

Standing Committee on Finance
Parliament
C/O A Wicomb
Committee Secretary



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3629

Your reference

Our reference
General Laws Amendment Bill 2022

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Committee members

THE GENERAL LAWS AMENDMENT (ANTI MONEY LAUNDERING AND COUNTER TERRORIST FINANCING) BILL

The non-profit sector in South Africa is massive, diverse and has a wide-ranging impact for social good. The sector acts as both the watchdog and the heart of South Africa's democracy ensuring that the most vulnerable are cared for, and that ideas that can change the world get to the places where they are needed most to make a positive difference. In many places, the non-profit sector works with government, but the sector also acts, necessarily so, independently in its fight against injustice, marginalisation, and silencing, to fulfil their role of holding government to account protecting the interests of citizens.

At ngoLAW we serve a cross-section of non-profits, and understand that the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill (AML CTF Bill) has been proposed in an effort to avoid the consequences of the threat grey-listing faced by South Africa. The non-profit sector relies heavily on foreign donor funding and for this reason we acknowledges the importance of avoiding grey-listing by making legislative changes in accordance with the recommendations by the Financial Action Task Force (FATF).

However, the AML CTF Bill in its current form goes beyond what is recommended by FATF and will have disastrous and unintended consequences for the non-profit sector.

It is important to note that the non-profit sector has not been included during the consultation process for the drafting of this Bill. Many misunderstandings, misalignments and negative reactions could have been avoided if they had been consulted earlier. The Bill contains many provisions which indicate a lack of understanding of the legal framework for non-profits, and of the practical administrative and compliance environment in which non-profits operate. The chief disjuncture seems to be an unfounded confidence in the

NPO Directorate which in reality does not have the funds, the systems or the human resources to play the role assigned to it by the Bill.

Given the very tight deadline for responses to the Bill (based upon the tight deadline for compliance with FAFT requirements) we advise that it is not possible to entirely review and restructure the non profit regulatory environment at this time. It is certainly not possible to enforce universal mandatory registration in this round. Extensive consultation would be required for that process and this will take years, not weeks.

It also should be noted that the AML CTF Bill contains some provisions that would either serve no purpose or would result in the exact opposite of the intended outcome, and which would result in unfair, unfeasible, and unconstitutional restrictions on the existence and work of non-profits.

The main focus of this submission is to oppose in the strongest terms the introduction of compulsory registration with the Non-Profit Organisation Directorate (NPO Directorate) under the Department of Social Development (DSD) of all not-for-profit organisations in South Africa in order for them to be able to 'operate.'

Under Apartheid, the (since-repealed) Fund-raising Act 107 of 1978 was introduced to 'provide for control of the collection of contributions from the public.' It required compulsory registration and issuing of a fundraising number before any funds could be collected from the public by donation. This regime allowed the fascist state to exercise control over not only the collection of funds, but also of which non-profits they deemed worthy of operating in the country. It was a tool of oppression and suppression of many organisations that fought against the human rights abuses and corruption of the Apartheid Government. The transition to a voluntary and enabling registration under the NPO Act was negotiated with civil society after the end of apartheid, and this history and process is still fresh in the minds of many.

The NPO Directorate currently sits under and inside the DSD government department. The NPO current database is at least 10 years out of date due to political interference with the duty of the Director to deregister non-compliant organisations. Civil society will not countenance mandatory registration with an authority which is under a government department.

Just a quick bit of legal context: NPO registration is currently an add-on voluntary registration available to non-profit companies (NPCs), charitable trusts and voluntary associations whose founding documents contain basic good-governance protocols. The status requires an annual report lodged on activities and meetings, and annual financial statements to be lodged.

The current main incentives for voluntary NPO registration are that it is required to receive funding from government entities including the Lotteries Board. Then there is a general

perception (not as widely held as it used to be) that it was a marker of compliance, good governance and trustworthiness. For voluntary associations, many of them seek NPO registration just to have a registration number to show their bankers.

If the NPO register were up to date, the fact of NPO registration would give some comfort to potential donors that the organisation at least was doing the base minimum of filing annual reports.

Beyond that, NPO registration does not offer any additional protections, checks or balances. The process of lodging NPO Reports is clunky (often manual as their system is so frequently down) and contents of NPO reports lodged are not being perused by anyone who has the insight, training or capacity to look for or find any evidence of corruptions or money laundering. The NPO Directorate does not have capacity to audit or verify any of the information that they receive at present.

Compulsory registration in a broad stroke across the sector would be ill-advised, disastrous for the non-profit sector, and unconstitutional.

