THE BANKING ASSOCIATION SOUTH AFRICA

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13 February 2026

Committee Secretary
Finance Standing Committee

Our ref: S Amod/ MC-AFC/GLAB (2025)
Your ref: Draft GLAB (2025)
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COMMENTS OF THE BANKING ASSOCIATION SOUTH AFRICA ON THE DRAFT GENERAL LAWS (ANTI-MONEY LAUNDERING AND COMBATING TERRORISM FINANCING) AMENDMENT BILL, 2025

The above matter refers.

The Banking Association South Africa (**BASA**) and our members appreciate the opportunity afforded to us to submit comments and recommendations on the draft General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill, 2025.

We submit our comments for your consideration and trust that our input will assist.

Kind Regards

Sadiyaa Amod
Manager - Legislation & Regulatory Oversight

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NAME OF PERSON COMPILING SUBMISSION: SADIYAA AMOD

ORGANISATION: THE BANKING ASSOCIATION SOUTH AFRICA

SUBMISSION DESCRIPTION: GENERAL LAWS (ANTI-MONEY LAUNDERING AND COMBATING TERRORISM FINANCING) AMENDMENT BILL (2025)

*Additions are italicised and underlined in green **xxx**, and deletions are struck through ~~xxx~~*

NO	REFERENCE IN ACT/BILL/DOCUMENT	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
1)	BASA supports the overarching policy objectives of the Draft General Laws (Anti-Money Laundering and Combating Terrorism Financing (AML/CFT) Amendment Bill (2025) and recognises its importance in strengthening South Africa's AML/CFT regime, addressing Financial Action Task Force (FATF) findings, enhancing regulatory consistency across the financial system and preparing for the 2026/27 Mutual Evaluation. Certain proposed amendments may give rise to operational, governance and legal challenges that extend beyond the policy intent of the Bill as elaborated in our commentary below. Certain amendments introduce expanded powers and obligations without clearly articulated thresholds or safeguards. This may lead to inconsistent application across institutions and increased operational risk.		
2)	Measures such as extended record-retention periods, expanded sanctions and designation mechanisms, enhanced information-sharing powers, and more granular client-data reporting obligations materially increase cost, systems complexity, cyber-risk exposure, and interpretive uncertainty when implemented at scale. These impacts are further amplified by multi-divisional operating models, the historic evolution of onboarding and data-capture standards, and the need to reconcile expanded AML/CFT obligations with existing prudential, confidentiality and data-protection requirements.		
3)	BASA submits that certain amendments may require regulations and clear interpretive guidance/ updated guidance, proportionate implementation measures, and a risk-based application of expanded powers would materially enhance legal certainty and practical effectiveness. Phased implementation where appropriate, formal clarification on areas of legal hierarchy and timing, and recognition of good-faith compliance efforts would reduce unintended execution risk, support supervisory trust, and ensure that the amended framework achieves its intended AML/CFT outcomes without creating avoidable operational or financial stability risks.		
4)	In particular, as it relates to the proposed amendments to the Nonprofit Organisations Act 17 of 1997 (NPO Act), there is a risk that low-risk, domestically focused NPOs may be subject to burdensome oversight disproportionate to their risk profile, and smaller NPOs may face sanctions without sufficient opportunity for remediation, which would go against the numerous publications from FATF, etc to utilise a risk-based approach and apply appropriate/ proportionate controls to NPOs. BASA recommends that the risk-based criteria be articulated either in the Bill or in guidance.		

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1.	**Clause 1** **Amendment of section 5 of Act 71 of 1997, as amended by section 10 of Act 22 of 2022** Section 5 of the Nonprofit Organisation Act, 1997, is hereby amended— *(a)* by the substitution for paragraph *(c)* of subsection (1) of the following paragraph: "*(c)* liaising with other organs of state and interested parties; **[and]";** *(b)* by the substitution for the full stop after paragraph *(d)* of subsection (1) of the expression "; and"; and *(c)* by the addition after paragraph *(d)* in subsection (1) of the following paragraph: "*(e)* monitor and enforce compliance with this Act by nonprofit organisations to whom this Act apply.".	1) The shift from supportive to regulatory enforcement is significant, with no accompanying procedural safeguards, capacity provisions, or enforcement framework. 2) We support enhanced oversight of NPOs in line with FATF Recommendation 8; however, monitoring and enforcement powers must be supported by clear procedures, appeal rights, capacity considerations, and risk-based prioritisation. Without these, compliance burdens and inconsistent application risk increases. 3) BASA recommends that the Department of Social Development (the DSD) in conjunction with the Financial Intelligence Centre (the Centre) issue guidance for NPOs and the framework proposed in the NPO Act, and that the DSD draft guidelines/ rules to cater for procedural safeguards, capacity provisions, and enforcement scope.	
2.	**Clause 2** **Amendment of section 14 of Act 71 of 1997** **2.** The following section is hereby substituted for section 14 of the Nonprofit Organisations Act, 1997:	1) The proposed amendment expands the appeal rights but does not specify timelines, suspension of decisions, procedural rules, or the nature of the appeal. BASA suggests that these matters be addressed in the Arbitration Tribunal's rules.	

