

Webber Wentzel Comments

General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill, 2022 [B18B–2022] (Omnibus Bill)

- Please find below our comments on the amendments proposed by the Omnibus Bill to:
 - (in Part A) the Companies Act, 2008;
 - (in Part B) the Trust Property Control Act, 1988; and
 - (in Part C) the Nonprofit Organisations Act, 1997.
- We would welcome the opportunity to provide more detail on request, should it be required. Our key contact's contact details appear below:

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General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill, 2022 [B18B–2022]			
Part A: Proposed Amendments to the Companies Act, 2008			
Bill	CA 2008	amendment	comment
s 55	s 1	<p>introduction of new definition of "affected company":</p> <p><u>"affected company" means a regulated company as set out in section 117(1)(i) and a private company that is controlled by or a subsidiary of a regulated company as a result of any circumstances contemplated in section 2(2)(a) or 3(1)(a);</u></p>	<ul style="list-style-type: none"> We submit that it should be considered whether a reference to section 2(2)(d) should be included in this definition.
s 55	s 1	<p>introduction of new definition of "beneficial owner":</p> <p><u>"beneficial owner", in respect of a company, means an individual who, directly or indirectly, ultimately owns that company or exercises effective control of that company, including through–</u></p> <p>(a) <u>the holding of beneficial interests in the securities of that company;</u></p> <p>(b) <u>the exercise of, or control of the exercise of the voting rights associated with securities of that company;</u></p> <p>(c) <u>the exercise of, or control of the exercise of the right to appoint or remove members of the board of directors of that company;</u></p> <p>(d) <u>the holding of beneficial interests in the securities, or the ability to exercise control, including through a chain of ownership or control, of a holding company of that company;</u></p> <p>(e) <u>the ability to exercise control, including through a chain of ownership or control, of–</u></p> <p>(i) <u>a juristic person other than a holding company of that company;</u></p> <p>(ii) <u>a body of persons corporate or unincorporate;</u></p>	<ul style="list-style-type: none"> We submit that it is not clear whether the legislator intends for the concept of "control" as set out in sections 2 and 3 to apply to this definition as well. We submit that, if that is the legislator's intention, the concept of "control", as used in the definition, should be expressly linked to sections 2 and 3 of the Act. We submit that the definition should conclude with a semi-colon rather than a comma.

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		<ul style="list-style-type: none"> (iii) a person acting on behalf of a partnership; (iv) a person acting in pursuance of the provisions of a trust agreement; or (f) the ability to otherwise materially influence the management of that company. 	
s 56	s 33	<p>amendment of section 33 as follows:</p> <p>33. Annual return.</p> <p>(1) Every company must file an annual return in the prescribed form with the prescribed fee, and within the prescribed period after the end of the anniversary of the date of its incorporation, including in that return–</p> <ul style="list-style-type: none"> (a) a copy of its annual financial statements, if it is required to have such statements audited in terms of section 30(2) or the regulations contemplated in section 30(7); and (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(7)(aA); and (b) any other prescribed information. <p>(1A) (a) The Commission must make the annual return contemplated in subsection (1) available electronically to any person as prescribed.</p> <p>(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</p>	

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		<p>by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).</p> <p>(2) Every external company must file an annual return in the prescribed form with the prescribed fee, and within the prescribed period after the anniversary of the date on which it was registered in terms of section 23(1).</p> <p>(3) Each year, in its annual return filed in terms of subsection (1), every company must designate a director, employee or other person who is responsible for the company's compliance with the requirements of this Part, and Chapter 3, if it applies to the company.</p>	
s 57	s 50	<p>amendment of section 50 as follows:</p> <p>50. Securities register and numbering.</p> <p>(1) Every company must–</p> <p>(a) establish or cause to be established a register of its issued securities in the prescribed form; and</p> <p>(b) maintain its securities register in accordance with the prescribed standards.</p> <p>(2) As soon as practicable after issuing any securities a company must enter or cause to be entered in its securities register, in respect of every class of securities that it has issued–</p> <p>(a) the total number of those securities that are held in uncertificated form; and</p> <p>(b) with respect to certificated securities–</p> <p>(i) the names and addresses of the persons to whom the securities were issued;</p>	

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		<ul style="list-style-type: none"> (ii) the number of securities issued to each of them; (iii) the number of, and prescribed circumstances relating to, any securities– <ul style="list-style-type: none"> (aa) that have been placed in trust as contemplated in section 40(6)(d); or (bb) whose transfer has been restricted; (iv) in the case of securities contemplated in section 43– <ul style="list-style-type: none"> (aa) the number of those securities issued and outstanding; and (bb) the names and addresses of the registered owner of the security and any holders of a beneficial interest in the security; and (v) any other prescribed information. <p>(3) If a company has issued uncertificated securities, or has issued securities that have ceased to be certificated, as contemplated in section 49(5), a record must be administered and maintained by a participant or central securities depository in the prescribed form, as the company's uncertificated securities register, which–</p> <ul style="list-style-type: none"> (a) forms part of that company's securities register; and (b) must contain, with respect to all securities contemplated in this subsection, any details– <ul style="list-style-type: none"> (i) referred to in subsection (2)(b), read with the changes required by the context; or (ii) determined by the rules of the central securities depository. 	

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		<p>(3A) (a) <u>A company that does not fall within the meaning of an "affected 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.</u></p> <p>(b) <u>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).</u></p> <p>(4) A securities register, or an uncertificated securities register, maintained in accordance with this Act is sufficient proof of the facts recorded in it, in the absence of evidence to the contrary.</p> <p>(5) Unless all the shares of a company rank equally for all purposes, the company's shares, or each class of shares, and any other securities, must be distinguished by an appropriate numbering system.</p>	
s 58	s 56	<p>amendment of section 56 as follows:</p> <p>56. Beneficial interest in securities <u>and beneficial ownership of company</u>.</p> <p>(1) Except to the extent that a company's Memorandum of Incorporation provides otherwise, the company's issued securities may be held by, and registered in the name of, one person for the beneficial interest of another person.</p>	

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		<p>(2) A person is regarded to have a beneficial interest in a security of a public company if the security is held <i>nomine officii</i> by another person on that first person's behalf, or if that first person—</p> <ul style="list-style-type: none"> (a) is married in community of property to a person who has a beneficial interest in that security; (b) is the parent of a minor child who has a beneficial interest in that security; (c) acts in terms of an agreement with another person who has a beneficial interest in that security, and the agreement is in respect of the co-operation between them for the acquisition, disposal or any other matter relating to a beneficial interest in that security; (d) is the holding company of a company that has a beneficial interest in that security; (e) is entitled to exercise or control the exercise of the majority of the voting rights at general meetings of a juristic person that has a beneficial interest in that security; or (f) gives directions or instructions to a juristic person that has a beneficial interest in that security, and its directors or the trustees are accustomed to act in accordance with that person's directions or instructions. <p>(3) If a security of a public company is registered in the name of a person who is not the holder of the beneficial interest in all of the securities in the same company held by that person, that registered holder of security must disclose—</p>	