However the Bill must be passed without delay as Grey-Listing will hit the non-profit sector first and hardest. South African non-profits receive an estimated R17,2 billion of foreign funding each year to perform the crucial work that government is not capable of or is neglecting. Delays of or decrease of this funding is not tenable for a sector already hard hit by the increase in both needs to be met and costs of doing the work.

So, a level of exposure and oversight is required, but mandatory universal NPO registration is not required in order for South Africa to comply with Recommendation 8 of the FAFT which states (my emphases):

“Countries should review the adequacy of laws and regulations that relate to Non-Profit Organisations which the country has identified as being vulnerable to terrorist financing abuse. Countries should apply focused and proportionate measures, in line with the risk-based approach, to such non-profit organisations to protect them from terrorist financing abuse, including:

(a) by terrorist organisations posing as legitimate entities;

(b) by exploiting legitimate entities as conduits for terrorist financing, including for the

purpose of escaping asset-freezing measures; and

(c) by concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.”

Recommendation 8 does not apply to the NPO sector as a whole. Countries should take a targeted approach to implementing the measures called for in Recommendation 8, including oversight and regulatory mechanisms, based on an understanding of the diversity of the NPO sector and the terrorism risks faced by

the domestic NPO sector. Given the variety of legal forms that NPOs can have, depending on the country, the FATF has adopted a functional definition of NPO. This definition is based on those activities and characteristics of an organisation which put it at risk of terrorist abuse, rather than on the simple fact that it is operating on a non-profit basis. Recommendation 8 only applies to those NPOs which fall within the FATF definition of a non-profit organisation:

“A legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of “good works”.”

The principle above offers a focused and targeted risk-based approach to adding mechanisms. FAFT has examined these recommendations and identified the major falling within specific non-profit organisations.

There is only one kind of organisation that is not currently already registered and that meets this definition, and that is the unregistered conduit voluntary association. Voluntary associations in general are one of the most diverse groups of organisations in the non-profit sector. They range from large national associations that have been around for 100 years to small community sports clubs that are started ad hoc, employ no staff, and receive little to no funding from outside sources.

The AML CTF Bill as it stands addresses the non-profit sector generally. Many of the changes, such as the building of consistency of persons who cannot serve as fiduciaries of non-profits across the sector, are welcomed.

However, the compulsory and mandatory registration of all non-profits with the NPO Directorate:

1. Is not required by the FAFT recommendation;
2. Is an unnecessary breach of human rights, privacy and freedoms and opposition will be huge and vocal;
3. Will be an unmanageable burden for DSD and parts of the sector;
4. Does not take into account that the NPO system does not have the granularity and searchability of data functions to allow, for instance, ineligible board members to be located, identified and notified;
5. Will have the opposite effect from that intended, as the data and reports of every tiny voluntary association in the country will bury the important information that is needed to assess and address risks;
6. Need not apply to foreign companies who are already required to register and report to CIPC;
7. Should not apply to trusts, as they are required to report to the Master of the High Court in terms of the proposed amendments to the Trust Property Control Act;
8. Should not target voluntary associations broadly, for fear of crippling the NPO directorate with sheer numbers and the small community organisations that do not have capacity themselves.

Below is a summary of our recommendations and engagement with the Bill, as well as possible re-wordings of the Bill that will achieve the purpose of preventing grey-listing, combat the necessary risks in the sector, and prevent the complete collapse of the regulatory environment for the non-profit sector in South Africa.

Our high level summarised suggestion is the following:

1. Focus on identified risky organisations and deal with just those unregistered voluntary associations which are conduit funders (receive and on-donate funds) of over a certain figure (we propose R5 million per year);
2. Designate these as 'conduit voluntary associations'; and
3. Require that they are registered with CIPC as NPCs (CIPC has capacity and systems and is improving them all the time).

For foreign organisations carrying on non-profit activities in South Africa, as those which are foreign companies and trusts are already catered for in the relevant Acts and it is just foreign associations which need to be brought into the loop I suggest that we do not require compulsory NPO registration but amend the Companies Act to also apply to foreign unincorporated organisations.

(Leave NPO registration voluntary at this time, and build capacity, interact, possibly develop a universal independent registry with proper planning and consultation.)