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	"**Appeals against refusal to register and administrative sanction** **14.** (1) Within one month after receipt of a notice of a decision of the director— *(a)* not to register a nonprofit organisation**[,]** or *(b)* to impose an administrative sanction contemplated in section 20, the organisation may appeal against the decision by submitting to the Directorate for consideration by an Arbitration Tribunal— **[*(a)*]**(i) in respect of subsection (1)*(a),* the application to register as contemplated in section 13; **[*(b)*]**(ii) the notice sent to the applicant by the director in terms of section 13(3) or section 20(1), as may be applicable; **[*(c)*]**(iii) details of the organisation's response to the director's notice; and ***[(d)]***(iv) the director's notice and reasons for the decision which is the subject of the appeal. (2) Within three months after receipt of the relevant items, the Arbitration Tribunal must consider the appeal in the prescribed manner, including providing the appellant and the		

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	Directorate with the opportunity to make oral representations, and send a written notice of its decision to the appellant and to the director, stating the reasons for the decision. (3) If the Arbitration Tribunal upholds an appeal contemplated in subsection(1)*(a)*, the director must register the organisation by entering its name in the register. (4) The Arbitration Tribunal may— *(a)* confirm, modify or set aside the administrative sanction contemplated in subsection (1)*(b)*; or *(b)* refer the matter back for reconsideration by the director in accordance with the directions of the Arbitration Tribunal. (5) A decision by the Arbitration Tribunal in terms of this section is binding, subject to any right of review by, or appeal to, a court. (6) The Arbitration Tribunal may, on good cause shown, grant condonation to an appellant who has failed to lodge an appeal timeously as provided for in subsection (1).		

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	(7) An application for condonation in terms of subsection (6) may be made on affidavit or in written submissions. (8) If opposed by an interested party, the grounds of opposition must be stated. (9) Depending on the nature of the application, the application, opposed or unopposed, may be decided on the papers or during the hearing by the Arbitration Tribunal.".		
3.	**Clause 3** **Amendment of section 20 of Act 71 of 1997** 3. Section 20 of the Nonprofit Organisation Act, 1997, is hereby amended— *(a)* by the substitution for the heading of the following heading: "**Noncompliance with constitution and obligations by [registered] nonprofit organisation**"; and *(b)* by the substitution of subsection (1) of the following subsection: 1) The director **[must]**— *(a)* must send a compliance notice in the prescribed form to a **[registered]**	1) BASA recommends that a NPO's repeated non-compliance with a material provision of its constitution be included as an additional ground under section 20(1)(a).	1) BASA proposes that section 20 be amended as follows: "1) The director [must] — *(a)* must send a compliance notice in the prescribed form to a **[registered]** nonprofit organisation if the organisation has not complied with— (i) a material provision of its constitution; (ii) a condition or term of any benefit or allowance conferred on it in terms of section 11; or (iii) its obligations in terms of sections 12, 17, 18 and 19 and any other provision of this Act; ~~and~~

