill as presented by the National Treasury in the A- list dated 03 November 2022.
	2. The Committee notes that the Bill was processed under tight deadlines, especially with threats of South Africa facing a grey listing by FATF. The Committee has previously made it clear that our country cannot afford a grey listing by FATF as that might have a negative impact on trade and the economy.
	3. Although grey listing by FATF does not necessarily mean that countries must not deal with a particular country, the mere naming and shaming exercise by FATF could lead to “severe and adverse economic consequences for trade and transactions with other countries”, as the Minister observed in his letter to the Committee dated 03 November 2022.
	4. However, the Committee believes that legislation of this nature cannot be pushed through without adequate public participation. While South Africa needs to comply with global standards, it also must comply with its domestic laws and the Constitution, which demand public involvement and participation. That is the reason the Committee extended the public participation deadline, as explained above.
	5. The Committee believes that a Socio-Economic Impact Assessment (SEIA) study should have been conducted to evaluate the costs and benefits of the changes proposed by the Bill. The Committee however notes that due to the urgency of processing this Bill, an exemption by the Presidency was granted to the National Treasury, in July 2022, to dispense with the SEIAS requirement in respect of this Bill. Following correspondence between the Committee and the Minister of Finance, the issue of the SEIAS was clarified to the Committee by the Minister. The Committee, however, does not encourage the processing of legislation in this fashion, but understands the urgency of preventing South Africa from being grey listed by FATF in February 2023. The Committee will monitor closely the implementation of this Bill through regular briefings by the National Treasury and the FIC and other related parties.
	6. The Committee notes that the GLAB is an omnibus Bill that is aimed at amending many pieces of legislation, some of which do not fall under the legislative and oversight mandate of the Committee. The Chairperson of the Committee will write to the Speaker of Parliament to recommend that in the future such legislation be referred to all the affected Portfolio Committees for joint processing and consideration.
	7. The Committee notes the general concerns raised by religious organisations and persons and the general NPO community to the onerous provisions of this Bill. The Committee believes that these concerns have been addressed through the amendments as reflected in the A list of the Bill, particularly to clause 10 which provided for “prescribed registration requirements” for NPOs. The legal opinion obtained by National Treasury from senior counsel, dated 01 November 2022, has analysed the provisions of the Bill in respect of their compliance with the Bill of Rights in the Constitution and advised accordingly.
	8. The Committee was shown evidence by the FIC that NPOs, including religious organisations, are at risk, wittingly or unwittingly, of being used for money laundering and terrorism financing. While the Committee appreciates the evidence provided by the FIC in this regard, the Committee believes that the FIC should have presented more international examples of how religious organisations and NPOs have in the past been used to launder money and finance terrorism. The Committee believes that the regulation of non-profit organisations is necessary but believes that a risk-based approach is necessary in order to alleviate the burden of regulation on low-risk communities.
3. **CONCLUSION**
	1. The Committee agrees with amendments proposed in the A list of the Bill
	2. The Committee reports the Bill, [B18B-2022].

The Democratic Alliance (DA) and African Christian Democratic Party (ACDP) reserve their position.

Report to be considered.