Yours sincerely



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DETAILED SUBMISSIONS ON ANTI-MONEY LAUNDERING AND COMBATting TERRORISM FINANCING AMENDMENT BILL

Sections	Current NPO Act	The Bill	Our proposal	Our motivation and comments
Section 1	<p>Definitions of "constitution"</p> <p>'constitution' includes a trust deed and memorandum and articles of association</p>	<p>The AML-CTF Bill includes no proposed changes to this definition, but they are needed to align with the intent of the Bill and other legislation.</p>	<p>The substitution in subsection 1(iv) for the definition of "constitution" the following definition:</p> <p>""founding document' includes a constitution, trust deed, memorandum of incorporation or, in the case of a foreign organisation, its founding document"</p> <p>*all other references in the Act to 'constitution' would have to be changed to read 'founding document'.</p>	<ol style="list-style-type: none"> 1. The current definition of the founding document as 'constitution' creates wide and deep confusion in the non-profit sector, as organisations which are in fact trusts and non-profit companies think they have to have a constitution, draft and adopt them, and inadvertently set up a second legal entity being a voluntary association. Changing the definition to a more generic "founding document" would make a big difference in providing clarity around this issue. 2. Although we do not support the compulsory registration of foreign non-profits, this definition should be amended to include their (various) founding documents, as these might not otherwise fit within the definition. 3. The definition needs to be updated to refer to the new name for a company founding document, under the new Companies Act.
Section 1	<p>Definition of 'office bearer'</p> <p>"Office bearer means a director, trustee or person holding executive position"</p>	<p>The AML-CTF Bill includes no proposed changes to this definition, but it needs to be changed to align with the intent of the Bill and other legislation.</p>	<p>Substituting the definition of office bearer with the following wording:</p> <p>Definition of 'office bearer'</p> <p>Office bearer means a director, trustee or person</p> <p>elected to the committee or governing board of the organisation"</p>	<p>This amendment proposed is in line with FICA, the Companies and Trust Property Control Acts.</p> <p>Directors of non-profit companies and trustees of trusts are those responsible for governance, who sit on the governing board and who have ultimate fiduciary responsibility for the organisation. In Voluntary Associations, those who govern and have ultimate fiduciary responsibility are those who are elected by the members to serve on the committee governing body.</p> <p>The reference in the current definition to 'executive' position is to those who manage/administer- the management team employed by the organisation. The correction is required to ensure that it is the same functional group or</p>

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				status being referred to and tracked across all three types of legal entities. If the amendment is not made then Voluntary Associations would not have to disclose details of their board, but those of their CEO and senior managerial staff.
Section 2	Provides for the objects of the Act	<p>The objects of the Act are to encourage and support nonprofit organisations in their contribution to meeting the diverse needs of the population of the Republic by</p> <p>(b) - establishing an administrative and regulatory framework within which nonprofit organisations can must conduct their affairs</p> <p>(c) - encouraging requiring nonprofit organisations to maintain adequate standards of governance, transparency and accountability and to improve those standards;</p>	<p>No amendments should be made to this section, as the amendment proposed would make NPO registration compulsory for all organisations defined as NPOs, which exceeds FAFT requirements.</p> <p>NPCs and Trusts are hit twice by the provisions which is not necessary as these provisions are already taken care of under the Trust Property Control Act and Companies Act.</p>	<p>Note, the NPO Act defines as ‘nonprofit organisation’s</p> <p>“All trusts, company or other association of persons</p> <ul style="list-style-type: none"> - (a) established for a public purpose and - (b) the income and property of which are not distributable to its members or office-bearers except as reasonable compensation for services rendered. <p>This proposed amendment turns what is currently a voluntary registration into a compulsory one.</p> <p>We cannot support legislation which would make registration compulsory for all, as this is not an appropriate and reasonable response to the risk seeking to be averted.</p> <p>It is a major legal shift which would require extensive consultation. It would impose a burden on the sector and the Registrar without any useful result.</p> <p>The universal and compulsory registration of an unknown (but large) number of currently unregistered voluntary associations across SA will create a deluge of data which will break the NPO Directorate systems (such as they are) and which will bury the data on illegal flows of funds so deep that it will never be found.</p> <p>The (fascist) history of compulsory non-profit registration during the apartheid regime under the 1978 Fundraising Act and the unconstitutional impinging on the rights of freedom of association, expression etc will provoke vehement and public protests from the sector which will undermine the intent of the Bill and possible itself lead to Grey- Listing</p>