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		<p>(a) the identity of the person on whose behalf that security is held; and</p> <p>(b) the identity of each person with a beneficial interest in the securities so held, the number and class of securities held for each such person with a beneficial interest, and the extent of each such beneficial interest.</p> <p>(4) The information required in terms of subsection (3) must–</p> <p>(a) be disclosed in writing to the company within five business days after the end of every month during which a change has occurred in the information contemplated in subsection (3), or more promptly or frequently to the extent so provided by the requirements of a central securities depository; and</p> <p>(b) otherwise be provided on payment of a prescribed fee charged by the registered holder of securities.</p> <p>(5) A company that knows or has reasonable cause to believe that any of its securities are held by one person for the beneficial interest of another, by notice in writing, may require either of those persons to–</p> <p>(a) confirm or deny that fact;</p> <p>(b) provide particulars of the extent of the beneficial interest held during the three years preceding the date of the notice; and</p> <p>(c) disclose the identity of each person with a beneficial interest in the securities held by that person.</p> <p>(6) The information required in terms of subsection (5) must be provided not later than 10 business days after receipt of the notice.</p>	

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		<p>(7) A company that falls within the meaning of "regulated company" as set out in section 117(1)(i) must <u>An affected company must—</u></p> <p>(a) establish and maintain a register of the disclosures made in terms of this section; and</p> <p>(aA) <u>establish and maintain a register of the persons who hold beneficial interests equal to or in excess of 5% of the total number of securities of that class issued by the company, together with the extent of those beneficial interests, and ensure that this register is updated within the prescribed period after having received a notice contemplated in section 122(1); and</u></p> <p>(b) publish in its annual financial statements, if it is required to have such statements audited in terms of section 30(2), a list of the persons who hold beneficial interests equal to or in excess of 5% of the total number of securities of that class issued by the company, together with the extent of those beneficial interests.</p> <p>(8) Subsections (9) to (11) do not apply in respect of securities that are subject to the rules of a central securities depository.</p> <p>(9) A person who holds a beneficial interest in any securities may vote in a matter at a meeting of shareholders, only to the extent that—</p> <p>(a) the beneficial interest includes the right to vote on the matter; and</p> <p>(b) the person's name is on the company's register of disclosures as the holder of a beneficial interest, or the</p>	

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		<p>person holds a proxy appointment in respect of that matter from the registered holder of those securities.</p> <p>(10) The registered holder of any securities in which any person has a beneficial interest must deliver to each such person—</p> <p>(a) a notice of any meeting of a company at which those securities may be voted on within two business days after receiving such a notice from the company; and</p> <p>(b) a proxy appointment to the extent of that person's beneficial interest, if the person so demands in terms of subsection (11).</p> <p>(11) A person who has a beneficial interest in any securities that are entitled to be voted on at a meeting of a company's shareholders, may demand a proxy appointment from the registered holder of those securities, to the extent of that person's beneficial interest, by delivering such a demand to the registered holder, in writing, or as required by the applicable requirements of a central securities depository.</p> <p>(12) <u>A company that does not fall within the meaning of an "affected company" must file a record with the Commission, in the prescribed form and containing the prescribed information, regarding the individuals 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.</u></p> <p>(13) <u>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</u></p>	

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		section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001). (14) The Commission must maintain a register of the information contained in the records contemplated in subsections (7)(aA) and (12).	
s 59	s 69	<p>amendment of section 69 as follows:</p> <p>69. Ineligibility and disqualification of persons to be director or prescribed officer.</p> <p>(1) In this section, "director" includes an alternate director, and–</p> <p>(a) a prescribed officer; or</p> <p>(b) a person who is a member of a committee of a board of a company, or of the audit committee of a company, irrespective of whether or not the person is also a member of the company's board.</p> <p>(2) A person who is ineligible or disqualified, as set out in this section, must not–</p> <p>(a) be appointed or elected as a director of a company, or consent to being appointed or elected as a director; or</p> <p>(b) act as a director of a company.</p> <p>(3) A company must not knowingly permit an ineligible or disqualified person to serve or act as a director.</p> <p>(4) A person who becomes ineligible or disqualified while serving as a director of a company ceases to be entitled to</p>	<ul style="list-style-type: none"> We submit that subsection (8)(b)(v) should be amended to read as follows: "(8) A person is disqualified to be a director of a company if– (a) a court has prohibited that person to be a director, or declared the person to be delinquent in terms of section 162, or in terms of section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or (b) subject to subsections (9) to (12), the person– (i) is an unrehabilitated insolvent; (ii) is prohibited in terms of any public regulation to be a director of the company; (iii) has been removed from an office of trust, on the grounds of misconduct involving dishonesty; (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, or money laundering, terrorist financing, or proliferation financing activities as those terms are defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001); or

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		<p>continue to act as a director immediately, subject to section 70(2).</p> <p>(5) A person who has been placed under probation by a court in terms of section 162, or in terms of section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984), must not serve as a director except to the extent permitted by the order of probation.</p> <p>(6) In addition to the provisions of this section, the Memorandum of Incorporation of a company may impose–</p> <p>(a) additional grounds of ineligibility or disqualification of directors; or</p> <p>(b) minimum qualifications to be met by directors of that company.</p> <p>(7) A person is ineligible to be a director of a company if the person–</p> <p>(a) is a juristic person;</p> <p>(b) is an unemancipated minor, or is under a similar legal disability; or</p> <p>(c) does not satisfy any qualification set out in the company's Memorandum of Incorporation.</p> <p>(8) A person is disqualified to be a director of a company if–</p> <p>(a) a court has prohibited that person to be a director, or declared the person to be delinquent in terms of section 162, or in terms of section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or</p> <p>(b) subject to subsections (9) to (12), the person–</p> <p>(i) is an unrehabilitated insolvent;</p>	<p>(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</p> <p>(cc) under this Act, the Insolvency Act, 1936, (Act 24 of 1936), the Close Corporations Act, 1984, the Competition Act, the Financial Intelligence Centre Act, 2001, the Financial Markets Act, 2012, Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004), the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act 33 of 2004) or the Tax Administration Act, 2011 (Act 28 of 2011); or</p> <p>(v) when a person is subject to a resolution adopted by the Security Council of the United Nations when acting under Chapter VII of the Charter of the United Nations, providing for financial sanctions which entail the identification of persons or entities against whom member states of the United Nations must take the actions specified in the resolution."</p> <ul style="list-style-type: none"> In relation to subsection (9A), we submit that the wording of this subsection should be amended to make it clear when such a decision of the Security Council of the United Nations has been "taken" for purposes of the subsection.