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	nonprofit organisation if the organisation has not complied with— (i) a material provision of its constitution; (ii) a condition or term of any benefit or allowance conferred on it in terms of section 11; or (iii) its obligations in terms of sections 12, 17, 18 and 19 and any other provision of this Act; and *(b)* may— (i) refer the nonprofit organisation to the South African Police Service for criminal investigation if satisfied that any noncompliance may constitute an offence**[.]**; or (ii) impose an administrative sanction on any nonprofit organisation as contemplated in section 29(4) when satisfied on available facts and information.		***(iv) repeated non-compliance with a material provision of its constitution; and***"
4.	**Clause 5** **Amendment of section 1 of Act 38 of 2001, as amended by section 27 of Act 33 of 2004, section 1 of Act 11 of 2008, section 53 of Act 11 of 2013, section 1 of Act 1 of 2017 and section 18 of Act 22 of 2022**	1) The definition is too narrowly drafted and should be linked to main purpose of the FIC Act. See proposed definition. 2) The reference to 'person' in this context would contemplate natural and juristic persons. In the latter instance, the reference to 'living standards' does not seem appropriate.	1) BASA proposes that the definition of lifestyle audit be amended to read: "***Lifestyle audit*** ***means an analysis performed by the Centre comparing a person's declared income with assets, expenditure and financial flows, for the purpose of identifying indicators of money-laundering, terrorist financing,***

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	5. Section 1 of the Financial Intelligence Centre Act, 2001, is hereby amended— . . . *(d)* by the insertion in subsection (1) after the definition of "legal person" of the following definition: "**'lifestyle audit'** means an audit to determine if a person's living standards are consistent with the income from legitimate sources that can be attributed to that person;";	3) If reference to 'living standards' remains, it is requested that the Centre clarify how that would be measured in relation to an entity/ juristic person? Would the following be taken into consideration, namely patterns of expenditure, asset acquisition and the like? If yes, consideration to be given to make reference thereto in the said definition by distinguishing natural and juristic persons. 4) While the draft Bill explicitly empowers the Centre to conduct lifestyle audits and expand its information-sharing and information-request powers (under sections 1, 3, 4 and 40) the absence of defined criteria, thresholds, and inter-agency boundaries raises material governance concerns. Lifestyle audits may also lead to very high volume and complex data requests from the Centre. 5) It is important to ensure that the provisions of both the FIC Act and the Protection of Personal Information Act 4 of 2013 (POPIA) be implemented. 6) Clarifying the triggers for initiating audits, the scope of information permissible for collection, and parameters for sharing such information is therefore essential to maintain constitutional reasonableness and ensure that the broadened powers operate within a structured, transparent, and risk-based framework.	***proliferation-financing activities, or unlawful activities*** ~~an audit to determine if a person's living standards are consistent with the income from legitimate sources that can be attributed to that person~~;";

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		7) BASA recommends that: a) The Centre should ensure that the collection, use, and sharing of information for the purposes of lifestyle audits remains proportionate to the identified risk and limited to what is necessary to achieve the purposes of FIC Act. b) Any personal information obtained during a lifestyle audit must be processed in accordance with POPIA and the principles of lawful, reasonable, and minimal necessary processing. c) The parties involved should establish request parameters to avoid overly broad or duplicative requests: • time periods • transaction types • segmented trading activity	
5.	**Clause 7** **Amendment of section 4 of Act 38 of 2001, as amended by section 4 of Act 11 of 2008, section 3 of Act 1 of 2017 and section 20 of Act 22 of 2022** Section 4 of the Financial Intelligence Centre Act, 2001, is hereby amended— . . .	1) "Prescribed' is defined in section 1 of the FIC Act as 'means prescribed by the Minister by regulation in terms of section 77'. The use of this defined term in the context does not seem appropriate. 2) In essence, if the Minister so prescribes – this would be subject to public consultation and is required to be published in a Regulation.	1) BASA proposes that in relation to the use of the word 'prescribes', and reasonably believes the following amendment be made: "(bA) where appropriate, conduct lifestyle audits— . . . (ii) without limiting the generality of subparagraph (i) and in addition