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section 12(1)	(1) Any nonprofit organisation that is not an organ of state may apply to the director for registration.	<p>(1) (a) A nonprofit organisation that is not an organ of state including a foreign nonprofit organisation, that intends to operate within the Republic must be registered in terms of this Act before it commences operations, subject to paragraph (b), and in accordance with prescribed registration requirements.</p> <p>(b) a nonprofit organisation that is operating but is not registered in terms of this Act on the date of commencement of this provision, must register within the period determined by the Minister by notice in the Gazette, in accordance with the prescribed transitional arrangements and registration requirements.</p>	No amendments to be made for the reasons given above	<p>First important note here is that NPO status is an additional registration available to an existing legal entity and is not a type of legal entity.</p> <p>The first hurdle for the proposed mandatory NPO registration of foreign organisations operating in SA is that there is no local legal entity which is able to apply to the NPO Directorate to be registered.</p> <p>The foreign founding document contents will not also comply with the provisions of the NPO Act. What will happen, in fact, is that if a foreign organisation had to be registered under the NPO Act, the NPO Directorate (most of whose staff seem not to understand the legal nature of voluntary associations and NPO status) would in all likelihood supply it with a standard form constitution. The foreign entity would then sign that document, unknowingly set up a new South African voluntary association and create a whole lot of confusion.</p> <p>Registration of foreign entities, their officers and companies is dealt with in the following pieces of legislation already in force:</p> <ul style="list-style-type: none"> • <i>s23 of the Companies Act</i> • <i>s 8 of Trust Property Control Act</i> • <i>21b. Financial Intelligence Centre Act No. 38 Of 2001</i> <p>Section 23 of the Companies Act already provides that any external non-profit company must register with CIPC within 20 business days after it first began to conduct non-profit activities within South Africa.</p> <p>Section 23 goes on to specify that certain activities do not qualify as non-profit activities (those applicable to non-profits are holding meetings, opening a bank account or purchasing any interest in any property). So, these activities will not require registration with CIPC.</p> <p>However, being a party to an employment contract OR, over the course of 6 months engaging in a course of conduct or pattern of activities which would lead a person to reasonably conclude that the company intended to continually engage in non-profit activities within SA does give rise to the need to register the foreign entity in SA.</p> <p>It should be noted that the definition of 'foreign company' in the Companies Act refers to an 'entity incorporated outside of the Republic' - it could therefore be</p>

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				<p>any sort of formally established entity, and not necessarily a company, for it to be required to register under section 23.</p> <p>It should also be noted that, at the point at which an external non profit company must legally be registered, the foreign entity often chooses, instead, to establish an SA NPC or SA charitable trust, for various reasons.</p> <p>A legal mechanism therefore already exists in the Companies Act to require a local registration (and, ipso facto, inclusion in the SA Financial Intelligence Centre Agency and tax systems) for foreign entities which cross the lines laid down in the Companies Act.</p> <p>Section 8 of the Trust Property Control Act already requires that</p> <p><i>“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 the Master may authorise such trustee under section 6 to act as trustee in respect of that property.”</i></p> <p>This means that foreign trusts which wish to operate in SA are required to register with the Master of the High Court, so trusts are taken care of.</p> <p>For foreign voluntary associations or equivalent, we suggest that the provisions of section 23 of the Companies Act are broadened to reach these and please see proposed amendments in the relevant section of this submission.</p> <p>Since a mechanism already exists for a local registration in South Africa of organisations which do more than hold meetings, open bank accounts or hold property, we suggest that the proposed changes be dropped and that those who deal with applications are trained in the correct response to foreign organisations carrying out non profit activities in South Africa, which is that section 23 of the Companies Act compels them to register with CIPC and that, once that registration is accomplished, they may choose to register as an NPO.</p>

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section 12(1)	(1) Any nonprofit organisation that is not an organ of state may apply to the director for registration.	<p>Added:</p> <p>c) A nonprofit organisation whether registered in terms of the Act or not, must comply with the requirements of this Act</p>		<p>Here again, please note that the NPO Act defines as ‘nonprofit organisation’s</p> <p>“All trusts, company or other association of persons</p> <ul style="list-style-type: none"> - (a) established for a public purpose and - (b) the income and property of which are not distributable to its members or office-bearers except as reasonable compensation for services rendered. <p>This sweeping proposed addition is shocking and deeply impractical and does not take account of the size and variety of the unregistered voluntary associations in South Africa.</p> <p>As soon as any group of people working together on an outward facing (public purpose) project signs a founding document with the three essential clauses that protect those involved from personal liability, a voluntary association is formed, and one which falls under the definition of “NPO” in the NPO Act. Every residents association, street committee, clean-up initiative, birder group, addiction support group, choir, dance club, running club, meditation group -the list is endless- is not only compelled to register (which we have already argued against in the previous section) but, even if they do not register, even if they do not realise that they have set up a voluntary association and have never heard of the NPO Act, they are compelled to comply with it and to be subject to criminal sanctions for non-compliance. This is clearly an abrogation of their rights, and an abuse of power for no discernible or justified purpose.</p> <p>The requirements of the NPO Act are not only the new (laudable) ones added, such as those who are disqualified from holding office, but also include the annual requirement to lodge reports with the NPO Directorate (financial statements and a narrative report). If section 1(c) is added, all of the organisations we have mentioned will be subject to</p>