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		<p>(ii) is prohibited in terms of any public regulation to be a director of the company;</p> <p>(iii) has been removed from an office of trust, on the grounds of misconduct involving dishonesty; or</p> <p>(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—</p> <p>(aa) involving fraud, misrepresentation or dishonesty, <u>or money laundering, terrorist financing, or proliferation financing activities as those terms are defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001); or</u></p> <p>(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</p> <p>(cc) under this Act, the Insolvency Act, 1936, (Act 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</p>	

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		<p>and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004), the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act 33 of 2004) or the Tax Administration Act, 2011 (Act 28 of 2011); or</p> <p>(v) when a person is subject to a resolution adopted by the Security Council of the United Nations when acting under Chapter VII of the Charter of the United Nations, providing for financial sanctions which entail the identification of persons or entities against whom member states of the United Nations must take the actions specified in the resolution.</p> <p>(9) A disqualification in terms of subsection (8)(b)(iii) or (iv) ends at the later of–</p> <p>(a) five years after the date of removal from office, or the completion of the sentence imposed for the relevant offence, as the case may be; or</p> <p>(b) at the end of one or more extensions, as determined by a court from time to time, on application by the Commission in terms of subsection (10).</p> <p>(9A) A disqualification in terms of subsection (8)(b)(v) ends when the Security Council of the United Nations takes a decision to no longer apply that resolution to a person contemplated in that subsection.</p>	

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		<p>(10) At any time before the expiry of a person's disqualification in terms of subsection (8)(b)(iii) or (iv)–</p> <p>(a) the Commission may apply to a court for an extension contemplated in subsection (9)(b); and</p> <p>(b) the court may extend the disqualification for no more than five years at a time, if the court is satisfied that an extension is necessary to protect the public, having regard to the conduct of the disqualified person up to the time of the application.</p> <p>(11) A court may exempt a person from the application of any provision of subsection (8)(b).</p> <p>(11A) The Registrar of the Court must, upon–</p> <p>(a) the issue of a sequestration order;</p> <p>(b) the issue of an order for the removal of a person from any office of trust on the grounds of misconduct involving dishonesty; or</p> <p>(c) a conviction for an offence referred in subsection (8)(b)(iv),</p> <p>send a copy of the relevant order or particulars of the conviction, as the case may be, to the Commission.</p> <p>(11B) The Commission must notify each company which has as a director to whom the order or conviction relates, of the order or conviction.</p> <p>(12)</p> <p>(13) The Commission must establish and maintain in the prescribed manner a public register of persons who are disqualified from serving as a director, or who are subject to</p>	

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		an order of probation as a director, in terms of an order of a court pursuant to this Act or any other law.	
s 60	s 122	<p>amendment of section 122 as follows:</p> <p>122. Required disclosure concerning certain share transactions.</p> <p>(1) A person must notify a-regulated<ins>an affected</ins> company in the prescribed manner and form within three business days after that person–</p> <p>(a) acquires a beneficial interest in sufficient securities of a class issued by that company such that, as a result of the acquisition, the person holds a beneficial interest in securities amounting to 5%, 10%, 15%, or any further whole multiple of 5%, of the issued securities of that class; or</p> <p>(b) disposes of a beneficial interest in sufficient securities of a class issued by a company such that, as a result of the disposition, the person no longer holds a beneficial interest in securities amounting to a particular multiple of 5% of the issued securities of that class.</p> <p>(2) the requirements set out in subsection (1) apply to a person irrespective of whether–</p> <p>(a) the person acquires or disposes of any securities–</p> <p>(i) directly or indirectly; or</p> <p>(ii) individually, or in concert with any other person or persons, or</p>	

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		<p>(b) the stipulated percentage of issued securities is held by that person alone, or in aggregate by that person together with any–</p> <p>(i) related or inter-related person; and</p> <p>(ii) person who has acted in concert with any other person.</p> <p>(3) A regulated company that has received a notice in terms of this section must–</p> <p>(a) file a copy with the Panel; and</p> <p>(b) report the information to the holders of the relevant class of securities unless the notice concerned a disposition of less than 1% of the class of securities.</p> <p><u>(3A) An affected company that has received a notice in terms of this section must file a record of that notice with the Commission, in the prescribed form and containing the prescribed information and within the prescribed period after having received that notice.</u></p> <p>(4) For the purposes of this section–</p> <p>(a) when determining the number of issued securities of a class, a person is entitled to rely on the most recently published statement by the company, unless that person knows or has reason to believe that the statement is inaccurate; and</p> <p>(b) when determining the number of securities held by–</p> <p>(i) a person or persons contemplated in subsection (1)–</p> <p>(aa) to the extent that the person has the entire, or a partial or shared, beneficial</p>	

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		<p>interest in any securities, those interests must be aggregated, irrespective of the nature of the person's interest; and</p> <p>(bb) any securities that may be acquired by the person if they exercised any options, conversion privileges or similar rights, are to be included; and</p> <p>(ii) any other person, any securities that may be acquired by that other person if they exercised any options, conversion privileges or similar rights, are to be excluded.</p> <p>(5) The prescribed requirements referred to in subsection (3A) 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).</p> <p>(6) The Commission must maintain a register of the information contained in the notices contemplated in subsection (3A).</p>	
s 61		<p>amendment of Arrangement of Sections by the substitution for item 56 of the following item:</p> <p>56. Beneficial interest in securities and beneficial ownership of company.</p>	

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Part B: Proposed Amendments to the Trust Property Control Act, 1988			
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s 1	s 1	<p>introduction of new definition of "accountable institution":</p> <p><u>"accountable institution" has the meaning defined in section 1(1) and Schedule 1 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);</u></p> <p><u>[the Financial Intelligence Centre Act, 2001, in its present form, defines "accountable institution" as follows:</u></p> <p>"accountable institution" means a person referred to in Schedule 1;]</p>	
s 1	s 1	<p>introduction of new definition of "beneficial owner":</p> <p><u>"beneficial owner", in respect of the provisions of a trust instrument, means–</u></p> <p>(a) <u>a natural person who directly or indirectly ultimately owns the relevant trust property;</u></p> <p>(b) <u>a natural person who exercises effective control of the administration of the trust arrangements that are established pursuant to a trust instrument;</u></p> <p>(c) (i) <u>each founder of the trust; or</u></p> <p>(ii) <u>if a founder of the trust is a legal person, a person acting on behalf of a partnership or in pursuance of the provisions of a trust instrument, the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person or partnership or the relevant trust property or trust arrangements pursuant to that trust instrument;</u></p>	<ul style="list-style-type: none"> Noting that it appears to be the intention "to provide best practice through guidance", we submit that it is important for the legislator to clarify what is meant by the term "effective control" to provide certainty or some guidance.