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	(c) by the insertion after paragraph *(b)* of the following paragraph: "(bA) where appropriate, conduct lifestyle audits— (i) in the course of the performance of its functions contemplated in paragraphs *(a)*, *(a*A*)* and *(b)*; or (ii) without limiting the generality of subparagraph (i) and in addition thereto, of persons referred to in Schedule 3A or any other category of persons prescribed by the Minister at the request of an organ of state, public entity or municipality, if the Centre reasonably believes the entity is affected by or has an interest in the information it obtains through conducting a lifestyle audit;".	3) This proposed amendment must be read in context of section 4 of the FIC Act which states 'To achieve its objectives the Centre must (bA) **where appropriate, conduct lifestyle audits. . .'** As such the reference to 'if the Centre reasonably believes the entity . . . .through conducting a lifestyle audit' in (bA)(ii) is not required, as the discretion (in the achievement of its objectives) already exists in the use of the words '**where appropriate'** as read with the definition of **'lifestyle audit'**. We therefore propose the amendment including reference to the Prevention of Organised Crime Act 121 of 1998 and the deletion of the words as indicated in the 3rd column. 4) In the absence of deleting the said wording, the use of the words "reasonably believes", has not been defined nor have objective criteria been provided. The term "reasonably believes" gives power to initiate lifestyle audits based only on the Centre's reasonable belief, without defining what constitutes such belief. We furthermore submit that the reference to 'where appropriate', if reference to 'reasonably believes' remains, should then be deleted and consideration to the further aspects to be addressed as mentioned in the 3rd column.	thereto, of persons referred to in Schedule 3A ~~or any other category of persons~~ ***which the Centre reasonably knows or suspects to be guilty of an offence in terms of sections 4, 5 or 6 of the Prevention Act.*** ~~prescribed by the Minister at the request of an organ of state, public entity or municipality, if the Centre reasonably believes the entity is affected by or has an interest in the information it obtains through conducting a lifestyle audit~~; 2) In the absence of adopting the above amendment clarity is required on what would constitute "reasonable belief".

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6.	**Clause 9** **Substitution of section 23 of Act 38 of 2001, as amended by section 13 of Act 1 of 2017** **9.** The following section is hereby substituted for section 23 of the Financial Intelligence Centre Act, 2001: "**Period for which records must be kept** 23. An accountable institution must keep the records which relate to— *(a)* the establishment of a business relationship referred to in section 22, for at least **[five]** seven years from the date on which the business relationship is terminated; *(b)* a transaction referred to in section 22A which is concluded, for at least **[five]** seven years from the date on which that transaction is concluded; and *(c)* a transaction or activity which gave rise to a report contemplated in section 29, for at least **[five]** seven years from the date on which the report was submitted to the Centre.".	1) Retaining personal and transactional data beyond previously established timeframes necessitates strengthened governance to ensure that continued retention remains lawful, justified, and proportionate. 2) For large, diversified banking groups, these impacts are amplified by the scale of historical data involved, legacy system constraints, and the need to maintain consistent retention controls across retail, relationship banking, corporate, investment banking, and transactional platforms. 3) The extension of the mandatory record-keeping period also has material cost and operational implications, particularly for large banking groups, which manage significant volumes of transactional, customer, and compliance data across multiple business lines. 4) Retaining data for longer periods substantially increases: a) Data storage and infrastructure costs, particularly in secure environments subject to banking-grade resilience and redundancy requirements b) Data governance and lifecycle-management complexity, including the need for enhanced access controls, monitoring, and secure disposal processes	1) BASA proposes that the proposed amendments be deleted and the current five-year period record retention period be retained.

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		c) Re-engineering of data-retention and destruction frameworks; d) Enhanced audit, assurance, and oversight capabilities; e) Cyber-security and data-protection risk, as larger data sets held over extended periods increase exposure to potential breaches; f) Compliance oversight costs, as longer retention periods expand the universe of data subject to regulatory review, inspection, or litigation. 5) The Centre is requested to provide clarity on: a) The interaction between the proposed extended record-keeping obligations and POPIA retention requirements. b) The interaction of section 14(1) of POPIA with mandatory statutory record-keeping. c) The rationale for this amendment and whether the risk mitigation by this amendment would warrant the cost. d) Whether the extended seven-year retention requirement applies prospectively only to records created after commencement, to reduce the need for retrospective data restoration. For certainty, it will be useful for the Centre to clarify whether existing records will be affected. For example, if a transaction was processed in January 2024, an institution	

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		would keep records related to that transaction until January 2029, in line with the current requirement. Is there any expectation that records which have not yet reached the five-year retention period be reclassified and subjected to the new seven-year retention period? e) How institutions should prioritise retention periods where multiple laws prescribe different timelines, to avoid conservative over-retention driven by legal uncertainty. 6) BASA proposes that the proposed amendments be deleted and the five-year record retention period be retained.	