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				criminal sanction for not filing reports that they did not know were required.
Section 12(2)	(2) Unless the laws in terms of which a nonprofit organisation is established or incorporated make provision for the constitution of a nonprofit organisation that intends to register.	(2) Unless the laws in terms of which a nonprofit organisation is established or incorporated make provision for the constitution of a nonprofit organisation that intends to register.	Do not adopt	For reasons as above
Section 12(3)	(3) The constitution of a nonprofit organisation that intends to register, may make provision for matters relevant to conducting its affairs, including matters that-	(3) The constitution of a nonprofit organisation that intends to register, may make provision for matters relevant to conducting its affairs, including matters that-	Do not amend	For reasons as above
Sections 24 to s25A	The director must keep a register in the prescribed form of - a) all nonprofit organisations that have been registered b) all nonprofit organisations whose registrations have been cancelled; and c) all nonprofit	NEW provisions regarding disqualification of 'office bearers' and measures to be taken to enforce their removal from office		The amending and correcting of the definition of 'office bearer' is crucial for this to function as it should, and have the intended effect. The NPO Directorate would need to have a searchable database to locate relevant 'office bearers' and notify. This data base will be incredibly large and the annual uploading of relevant data would be very time consuming if mandatory universal registration were implemented. Note that these provisions have been made consistent across the Trust and

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	organisations that have voluntarily deregistered or have been wound up or dissolved			Companies Act as well, so no need to make these types of organisation register as NPOs, as they already have these checks and standards in place.

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Section 1(1)	<p>"beneficial owner"</p> <p>in respect of a legal person, means a natural person who, independently or together with another person, directly or indirectly -</p> <p>a) owns the legal person; or</p> <p>b) exercises effective control of the legal person;</p>	<p>"beneficial owner" in respect of a legal person,</p> <p>a) means a natural person who, independently or together with another person, directly or indirectly -</p> <p>a) owns the legal person; or</p> <p>b) exercises effective control of the legal person;</p> <p>i) ultimately owns or exercises effective control of -</p> <p>aa) a client of an accountable institution; or</p> <p>bb) a legal person, partnership or trust that owns or exercises effective control of, as the case may be, a client of an accountable institution; or</p> <p>ii) exercises control of a client of an accountable institution on whose behalf a transaction is being conducted; and</p> <p>b) includes -</p> <p>i) in respect of legal persons, each natural person contemplated in section 21B(2)(a);</p> <p>ii) in respect of a partnership, each natural</p>	<p>Add clause 1(1)(c): which reads:</p> <p>"(c) excludes, in the case of non-profit companies or voluntary associations members and others with voting powers if neither they nor any related person derives any benefit from the work of the non-profit company or Voluntary Association."</p>	<p>With-member NPCs and voluntary associations must have members and:</p> <ul style="list-style-type: none"> • Where (as is usually the case) these members have nothing to gain from the work of the company, they do not pose a risk; • Where the members are other organisations (and sometimes the other organisations may have sub-groups as members), the gathering and updating of natural persons details through these layers is impossible, burdensome and costly; and • The unintended consequence of forcing the gathering and exposure of ultimate (non-beneficiary) members will be a decrease in good governance and accountability as many with-members NPCs will convert to no-member models and voluntary associations will limit their member

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		<p>person contemplated in section 21B(3)(b); and iii) in respect of a trust, each natural person contemplated in section 21B(4)(c)(d) and (e);</p>		<p>base.</p>
Section 1(1)			<p>Adding the definition: “conduit voluntary association” means a voluntary association established in the Republic which primarily receives and distributes funds and which would, if it were a non-profit company, and its gross income were taken into account in Regulation 28(2)(a) of the Companies Act, be required in terms of Regulation 28 of the Companies Act to have its annual financial statements audited.</p>	<p>There may be an easier way to do this, but we are here pegging compulsory registration and the reporting of conduit voluntary associations to the amounts set in the Companies Act regulations, so that they will not get out of synch and will be revised automatically in terms of that Act.</p>
Section 21B (2) Additional due diligence measures relating to legal persons, trusts and partnerships	<p>(2) If a client contemplated in section 21 is a legal person, an accountable institution must, in addition to the steps required under sections 21 and 21A and in accordance with its Risk Management and Compliance Programme— (a) establish the identity of the beneficial owner of the client by— (i) determining the identity of each natural person who, independently or together with another person, has a</p>		<p>Adding 21(2)(c) to read : (c) if the client is a conduit voluntary association establish the gross income in each year of that conduit voluntary association.</p>	<p>Adding the duty to establish the gross income so that reports may be made.</p>