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		<p>(d) (i) <u>each trustee of the trust; or</u></p> <p>(ii) <u>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; and</u></p> <p>(e) (i) <u>each beneficiary referred to by name in the trust instrument or other founding instrument in terms of which the trust is created; or</u></p> <p>(ii) <u>if a beneficiary referred to by name in the trust instrument is a legal person, a partnership or a person acting on behalf of a partnership or a person acting in pursuance of the provisions of a trust instrument, the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person or partnership or the relevant trust property or trust arrangements pursuant to that trust instrument;</u></p>	
s 2	s 6	<p>amendment of section 6 as follows:</p> <p>6. Authorization of trustee and security.</p> <p>(1) Any person whose appointment as trustee in terms of a trust instrument, section 7 or a court order comes into force after the commencement of this Act, shall act in that capacity only if authorized thereto in writing by the Master.</p> <p>(1A) <u>A person is disqualified from being authorized as a trustee if the person—</u></p> <p>(a) <u>is an unrehabilitated insolvent;</u></p>	<ul style="list-style-type: none"> We submit that the phrase "the end of" should be inserted at the beginning of subsection (1B)(b), as follows: <ul style="list-style-type: none"> "(1B) A disqualification in terms of subsection (1A)(d) or (e) ends at the later of— <ul style="list-style-type: none"> (a) five years after the date of removal from office, or the completion of the sentence imposed for the relevant offence, as the case may be; or (b) <u>the end of</u> one or more extensions, as determined by a court from time to time, on application by the Master in terms of subsection (1C)." In relation to subsection (1C), we submit that the wording of this subsection should be amended to make it clear when such a decision of the Security

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		<p>(b) <u>has been prohibited by a court to be a director of a company, or declared by a court to be delinquent in terms of section 162 of the Companies Act, 2008 (Act No. 71 of 2008), or section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984);</u></p> <p>(c) <u>is prohibited in terms of any law to be a director of a company;</u></p> <p>(d) <u>has been removed from an office of trust, on the grounds of misconduct involving dishonesty;</u></p> <p>(e) <u>has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the prescribed amount in terms of section 69 of the Companies Act, 2008, for theft, fraud, forgery, perjury or an offence—</u></p> <p style="padding-left: 20px;">(i) <u>involving fraud, misrepresentation or dishonesty, or money laundering, terrorist financing or proliferation financing activities as those terms are defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);</u></p> <p style="padding-left: 20px;">(ii) <u>in connection with the promotion, formation or management of a company, or in connection with any act contemplated in section 69(2) or (5) of the Companies Act, 2008; or</u></p> <p style="padding-left: 20px;">(iii) <u>under this Act, the Companies Act, 2008, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, 1998 (Act No. 89 of 1998),</u></p>	<p>Council of the United Nations has been "taken" for purposes of the subsection.</p>

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		<p>the Financial Intelligence Centre Act, 2001, the Financial Markets Act, 2012 (Act No. 19 of 2012), Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004), or the Tax Administration Act, 2011 (Act No. 28 of 2011);</p> <p>(f) is subject to a resolution adopted by the Security Council of the United Nations when acting under Chapter VII of the Charter of the United Nations, providing for financial sanctions which entail the identification of persons or entities against whom member states of the United Nations must take the actions specified in the resolution; or</p> <p>(g) is an unemancipated minor, or is under a similar legal disability.</p> <p>(1B) A disqualification in terms of subsection (1A)(d) or (e) ends at the later of–</p> <p>(a) five years after the date of removal from office, or the completion of the sentence imposed for the relevant offence, as the case may be; or</p> <p>(b) one or more extensions, as determined by a court from time to time, on application by the Master in terms of subsection (1C).</p> <p>(1C) A disqualification in terms of subsection (1A)(f) ends when the Security Council of the United Nations takes a decision to no</p>	

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		<p><u>longer apply that resolution to a person contemplated in that subsection.</u></p> <p>(1D) <u>At any time before the expiry of a person's disqualification in terms of subsection (1A)(d) or (e)–</u></p> <p>(a) <u>the Master may apply to a court for an extension contemplated in subsection (1B)(b); and</u></p> <p>(b) <u>the court may extend the disqualification for no more than five years at a time, if the court is satisfied that an extension is necessary to protect the public, having regard to the conduct of the disqualified person up to the time of the application.</u></p> <p>(1E) <u>A court may exempt a person from the application of any provision of subsection (1A)(a), (c), (d) or (e).</u></p> <p>(1F) <u>The Registrar of the Court must, upon–</u></p> <p>(a) <u>the issue of a sequestration order;</u></p> <p>(b) <u>the issue of an order for the removal of a person from any office of trust on the grounds of misconduct involving dishonesty; or</u></p> <p>(c) <u>a conviction for an offence referred to in subsection (1A)(e).</u></p> <p><u>send a copy of the relevant order or particulars of the conviction, as the case may be, to the Master.</u></p> <p>(1G) <u>The Master must notify each trust which has as a trustee to whom the order or conviction relates, of the order or conviction.</u></p> <p>(1H) (a) <u>The Master must establish and maintain in the prescribed manner a public register of persons who are</u></p>	

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		<p><u>disqualified from serving as a trustee, in terms of an order of a court pursuant to this Act or any other law.</u></p> <p>(b) <u>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).</u></p> <p>(2) The Master does not grant authority to the trustee in terms of this section, unless–</p> <p>(a) he has furnished security to the satisfaction of the Master for the due and faithful performance of his duties as trustee; or</p> <p>(b) he has been exempted from furnishing security by a court order or by the Master under subsection (3)(a) or, subject to the provisions of subsection (3)(d), in terms of a trust instrument:</p> <p>Provided that where the furnishing of security is required, the Master may, pending the furnishing of security, authorize the trustee in writing to perform specified acts with regard to the trust property.</p> <p>(3) The Master may, if in his opinion there are sound reasons to do so–</p> <p>(a) whether or not security is required by the trust instrument (except a court order), dispense with security by a trustee;</p> <p>(b) reduce or cancel any security furnished;</p> <p>(c) order a trustee to furnish additional security;</p>	

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		<p>(d) order a trustee who has been exempted from furnishing security in terms of a trust instrument (except a court order) to furnish security.</p> <p>(4) If any authorization is given in terms of this section to a trustee which is a corporation, such authorization shall, subject to the provisions of the trust instrument, be given in the name of a nominee of the corporation for whose actions as trustee the corporation is legally liable, and any substitution for such nominee of some other person shall be endorsed on the said authorization.</p>	
s 3	s 8	<p>amendment of section 8 as follows:</p> <p>8. Foreign trustees. When a person who was appointed outside the Republic as trustee has to administer or dispose of trust property in the Republic, the provisions of this Act shall apply to such trustee in respect of such trust property and <u>such person shall act in that capacity only if authorized thereto in writing by</u> the Master may authorize such trustee under section 6 to act as trustee in respect of that property.</p>	
s 4	s 10	<p>amendment of section 10 as follows:</p> <p>10. Trust account. (1) Whenever a person receives money in his capacity as trustee, he shall deposit such money in a separate trust account at a banking institution or building society. (2) <u>A trustee must disclose their position as trustee to any accountable institution with which the trustee engages in that</u></p>	<ul style="list-style-type: none"> We submit that the heading of section 10 should also be amended to reflect the expanded ambit of the section, as follows: "Trust account <u>and disclosure to accountable institutions.</u>".