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7.	**Clause 10** **Amendment of section 26A of Act 38 of 2001, as inserted by section 17 of Act 1 of 2017, substituted by section 28 of Act 22 of 2022 and amended by section 24 read with Schedule to Act 23 of 2022** **10.** Section 26A of the Financial Intelligence Centre Act, 2001, is hereby amended— . . . (d) by the addition in subsection (3) of the following paragraphs: "(d) an entity identified in the notice published by the National Director of Public Prosecutions in accordance with section 23(5) of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 in respect of which a High Court has made an order pursuant to section 23 of that Act; and (e) a variation, rescission or setting aside of an order published by the National Director of Public Prosecutions pursuant to section 23 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004."	1) BASA proposes that once the provision has been enacted the Centre enhance PCC 44A to address how: a) accountable institutions will be notified/ what appropriate means would entail and whether entities identified will be published by the Centre in its Targeted Financial Sanctions (TFS) list as noted when the Centre published the first order issued by a court in terms of section 23 of POCDATARA on 13 February 2025. b) to deal with orders which contain bespoke conditions that do not align neatly with automated sanctions screening tools.	

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8.	**Clause 11** **Amendment of section 26C of Act 38 of 2001, as inserted by section 17 of Act 1 of 2017 and amended by section 30 of Act 22 of 2022** **11.** Section 26C of the Financial Intelligence Centre Act, 2001, is hereby amended— *(a)* by the insertion after paragraph *(a)* of subsection (2) of the following paragraph: "*(a*A*)* provide for extraordinary expenses;"; and …	1) The insertion of the term "extraordinary expenses" without a clear definition may introduce ambiguity especially as seen as different from the specification of basic expenses and other listed permitted payments. 2) This vagueness may lead to inconsistent interpretation and application, creating operational and legal risks. It could also lead to potential misuse of the allowance. 3) BASA proposes that a definition for "extraordinary expenses" be provided, alternatively, a list of "extraordinary expenses" similar to that contemplated under the listed basic expenses in section 26C(2)(a), be provided in the FIC Act.	1) BASA proposes that a definition for "extraordinary expenses" be provided, alternatively, a list of "extraordinary expenses" similar to that contemplated under the listed basic expenses in section 26C(2)(a), be provided for "extraordinary expenses". 2) Should the Centre elect not to provide a definition/ list in section 26C, it is suggested that same be included in updated guidance issued by the Centre.
9.	**Clause 11** **Amendment of section 26C of Act 38 of 2001, as inserted by section 17 of Act 1 of 2017 and amended by section 30 of Act 22 of 2022** **11.** Section 26C of the Financial Intelligence Centre Act, 2001, is hereby amended— . . . "*(d)* accrue interest or other earnings due on accounts holding property	1) Prior to a person/ entity being sanctioned, business in the normal course would apply to the property, including interest accruing and services being rendered. Noting the content of sections 26A(1) and 26(1A) i.e. the immediacy of application of section 26A(1), and the provisions of section 26A(2), the accrual of interest would automatically form part of the prohibited property/ financial service and thereafter (i.e. on sanctioning) cease to earn interest until advised otherwise by the Minister. 2) It is our understanding that the intent would be for the Minister per section 26C(1) in writing to	1) BASA proposes that the proposed amendment to section 26C(d) be deleted: "accrue interest or other earnings due on accounts holding property affected by a prohibition under section 26B ~~that arose before the date on which the person or entity was identified by the Security Council of the United Nations;~~ or".

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	affected by a prohibition under section 26B that arose before the date on which the person or entity was identified by the Security Council of the United Nations; or".	determine the provision of financial services or dealing with property, including the accrual of interest or other earnings **due on the accounts holding property affected by the section 26B prohibition (our emphasis)**. This would include by way of example, the dealing with the prohibited property like interest that arose before the date on which the person or entity was identified. 3) We believe that the proposed amendment is not necessary, and the provision should remain the same.	