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	<p>controlling ownership interest in the legal person;</p> <p>(ii) if in doubt whether a natural person contemplated in subparagraph (i) is the beneficial owner of the legal person or no natural person has a controlling ownership interest in the legal person, determining the identity of each natural person who exercises control of that legal person through other means; or</p> <p>(iii) if a natural person is not identified as contemplated in subparagraph (ii), determining the identity of each natural person who exercises control over the management of the legal person, including in his or her capacity as executive officer, non-executive director, independent non-executive director, director or manager; and</p> <p>(b) take reasonable steps to verify the identity of the beneficial owner of the client, so that the accountable institution is satisfied that it knows who the beneficial owner is.</p>			
<p>Section 21B Additional due diligence measures relating to legal persons, trusts and partnerships</p>	<p>(4) If a natural person, in entering into a single transaction or establishing a business relationship as contemplated in section 21, is acting in pursuance of the provisions of a trust agreement between natural persons, an accountable institution must, in addition to the steps required under sections 21 and 21A and in accordance with its Risk Management and Compliance Programme -</p>	<p>(4) If a natural person, in entering into a single transaction or establishing a business relationship as contemplated in section 21, is acting in pursuance of the provisions of a trust agreement between natural persons, an accountable institution must, in addition to the steps required under sections 21 and 21A and in accordance with its Risk Management and Compliance Programme -</p>	<p>Amend 21B(4)(c) to read:</p> <p>(i) each founder or initial donor which is still living; and</p> <p>i) if the initial donor or founder of the trust is a legal person or a person acting on behalf of a partnership or in pursuance of the provisions of a trust agreement, the beneficial</p>	<ul style="list-style-type: none"> • Most common to refer to founders of trusts as ‘donors’; • In the case of charitable trusts the initial donor is often deceased or closed down. This proposed amendment stops financial institutions from demanding the impossible.

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	<p>c) establish the identity of the founder;</p> <p>d) establish the identity of - i) each trustee; and ii) each natural person who purports to be authorised to enter into a single transaction or establish a business relationship with the accountable institution on behalf of the trust;</p> <p>e) establish - i) the identity of each beneficiary referred to by name in the trust deed or other founding instrument in terms of which the trust is created; or ii) if beneficiaries are not referred to by name in the trust deed or other founding instrument in terms of which the trust is created, the particulars of how the beneficiaries of the trust are determined.</p>	<p>c) in respect of the founders of the trust, establish the identity of i) each the founder; and ii) if the founder of the trust is a legal person or a person acting on behalf of a partnership or in pursuance of the provisions of a trust agreement, the beneficial owner of that legal person or partnership;</p> <p>d) in respect of the trustees of the trust establish the identity of - i) each trustee; iA if a trustee is a legal person or person acting on behalf of a partnership, the beneficial owner of that legal person or partnership; and ii) each natural person who purports to be authorised to enter into a single transaction or establish a business relationship with the accountable institution on behalf of the trust whether such person is appointed as a trustee of the trust or not;</p> <p>e) in respect of the beneficiaries of the trust, establish - i) the identity of each beneficiary referred to by name in the trust deed or other founding instrument in terms of which the trust is created; iA) if a beneficiary referred to by name in the trust deed is a legal person or a person acting on behalf of a partnership or in pursuance of the provisions of a trust agreement, the beneficial owner of that legal person, partnership or trust; and ii) if beneficiaries are not referred to by name in</p>	<p>owner of that legal person or partnership if that legal person or partnership exists.</p> <p>Add as section 4(e) (iii): (iii) or if there are no identifiable individuals who are or may be beneficiaries, a description of the class or group of persons (or other living organisms) which may benefit from the work of the trust.</p>	<p>Addition of (iii) reason: Many charitable trusts will never be able to name or identify individuals who benefit from their work. A trust, set up, for instance, to protect the fynbos on Table Mountain, has no namable beneficiaries. A trust set up to develop awareness of and counter gender-based violence will also not be able to identify beneficiaries.</p>

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		the trust deed or other founding instrument in terms of which the trust is created, the particulars of how the beneficiaries of the trust are determined.		
To be added: s28B			<p>Add a new section 28B to read:</p> <p>An accountable institution and a reporting institution must, within the prescribed period, report to the Centre the prescribed particulars of</p> <ul style="list-style-type: none"> (1) a conduit voluntary association whose total receipts and accruals in any year meets the requirements for mandatory registration in terms of the Companies Act and Regulations; and (2) all of those conduit voluntary associations falling into each group of conduit voluntary associations having beneficial owners in common, the aggregate of whose total receipts 	<p>Building in a reporting duty to facilitate enforcement of mandatory registration.</p> <p>Also to counter voluntary associations from splintering into more than one once registration point is reached.</p>

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			and accruals in any year meets the requirements for mandatory registration in terms of the Companies Act and Regulations	
Regulation 1, definitions section			Addition of a definition to read: “conduit voluntary association threshold report” Means a report which must be submitted by accountable and reporting institutions in terms of section 28B of the Act.	This definition added to create a mechanism for reporting a conduit voluntary association which has a gross income over R5million a year.