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		capacity, and must make it known to the accountable institution that the relevant transaction or business relationship relates to trust property.	
s 5	s 11	<p>amendment of section 11 as follows:</p> <p>11. Registration and identification of trust property.</p> <p>(1) Subject to the provisions of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984), section 40 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), and the provisions of the trust instrument concerned, a trustee shall–</p> <ul style="list-style-type: none"> (a) indicate clearly in his bookkeeping the property which he holds in his capacity as trustee; (b) if applicable, register trust property or keep it registered in such manner as to make it clear from the registration that it is trust property; (c) make any account or investment at a financial institution identifiable as a trust account or trust investment; (d) in the case of trust property other than property referred to in paragraphs (b) or (c), make such property identifiable as trust property in the best possible manner; and and (e) record the prescribed details relating to accountable institutions which the trustee uses as agents to perform any of the trustee's functions relating to trust property, and from which the trustee obtains any 	

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		<p><u>services in respect of the trustee's functions relating to trust property.</u></p> <p>(1A) <u>The prescribed requirements referred to in paragraph (e) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).</u></p> <p>(2) In so far as the registration or identification of trust property being administered by a trustee at the commencement of this Act does not comply with the requirements of subsection (1), the trustee shall within a period of 12 months after the said commencement take such steps or cause such steps to be taken as may be necessary to bring the registration or identification of such property into conformity with the said requirements.</p> <p>(3) Upon application in terms of subsection (2) to bring the registration of trust property into line with the provisions of subsection (1), the officer in charge of a deeds registry where such trust property is registered, shall free of charge take such steps as may be necessary to effect the required registration.</p>	
s 6	s 11A	<p>introduction of new section 11A:</p> <p><u>11A. Beneficial ownership.</u></p> <p>(1) <u>A trustee must–</u></p> <p>(a) <u>establish and record the beneficial ownership of the trust;</u></p> <p>(b) <u>keep a record of the prescribed information relating to the beneficial owners of the trust;</u></p>	

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		<p>(c) <u>lodge a register of the prescribed information on the beneficial owners of the trust with the Master's Office; and</u></p> <p>(d) <u>ensure that the prescribed information referred to in paragraphs (a) to (c) is kept up to date.</u></p> <p>(2) <u>The Master must keep a register in the prescribed form containing prescribed information about the beneficial ownership of trusts.</u></p> <p>(3) <u>A trustee must make the information contained in the register referred to in subsection (1)(c), and the Master must make the information in the register referred to in subsection (2), available to any person as prescribed.</u></p> <p>(4) <u>The prescribed requirements referred to in this section must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).</u></p>	
s 7	s 19	<p>amendment of section 19 as follows:</p> <p>19. Failure by trustee to account or perform duties.</p> <p>(1) If any trustee fails to comply with a request by the Master in terms of section 16 or to perform any duty imposed upon him<u>the trustee</u> by <u>this Act</u>, the trust instrument or by <u>any other</u> law, the Master or any person having an interest in the trust property may apply to the court for an order directing the trustee to comply with such<u>the Master's</u> request or to perform such<u>the</u> duty.</p>	<ul style="list-style-type: none"> • Since trustees may need to place reliance on information that is provided to them, we submit that section 19 should be amended to provide that a trustee will not be guilty of an offence in terms of section 11A(1) if the trustee can show that the trustee took all reasonable steps to establish the beneficial ownership of the trust. • We note that section 19(2)'s proposed introduction of these new offences (for failure to comply with an administrative obligation embodied in sections 10(2), 11(1)(e) or 11A(1)) is likely to disincentivise persons to act as trustees.

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		(2) <u>A trustee who fails to comply with an obligation referred to in section 10(2), 11(1)(e) or 11A(1), commits an offence and on conviction is liable to a fine not exceeding R10 million, or imprisonment for a period not exceeding five years, or to both such fine and imprisonment.</u>	
s 8	s 20	<p>amendment of section 20 as follows:</p> <p>20. Removal of trustee.</p> <p>(1) A trustee may, on the application of the Master or any person having an interest in the trust property, at any time be removed from his office by the court if the court is satisfied that such removal will be in the interests of the trust and its beneficiaries.</p> <p>(2) A trustee may at any time be removed from his office by the Master–</p> <p>(a) if he has been convicted in the Republic or elsewhere of any offence of which dishonesty is an element or of any other offence for which he has been sentenced to imprisonment without the option of a fine<u>the person becomes disqualified to be authorised as a trustee in terms of section 6(1A);</u> or</p> <p>(b) if he<u>the trustee</u> fails to give security or additional security, as the case may be, to the satisfaction of the Master within two months after having been requested thereto<u>to do so by the Master</u> or within such<u>a</u> further period as that<u>is</u> allowed by the Master; or</p>	<ul style="list-style-type: none"> In line with the gender-neutral amendments proposed to be made to section 20(2) of the Act by the Omnibus Bill, we submit that section 20(2) should be amended as follows: "A trustee may at any time be removed from his office by the Master–;".

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		<p>(c) if his<u>the trustee's</u> estate is sequestered or liquidated or placed under judicial management; or</p> <p>(d) if he<u>the trustee</u> has been declared by a competent court to be mentally ill or incapable of managing his<u>their</u> own affairs or if he<u>the trustee</u> is by virtue of the Mental Health Act, 1973 (Act No. 18 of 1973)<u>Mental Health Care Act, 2002 (Act No. 17 of 2002)</u>, detained as a patient in an institution or as a State patient; or</p> <p>(e) if he<u>the trustee</u> fails to perform satisfactorily any duty imposed upon him<u>the trustee</u> by or under this Act or to comply with <u>the requirements of this Act or</u> any lawful request of the Master.</p> <p>(3) If a trustee authorized to act under section 6(1) is removed from his office or resigns, he shall without delay return his written authority to the Master.</p>	

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s 9	s 2	<p>amendment of section 2 as follows:</p> <p>2. Objects of Act.</p> <p>The objects of this Act are to encourage and support nonprofit organisations in their contribution to meeting the diverse needs of the population of the Republic by–</p> <ul style="list-style-type: none"> (a) creating an environment in which nonprofit organisations can flourish; (b) establishing an administrative and regulatory framework within which <u>registered</u> nonprofit organisations can<u>must</u> conduct their affairs; (c) encouraging<u>requiring registered</u> nonprofit organisations to maintain adequate standards of governance, transparency and accountability and to improve those standards; (d) creating an environment within which the public may have access to information concerning registered nonprofit organisations; and (e) promoting a spirit of co-operation and shared responsibility within government, donors and amongst other interested persons in their dealings with nonprofit organisations. 	