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10.	**Clause 12** **Substitution of section 27 of Act 38 of 2001, as amended by section 18 of Act 1 of 2017** **12.** The following section is hereby substituted for section 27 of the Financial Intelligence Centre Act, 2001: "**Accountable institutions, reporting institutions and persons subject to reporting obligations to advise Centre of clients** 27. If an authorised representative of the Centre— *(a)* provides an accountable institution, reporting institution or person that is required to make a report in terms of section 29 with the identifying particulars of a specified person and requests that accountable institution, reporting institution or person to advise— (i) whether the specified person is or has been a client of the accountable institution, reporting institution or person; (ii) whether the specified person is acting or has acted on behalf of any client of the accountable institution, reporting institution or person;	1) The requirement for accountable institutions to provide business relationship commencement and termination dates upon request by the Centre increases the level of granularity and precision expected in client data submissions. For large and diversified banking groups, this obligation presents additional complexity arising from the existence of multiple, business-unit-specific onboarding environments. 2) Where broad client bases are serviced across distinct divisions, each division operates separate client onboarding frameworks, systems, and governance processes. These divisions may capture client onboarding and relationship data independently, often reflecting different commercial entry points, product sets, and regulatory requirements. As a result, a single legal client may have multiple relationship commencement dates, depending on when the relationship was established within each business unit. 3) In addition, legacy clients, clients migrated through mergers or portfolio transfers, or clients moved between business lines may have onboarding histories that pre-date current systems or were captured under historical data standards. In such cases, the accuracy, consistency, and completeness of historic commencement or termination dates may vary,	

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	(iii) whether a client of the accountable institution, reporting institution or person is acting or has acted for the specified person; (iv) on the type and status of a business relationship that is associated with the specified person or client contemplated in subparagraph (i), (ii) or (iii), as the case may be, or (v) on the date on which the business relationship that is associated with the specified person or client contemplated in subparagraph (i), (ii) or (iii), as the case may be, had commenced and, if applicable, the date on which the business relationship in question had terminated, *(b)* provides an accountable institution, reporting institution or person that is required to make a report in terms of section 29 with a number specified by the Centre and requests that accountable institution, reporting institution or person to advise— (i) whether the accountable institution, reporting institution or person allocated the specified number to a person with whom the accountable institution, reporting institution or	requiring additional reconciliation, interpretation, and manual intervention before data can be confidently disclosed to the Centre. 4) For legal certainty and to mitigate the inconsistent interpretation of what constitutes the "business relationship commencement", and "termination dates" potentially leading to divergent reporting, BASA recommends that the Centre consider issuing guidance on the interpretation and reporting of business relationship commencement and termination dates, particularly clarifying whether: a) commencement and termination should be interpreted at a group-wide client level. b) termination refers to the full cessation of the client relationship across the banking group. c) reasonable, good-faith estimates or proxy dates, supported by governance controls and available records, are acceptable where precise historical dates cannot be reliably reconstructed.	

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	person has or has had a business relationship; (ii) on the type and status of a business relationship that is associated with the specified number contemplated in subparagraph (i), or (iii) on the date on which the business relationship that is associated with the specified number contemplated in subparagraph (i) had commenced and, if applicable, the date on which the business relationship in question had terminated, the accountable institution, reporting institution or person must inform the Centre accordingly.".		

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11.	**Clause 13** **Amendment of section 27A of Act 38 of 2001, as inserted by section 19 of Act 1 of 2017 and amended by section 31 of Act 22 of 2022** **13.** Section 27A of the Financial Intelligence Centre Act, 2001, is hereby amended by the substitution for subsection (1) of the following subsection: "(1) Subject to subsection (2), an authorised representative of the Centre has access during ordinary working hours to any records kept by or on behalf of an accountable institution in terms of section 22, 22A or 24, and may examine, make extracts from or copies of, any such records for the purposes of obtaining further information— *(a)* in respect of a report made or ought to be made in terms of section 28, 28A, 29, 30(1) or 31; *(b)* for use in the production of forensic evidence in accordance with section 3(2)*(a*B*);* or *(c)* for use in the conduct of a lifestyle audit contemplated in section 4*(b*A*)*.".	1) Refer to our comments on "lifestyle audits" above. 2) Section 27A meaningfully strengthens the FIC's analytical and investigative capabilities but introduces material risk of supervisory overreach without commensurate procedural safeguards. 3) Scoping discipline, and recognition of POPIA principles are essential to ensure that enhanced access powers do not undermine proportionality, legal certainty, or supervisory trust.	