Sections	Current Trust Property Control Act	The Bill	Our proposal	Our motivation and comments
Section 1(b)	Addition	"beneficial owner" - (a)- has the meaning defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); and (b)-for the purposes of this Act, in respect of a trust, includes, but is not limited to, a natural person who directly or indirectly ultimately own the relevant trust property or exercises effective control of the administration of the trust, including- (i)- each founder of the trust; (ii)- if a founder of the trust is a legal person or a person acting on behalf of a partnership, the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person or	Amend (b)(i) and (ii) as marked: (i)- each initial donor or founder of the trust who is still living ; (ii)- if a founder or initial donor of the trust is a legal person or a person acting on behalf of a partnership, and that partnership or legal person is still in existence , the natural person who directly or indirectly ultimately owns or exercises	The founding party for a South African charitable trust is usually referred to as the donor. The addition of the words ‘initial donor’ is to make it clear who is being referred to here. The balance of the amendments is to take care of the very long life of some trusts and the fact that initial donors may be deceased or no longer exist. The initial donor is a legal

Sections	Current Trust Property Control Act	The Bill	Our proposal	Our motivation and comments
		<p>partnership;</p> <p>(iii)- each trustee of the trust;</p> <p>(iv)- if a trustee of the trust is a legal person or a person acting on behalf of a partnership, the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person or partnership;</p> <p>(v)-each beneficiary referred to by name in the trust deed or other founding instrument in terms of which the trust is created;</p> <p>(vi)- if a beneficiary is referred to by name in the trust deed is a legal person or a person acting on behalf of a partnership or in pursuance of the provisions of a trust agreement, the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person, partnership or trust; and</p> <p>(vii)- a person who, through the ability to control the votes of the trustee or to appoint the trustees, or to appoint or change the beneficiaries of the trust, exercises effective control of the trust.</p>	effective control of that legal person or partnership;	<p>requirement for the formation of the trust and the identity of that donor is historical fact, ie is never updated.</p> <p>This proposed change is to stop banks unnecessarily bothering trusts for details of deceased or defunct donors OR banks expecting there to be replacement ones.</p>

Sections	Current Companies Act	The Bill	Our proposal	Our motivation and comments
Section 1	Addition of new definition of 'beneficial owner'	<p>"beneficial owner"</p> <p>(a)- has the meaning defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); and</p> <p>(b)- for the purposes of this Act, in respect of a company, includes, but is not limited to a natural person, who, directly or indirectly, ultimately owns or exercises control of a company, including through-</p>	<p>Add sub-section (c) to state:</p> <p>(c) in the case of a non-profit company excludes members and others with voting powers if neither they nor any related person has or could have any personal financial interest in the activities or outcomes of the</p>	<p>NPC's which work for public benefit are often accountable to members and:</p> <ul style="list-style-type: none"> • Where (as is usually the case) these members have nothing to gain from the work of the company, they do not pose a risk; • Where the members are other organisations (and sometimes the other organisations may have sub-groups as

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		(i)- ownership of the securities of the company; (ii)- the exercise or control of the exercise of the voting rights associated with securities of that company; (iii)- the exercise or control of the right to appoint or remove members or the board of directors; (iv)- ownership, or the exercise of control of- (aa)- a holding company of that company; (bb)- a juristic person other than a holding company of that company; (cc)- a body of persons corporate or unincorporate; (dd)- a partnership; or (ee)- any other category or type of entity that may be specified in regulations for this purpose, that owns or is able to exercise control of, as the case may be, that company including through a chain or network of ownership; or (v)- the ability to otherwise materially influence the decision-making or policy of the company.	activities of the non-profit company.	members), the gathering and updating of natural persons details through these layers is impossible, burdensome and costly; and <ul style="list-style-type: none"> The unintended consequence of forcing the gathering and exposure of ultimate (non-beneficiary) members will be a decrease in good governance and accountability as many with-members NPCs will convert to no-member models.
Section 1			Add the following definition to section 1: “conduit voluntary association” means a voluntary association established in the Republic which primarily receives and distributes funds and which would, if it were a non-profit company, and its total receipts and accruals were taken into account in Regulation 28(2)(a), be required	This proposed definition of a ‘conduit voluntary association’ refers to the regulations in the Companies Act which would lead to compulsory audit. Regulation 28(2)(a) skips the usual calculation of PI score (which would set the bar too high for this exercise, at gross income of R50 million to R90 million) and deals with ‘assets held in a fiduciary capacity’ (interpreted to mean as a bank or insurance company would) and the level currently