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s 10	s 5	<p>amendment of section 5 as follows:</p> <p>5. Functions of Directorate.</p> <p>(1) In addition to any other function determined by the Minister or specified elsewhere in this Act, the Directorate is responsible for–</p> <ul style="list-style-type: none"> (a) facilitating the process for developing and implementing policy; (b) determining and implementing programs, including programs– <ul style="list-style-type: none"> (i) to support nonprofit organisations in their endeavour to register; and (ii) to ensure that the standard of governance within nonprofit organisations is maintained and improved; (c) liaising with other organs of state and interested parties; and (d) facilitating the development and implementation of multi-sectoral and multi-disciplinary programs. <p>(2) <u>In order to promote the achievement of the objects of this Act and to perform its functions and duties, the Directorate may collaborate, co-operate, co-ordinate and enter into arrangements with other organs of state, which may include–</u></p> <ul style="list-style-type: none"> (a) <u>measures to co-ordinate their approach to performing their functions in terms of legislation;</u> (b) <u>entering into a memorandum of understanding, which, among other matters, may provide for–</u> 	

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		<p>(i) <u>the sharing of information between the parties, including–</u></p> <p>(aa) <u>the types of information to be furnished by each party; or</u></p> <p>(bb) <u>measures to protect the confidentiality of the information, including limiting access to specified persons or incumbents of specified positions, subject to the provisions of applicable legislation;</u></p> <p>(ii) <u>collaboration, co-operation between the parties, and assisting each other in the performance of their respective duties in terms of legislation, including through the provision of advice and support; and</u></p> <p>(iii) <u>the delegation by the Directorate to another organ of state of specified administrative functions.</u></p>	
s 11	s 12	<p>amendment of section 12 as follows:</p> <p>12. Requirements for registration.</p> <p><u>(1)(a) A nonprofit organisation referred to in paragraph (b) must apply, and any other nonprofit organisation that is not an organ of state may apply, to the director for registration, subject to paragraph (c), and in accordance with the requirements and procedure contemplated in sections 13, 14 and 15.</u></p> <p><u>(b) A nonprofit organisation must be registered under this Act if it–</u></p>	<ul style="list-style-type: none"> The current position is that nonprofit organisations have a choice whether to register as nonprofit organisations under the Act. These amendments now make it mandatory for certain nonprofit organisations to register under the Act. It would be helpful to clarify that this registration is required notwithstanding other forms of registration nonprofit organisations may already have or wish to have, eg as non-profit companies under the Companies Act, 2008. We submit that it is also essential to clarify that the nonprofit organisation registration under the Act will be in addition to any form of existing registration and that nonprofit organisations will not have to de-register from existing forms of registration. In addition, it is important to clarify whether nonprofit organisations are required to have a constitution in

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		<p>(i) <u>makes donations to individuals or organisations outside of the Republic's borders; or</u></p> <p>(ii) <u>provides humanitarian, charitable, religious, educational or cultural services outside of the Republic's borders.</u></p> <p>(c) <u>A nonprofit organisation referred to in paragraph (b) that is operating but is not registered in terms of this Act on the date of commencement of this provision, must apply to register within the period determined by the Minister by notice in the Gazette.</u></p> <p>(d) <u>A registered nonprofit organisation, and nonprofit organisation referred to in paragraph (b) whether it is in fact registered in terms of the Act or not, must comply with the requirements of this Act.</u></p> <p>(2) 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 <u>is required in terms of subsection (1)(b) or</u> intends to register must–</p> <p>(a) state the organisation's name;</p> <p>(b) state the organisation's main and ancillary objectives;</p> <p>(c) state that the organisation's income and property are not distributable to its members or office-bearers, except as reasonable compensation for services rendered;</p> <p>(d) make provision for the organisation to be a body corporate and have an identity and existence distinct from its members or office-bearers;</p>	<p>addition to their existing governing documents (ie their memorandum of incorporation or trust deed).</p>

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		<p>(e) make provision for the organisation's continued existence notwithstanding changes in the composition of its membership or office-bearers;</p> <p>(f) ensure that the members or office-bearers have no rights in the property or other assets of the organisation solely by virtue of their being members or office-bearers;</p> <p>(g) specify the powers of the organisation;</p> <p>(h) specify the organisational structures and mechanisms for its governance;</p> <p>(i) set out the rules for convening and conducting meetings, including quorums required for and the minutes to be kept of those meetings;</p> <p>(j) determine the manner in which decisions are to be made;</p> <p>(k) provide that the organisation's financial transactions must be conducted by means of a banking account;</p> <p>(l) determine a date for the end of the organisation's financial year;</p> <p>(m) set out a procedure for changing the constitution;</p> <p>(n) set out a procedure by which the organisation may be wound up or dissolved; and</p> <p>(o) provide that, when the organisation is being wound up or dissolved, any asset remaining after all its liabilities have been met, must be transferred to another nonprofit organisation having similar objectives.</p> <p>(3) The constitution of a nonprofit organisation that is required in terms of subsection (1)(b) or that intends to register, may make provision for matters relevant to conducting its affairs, including matters that–</p>	

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		<ul style="list-style-type: none"> (a) specify qualifications for and admission to membership of the organisation; (b) determine the circumstances in which a member will no longer be entitled to the benefits of membership; (c) provide for termination of membership; (d) provide for appeals against loss of the benefits of membership or against termination of membership and specify the procedure for those appeals and determine the body to which those appeals may be made; (e) provide for membership fees and matters determining membership fees and other payments by members; (f) provide that members or office-bearers do not become liable for any of the obligations and liabilities of the organisation solely by virtue of their status as members or office-bearers of the organisation; (g) provide for the appointment of office-bearers and define their respective functions; (h) set out a procedure for nominating, electing or appointing office-bearers; (i) determine the circumstances and manner in which office-bearers may be removed from office and provide for appeals against such removal and specify procedures for those appeals and determine a body to which those appeals can be made; (j) provide that its office-bearers are not personally liable for any loss suffered by any person as a result of an act or omission which occurs in good faith while the office-bearer is performing functions for or on behalf of the organisation; 	

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		<p>(k) provide for making investments;</p> <p>(l) determine the purposes for which the funds of the organisation may be used; and</p> <p>(m) provide for acquiring and controlling assets.</p> <p>(4) <u>The director when considering an application for registration in terms of section 13, after having received amendments to the constitution in terms of section 19, or at any other time, may only require a nonprofit organisation to make an alteration to its constitution to ensure that the constitution addresses the matters referred to in subsection (2).</u></p>	
s 12	s 13	<p>amendment of section 13 as follows:</p> <p>13. Application for registration.</p> <p>(1) A nonprofit organisation may apply<u>applies</u> for registration by submitting to the director–</p> <p>(a) the prescribed form, properly completed;</p> <p>(b) two copies of its constitution; and</p> <p>(c) such other information as may be required by the director so as to assist the director to determine whether or not the nonprofit organisation meets the requirements for registration.</p> <p>(2) Within two months after receiving an application which complies fully with subsection (1) the director–</p> <p>(a) must consider the application and any further information provided by the applicant; and</p>	<ul style="list-style-type: none"> As regards subsection (8), we submit that the legislator should clarify that a nonprofit organisation that has submitted an application for registration will be deemed to be registered with effect from the date of submission of the application.

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		<p>(b) if satisfied that the applicant complies with the requirements for registration, must register the applicant by entering the applicant's name in the register.</p> <p>(3) If, after considering an application, the director is not satisfied that the application complies with the requirements for registration, the director must send the applicant a written notice, giving reasons for the decision and informing the applicant that it has one month from the date of the notice to comply with those requirements.</p> <p>(4) The period within which compliance must be effected may be extended by the director on good cause shown by the applicant.</p> <p>(5) If an applicant who has received a notice in terms of subsection (3) complies with the requirements for registration timeously, the director must register the applicant by entering the applicant's name in the register.</p> <p>(6) If an applicant who has received a notice in terms of subsection (3) has not complied timeously with the requirements set out in that notice, the director must—</p> <p>(a) refuse to register the applicant; and</p> <p>(b) notify the applicant in writing of the refusal and the reasons for it.</p> <p>(7) <u>The director may only refuse to register a nonprofit organisation on the grounds that the applicant has not complied with the requirements for registration in section 12 or has not complied with a notice issued in terms of subsection (3), as referred to in subsection (6).</u></p>	

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		(8) A nonprofit organisation that has submitted an application for registration is deemed to be registered unless and until the director has given notice to the applicant in terms of subsection (3) and the process envisaged in subsections (4) to (6) has been completed.	
s 13	s 18	<p>amendment of section 18 as follows:</p> <p>18. Duty to provide reports and information.</p> <p>(1) Every registered nonprofit organisation must, in writing, provide the director with–</p> <p>(a) a narrative report of its activities in the prescribed manner together with its financial statements and the accounting officer's report as contemplated in section 17(1) and (2), within nine months after the end of its financial year;</p> <p>(b) the names and physical, business and residential addresses of its office-bearers within one month after any appointment or election of its office-bearers even if their appointment or election did not result in any changes to its office-bearers;</p> <p>(bA) prescribed information about the office-bearers, control structure, governance, management, administration and operations of registered nonprofit organisations;</p> <p>(c) a physical address in the Republic for the service of documents as contemplated in section 16(2);</p> <p>(d) notice of any change of address within one month before a new address for service of documents will take effect; and</p>	<ul style="list-style-type: none"> We submit that the proposed new section 18(1)(bA) should be amended to read as follows: "prescribed information about theits office-bearers, control structure, governance, management, administration and operations of registered nonprofit organisations;"

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		<p>(e) such other information as may be prescribed.</p> <p>(1A) The prescribed requirements referred to in paragraph (bA) of subsection (1) 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).</p> <p>(1B) A registered nonprofit organisation must ensure that the information referred to in subsection (1)(bA) that must be provided to the director is kept up to date.</p> <p>(2) The director may cause any document or a narrative, financial or other report that is submitted to the director to be scrutinised, or, by means of a notice, require a registered nonprofit organisation to submit any information or document reasonably required in order to enable the director to determine whether the organisation is complying with—</p> <p>(a) the material provisions of its constitution;</p> <p>(b) any condition or term of any benefit or allowance conferred on the organisation in terms of section 11; or</p> <p>(c) its obligations in terms of this section, section 17 and any other provision of this Act.</p> <p>(3) A registered nonprofit organisation must submit the information or document contemplated in subsection (2) within one month after receipt of the notice.</p> <p>(4) If the accounting officer of a registered nonprofit organisation becomes aware of any instance in which the organisation has failed to comply with the financial provisions of this Act or its constitution, the accounting officer must notify the director of the occurrence—</p>	

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		<p>(a) within one month after becoming aware of it; and</p> <p>(b) in writing with sufficient detail to describe the nature of the noncompliance.</p> <p>(5) The duty imposed on an accounting officer in terms of subsection (4) supersedes the duty of confidentiality owed to the organisation by the accounting officer.</p>	
s 14	s 24	<p>amendment of section 24 as follows:</p> <p>24. Register of nonprofit organisations.</p> <p>(1) The director must keep a register in the prescribed form of–</p> <p>(a) all nonprofit organisations that have been registered;</p> <p>(b) all nonprofit organisations whose registrations have been cancelled; and</p> <p>(c) all nonprofit organisations that have voluntarily deregistered or have been wound up or dissolved; <u>and</u></p> <p>(d) <u>prescribed information about the office-bearers, control structure, governance, management, administration and operations of registered nonprofit organisations.</u></p> <p>(2) Within two months after the end of each financial year, the director must publish in the <i>Gazette</i> and at least one other widely circulated means of communication, the names of–</p> <p>(a) all nonprofit organisations that are registered;</p> <p>(b) all nonprofit organisations whose registrations were cancelled during the previous financial year; and</p> <p>(c) all nonprofit organisations which deregistered voluntarily, have been wound up or dissolved during the previous financial year.</p>	<ul style="list-style-type: none"> We submit that subsection (4) should be amended to read as follows: "A nonprofit organisation must make the information referred to in section 18(1)(bA), and the director must provide access to<u>make</u> the information in the register referred to in subsection (1)(d), available to any person as prescribed."

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		<p>(3) Subsection (2) does not preclude the director from publishing the names of the organisations contemplated in that section in any widely circulated means of communication, as and when considered appropriate.</p> <p>(4) A registered 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.</p> <p>(5) The prescribed requirements referred to in subsections (1)(d) and (4) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).</p>	
s 15	Ch 3A	<p>insertion of Chapter 3A:</p> <p style="text-align: center;"><u>CHAPTER 3A</u></p> <p style="text-align: center;"><u>OFFICE-BEARERS OF NONPROFIT ORGANISATIONS</u></p> <p><u>25A. Disqualification and removal of office-bearers.</u></p> <p>(1) A person is disqualified from being an office-bearer of a registered nonprofit organisation if the person–</p> <p style="margin-left: 20px;">(a) is an unrehabilitated insolvent;</p> <p style="margin-left: 20px;">(b) has been prohibited by a court to be a director of a company, or has been declared by a court to be delinquent in terms of section 162 of the Companies</p>	<ul style="list-style-type: none"> We note that section 25A(1)(e)(ii) contains a dittographic error, which we submit should be corrected as follows: "in connection with the promotion, formation or management of a company, or in connection with any act contemplated in in section 69(2) or (5) of the Companies Act, 2008; or". We submit that the phrase "the end of" should be inserted at the beginning of subsection (3)(b), as follows: <ul style="list-style-type: none"> "(3) A disqualification in terms of subsection (1)(d) or (e) ends at the later of– <ul style="list-style-type: none"> (a) five years after the date of removal from office, or the completion of the sentence imposed for the relevant offence, as the case may be; or (b) the end of one or more extensions, as determined by a court from time to time, on application by the Directorate in terms of subsection (4).".

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		<p><u>Act, 2008 (Act No. 71 of 2008), or section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984);</u></p> <p>(c) <u>is prohibited in terms of any law to be a director of a company;</u></p> <p>(d) <u>has been removed from an office of trust, on the grounds of misconduct involving dishonesty;</u></p> <p>(e) <u>has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined more than the amount prescribed in terms of section 69 of the Companies Act, 2008, for theft, fraud, forgery, perjury or an offence—</u></p> <p>(i) <u>involving fraud, misrepresentation or dishonesty, or money laundering, terrorist financing or proliferation financing activities as those terms are defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);</u></p> <p>(ii) <u>in connection with the promotion, formation or management of a company, or in connection with any act contemplated in in section 69(2) or (5) of the Companies Act, 2008; or</u></p> <p>(iii) <u>under this Act, the Companies Act, 2008, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the Competition Act, 1998 (Act No. 89 of 1998), the Financial Intelligence Centre Act, 2001, the Financial Markets Act, 2012 (Act No. 19 of 2012), Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004),</u></p>	<ul style="list-style-type: none"> • In relation to subsection (4), we submit that the wording of this subsection should be amended to make it clear when such a decision of the Security Council of the United Nations has been "taken" for purposes of the subsection. • We note that subsection (6) does not include a reference to subsection (1)(d) with the consequences that a court may not exempt a person from the application of that section (disqualification where the person has been removed from an office of trust on the grounds of misconduct involving dishonesty). We note that this is not the position under the Trust Property Control Act, 1988 or the Companies Act, 2008, both of which contain provisions providing for such exemptions. • We submit that subsection (11) should be amended in the manner indicated below since the Act refers to disqualification rather than to ineligibility: <ul style="list-style-type: none"> "(11) A person who becomes ineligible or disqualified while serving as an office-bearer of a nonprofit organisation ceases to be entitled to continue to act as an office-bearer immediately."