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			<p>in terms of Regulation 28 to have its annual financial statements audited and includes, all of those conduit voluntary associations falling into a group of conduit voluntary associations having beneficial owners in common, the aggregate of whose total receipts and accruals in any year meets the requirements for mandatory audit under Regulation 28</p>	<p>in the regulation is any which exceed R5 million in a financial year.</p> <p>We feel that, for a conduit funder organisation which is set up as a voluntary association and which is receiving and giving away R5million or more in a year, compulsory registration as an NPC would be appropriate and useful, bringing that organisation under the detailed regulatory requirements of the Companies Act, into the public visibility that the online BizPortal allows, and requiring the annual reporting on financials and details of compliance which the Companies Act and regulations require.</p> <p>We have also added provisions catering for where conduit voluntary associations splinter into more than one, to avoid compulsory registration. In this case, all of them would have to be registered.</p>
Section 1	<p>"foreign company" means an entity incorporated outside the Republic, irrespective of whether it is— (a) a profit, or non-profit, entity; or</p>	<p>No proposed amendment in the AML CTF Bill</p>	<p>foreign company" means an entity incorporated or unincorporated entity or organisation outside the Republic, irrespective of whether it is— (a) a profit, or non-profit, entity; or (b) carrying on business or non-</p>	<p>Foreign non-profit companies and foreign trusts are already required to register in South Africa under section 23 of the Companies Act and section 8 of the Trust Property Control Act.</p> <p>This proposed amendment requires the registration with CIPC also of the foreign equivalents of voluntary associations (unincorporated or unregistered bodies and organisations) which may be carrying out non-profit</p>

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	(b)carrying on business or non-profit activities, as the case may be, within the Republic;		profit activities, as the case may be, within the Republic;	<p>activities in South Africa.</p> <p>This proposed amendment replaces the AML-CTF Bill proposal to make registration as an NPO compulsory for these entities.</p> <p>As the Companies Act already has well defined parameters for registration and the systems and processes to cope with these registrations (and the NPO Directorate does not) and also the oversight capacity, data searching capacity and reporting requirements in terms of the Companies Act are more effective and appropriate, it makes so much more sense to register the foreign voluntary associations with CIPC.</p>
Section 8 Categories of Companies	(3) No association of persons formed after 31 December 1939 for the purpose of carrying on any business that has for its object the acquisition of gain by the association or its individual members is or may be a company or other form of body corporate unless it— (a) is registered as a company under this Act; (b) is formed pursuant to another law; or		Add 8(4) to read: Any association of persons which is or becomes a ‘conduit voluntary association’ shall, within one year of so becoming, convert to being a non-profit company under this Act.	<p>This proposed addition to the Companies Act makes mandatory the registration of a non-profit company where a voluntary association which primarily receives and makes donations has its PI score go over the level at which an audit become compulsory for an NPC.</p> <p>The CIPC would have to institute a process for this ‘conversion’ as it does with the conversion of Pty to NPCs, provided that the name is approved and an NPC registration number would be allocated.</p> <p>The process would have to ensure continuity of legal existence, so SARS would have to continue the tax ref number, for example, and deeds office updates of details would be permitted (instead of transfer of property). Likewise banking and accounting history would have to continue intact.</p>

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	(c) was formed pursuant to Letters Patent or Royal Charter before 31 May 1962.			
Section 8 Categories of Companies			<p>Add 8(5) to read:</p> <p>Any association of persons which wishes to convert to a non-profit company under this Act, shall make application in the prescribed manner.</p>	<p>We very often encounter voluntary associations which wish to fall under the more credible, transparent and highly regulated CIPC and Companies Act, but there currently is no legal mechanism in place for conversion. A voluntary association which wishes to 'convert' has to start a new NPC, obtain tax exemption for it, then transfer everything across from the voluntary association to the new NPC. This process can take years, as the two organisations need to be run side by side for some time to allow the new NPC to develop a history which will be acceptable to donors.</p> <p>Providing a mechanism for voluntary conversion would allow these organisations to continue their operations with their financial history, bank accounts, employment contracts, SARS history and status etc all intact, but under the auspices and heft of the Companies Act.</p> <p>If we are to amend the Companies Act to enforce mandatory registration for conduit voluntary associations, it makes sense to take this as a positive opportunity to allow voluntary associations to make this transition. Many would be very pleased to be able to do so.</p>