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		<p><u>the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004), or the Tax Administration Act, 2011 (Act No. 28 of 2011);</u></p> <p>(f) <u>is subject to a resolution adopted by the Security Council of the United Nations when acting under Chapter VII of the Charter of the United Nations, providing for financial sanctions which entail the identification of persons or entities against whom member states of the United Nations must take the actions specified in the resolution contemplated in that subsection; or</u></p> <p>(g) <u>is an unemancipated minor, or is under a similar legal disability.</u></p> <p>(2) <u>A person who is disqualified, as set out in this section, may not—</u></p> <p>(a) <u>be appointed or elected as an office-bearer of a registered nonprofit organisation, or consent to being appointed or elected as an office-bearer; or</u></p> <p>(b) <u>act as an office-bearer of a registered nonprofit organisation.</u></p> <p>(3) <u>A disqualification in terms of subsection (1)(d) or (e) ends at the later of—</u></p> <p>(a) <u>five years after the date of removal from office, or the completion of the sentence imposed for the relevant offence, as the case may be; or</u></p>	

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		<p>(b) <u>one or more extensions, as determined by a court from time to time, on application by the Directorate in terms of subsection (4).</u></p> <p>(4) <u>A disqualification in terms of subsection (1)(f) ends when the Security Council of the United Nations takes a decision to no longer apply that resolution to a person contemplated in that subsection.</u></p> <p>(5) <u>At any time before the expiry of a person's disqualification in terms of subsection (1)(d) or (e)–</u></p> <p>(a) <u>the Directorate may apply to a court for an extension contemplated in subsection (3)(b); and</u></p> <p>(b) <u>the court may extend the disqualification for no more than five years at a time, if the court is satisfied that an extension is necessary to protect the public, having regard to the conduct of the disqualified person up to the time of the application.</u></p> <p>(6) <u>A court may exempt a person from the application of any provision of subsection (1)(a), (c) or (e).</u></p> <p>(7) <u>The Registrar of the Court must, upon–</u></p> <p>(a) <u>the issue of a sequestration order;</u></p> <p>(b) <u>the issue of an order for the removal of a person from any office of trust on the grounds of misconduct involving dishonesty; or</u></p> <p>(c) <u>a conviction for an offence referred to in subsection (1)(e).</u></p> <p><u>send a copy of the relevant order or particulars of the conviction, as the case may be, to the Directorate.</u></p>	

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		<p>(8) <u>The Directorate must notify each registered nonprofit organisation which has an office-bearer to whom the order or conviction relates, of the order or conviction.</u></p> <p>(9)(a) <u>The Directorate must establish and maintain in the prescribed manner a public register of persons who are disqualified from serving as an office-bearer, in terms of an order of a court pursuant to this Act or any other law.</u></p> <p>(b) <u>The prescribed requirements referred to 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).</u></p> <p>(10) <u>A registered nonprofit organisation may not knowingly permit a disqualified person to serve or act as an office-bearer.</u></p> <p>(11) <u>A person who becomes ineligible or disqualified while serving as an office-bearer of a registered nonprofit organisation ceases to be entitled to continue to act as an office-bearer immediately.</u></p> <p>(12) <u>An office-bearer of a registered nonprofit organisation may at any time be removed from office by the director if–</u></p> <p>(a) <u>the person becomes disqualified to be an office-bearer in terms of subsection (1);</u></p> <p>(b) <u>the office-bearer's estate is sequestrated or liquidated or placed under judicial management; or</u></p> <p>(c) <u>the office-bearer fails to perform satisfactorily any duty imposed upon the office-bearer by or under this</u></p>	

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		Act or to comply with the requirements of this Act or any lawful request of the director.	
s 16	s 21	<p>amendment of section 21 as follows:</p> <p>21. Cancellation of registration.</p> <p>(1) If a registered nonprofit organisation which has received a notice in terms of section 20 does not comply timeously with the notice or makes material false representations in any document or a narrative, financial or other report submitted to the director, the director must–</p> <p>(a) cancel its certificate of registration and its registration;</p> <p>(b) notify the organisation in writing of–</p> <p>(i) the cancellation and the reasons for it; and</p> <p>(ii) the date on which the registration was cancelled; and</p> <p>(c) amend the register accordingly.</p> <p>(2) When a nonprofit organisation's registration has been cancelled, all the rights, benefits and allowances it enjoyed as a result of being registered end immediately.</p> <p>(3) For purposes of this Act, a cancellation of registration takes effect on the date on which the certificate of registration is cancelled by the director.</p> <p>(4) The director may only cancel the registration of a non-profit organisation as contemplated in section 20 and this section.</p>	

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s 17	s 29	<p>amendment of section 29 as follows:</p> <p>29. Offences <u>and contraventions</u>.</p> <p>(1) It is an offence to cause a nonprofit organisation, when it is being wound up or dissolved, to transfer its remaining assets otherwise than in the manner contemplated in section 12(2)(o).</p> <p>(2) It is an offence for persons, bodies or organisations–</p> <p>(a) to represent themselves as being validly registered in terms of this Act unless they are so registered;</p> <p>(b) to make use of a registration number, a registration certificate or any information contained in the registration certificate if they have not been registered in terms of this Act; or</p> <p>(c) to make material false representations in any document or a narrative, financial or other report submitted to the director.</p> <p>(3) In any criminal proceedings in respect of an offence created in terms of this Act–</p> <p>(a) a certified copy of the registration certificate or extract of the register is admissible evidence and, in the absence of evidence to the contrary, is sufficient proof that an organisation is registered or has been registered, as the case may be; and</p> <p>(b) an affidavit from the director stating that an organisation has not been registered in terms of this Act, is sufficient proof of this fact in the absence of evidence to the contrary.</p>	<ul style="list-style-type: none"> As regards section 29(4), we note that it is not clear who will prescribe the envisaged administrative sanction and how it will be prescribed – whether in the Act or in regulations. We submit that the colon in this same section should be replaced with a dash as follows: "The following contraventions of this Act by a nonprofit organisation are subject to a prescribed administrative sanction:".

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		<p>(4) <u>The following contraventions of this Act by a nonprofit organisation are subject to a prescribed administrative sanction:</u></p> <p>(a) <u>a registered nonprofit organisation that fails to perform any duty imposed or comply with a requirement in terms of section 12 or 18(1)(bA); and</u></p> <p>(b) <u>a nonprofit organisation that is required to register in terms of section 12(1)(b) but fails to do so.</u></p>	