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12.	**Clause 14** **14.** The following section is hereby substituted for section 28A of the Financial Intelligence Centre Act, 2001: "**Property associated with terrorist and related activities and financial sanctions pursuant to Resolutions of United Nations Security Council <u>or order of High Court</u>** 28A. (3) An accountable institution contemplated in subsection (2) must, within the prescribed period, report to the Centre the prescribed particulars about an attempt to conduct a transaction or enquiries at conducting a transaction pertaining to— . . . <u>(3) An accountable institution contemplated in subsection (2) must, within the prescribed period, report to the Centre the prescribed particulars about an attempt to conduct a transaction or enquiries at conducting a transaction pertaining to—</u> <u>*(a)* a person or entity identified in a notice given by the Director under section 26A(3); or</u>	1) The proposed amendment appears to create a new type of report. This type of report in the current regime is regarded as TFTR or TFAR under sections 29(1) and S29(2) of the FIC Act. The Centre is requested to clarify whether: a) a new type of report is being introduced by the amendment; b) section 28A will now have two types of reports; and c) the prescribed timeframe for reporting under the proposed amendment is five business days and if the regulations will be amended to provide clarity on reporting timelines. 2) It is our understanding that: a) The reporting obligation in section 28A(3) only arises in respects of an accountable institution's clients. b) No dual reporting obligation arises under section 28A(3) and section 29 i.e. reporting under section 28A(3) discharges any potential reporting obligation under section 29. 3) If our understanding is correct, BASA requests that the relevant guidance issued by the FIC be amended to clarify this position and to avoid uncertainty in reporting obligations. 4) If this understanding is not correct, clarity is sought on the practical application of this	1) BASA proposes that the Centre provide a definition or guidance of what constitutes an "attempt to conduct a transaction or enquiries at conducting a transaction" for the purposes of section 28A(3).

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	(b) property owned or controlled by or on behalf of, or at the direction of such a person or an entity."	provision in circumstances involving non-customers and preliminary enquiries specifically in scenarios where a non-customer merely enquires about the possibility of conducting a transaction, but the information obtained is insufficient to complete the prescribed particulars or to give rise to a SAR or TFAR? 5) For legal certainty, BASA recommends that the Centre update its guidance with examples of what constitutes an "attempt to conduct a transaction or enquiries at conducting a transaction" for the purposes of section 28A(3), particularly within digital channels where customers may conduct non-binding platform actions such as opening a screen, beginning a transaction but abandoning it, initiating a transaction that is automatically declined. 6) The wording of sections 28A(3) and 51A(3A) could be interpreted as requiring that all enquiries relating to potential transactions be captured, screened, and assessed to determine whether the enquirer is a designated person or linked to a designated person. Clarity is therefore, required on the following: a) Is the expectation that all enquiries regardless of whether a transaction is to be performed must be captured and screened to establish whether the enquirer is a	

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		designated person or linked to a designated person or entity? b) Alternatively, is there an intended materiality or threshold test beyond which an enquiry would be reportable?	
13.	**Clause 16** **Substitution of section 35 of Act 38 of 2001, as amended by section 27 of Act 33 of 2004, section 24 of Act 1 of 2017 and section 34 of Act 22 of 2022** **16.** Section 35 of the Financial Intelligence Centre Act, 2001, is hereby amended— *(a)* by the substitution in subsection (1) for the words preceding paragraph *(a)* of the following words: "(1) A magistrate or judge of an area of jurisdiction within which the accountable institution conducts business **[designated by the Minister of Justice for the purposes of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (Act No. 70 of 2002),]** may, upon written application by the Centre, order an accountable institution to report to the Centre, on such terms and in such confidential manner as	1) Whilst the provision is supported, the proposed amendments may potentially have resource and capacity implications for Magistrate's Courts. It would be prudent to ensure that the Magistrates' Courts are adequately capacitated to consider monitoring applications.	

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	may be specified in the order, all transactions concluded by a specified person with the accountable institution or all transactions conducted in respect of a specified account or facility at the accountable institution, if there are reasonable grounds to suspect that—"; and *(b)* by the substitution for subsection (3) of the following subsection: "(3) A magistrate or judge referred to in subsection (1) may extend an order issued in terms of subsection (1) for further periods not exceeding three months at a time if — *(a)* the reasonable grounds for the suspicion on which the order is based still exist; and *(b)* the magistrate or judge is satisfied that the interest of justice is best served by monitoring the person, account or facility referred to in subsection (1) in the manner provided for in this section.".		
14.	**Clause 17** **Amendment of section 38 of Act 38 of 2001, as amended by section 12 of Act 11 of 2008**	1) The expanded coverage of the proposed amendment is welcomed. Section 38(1)(b), however, includes the words "another person" which may be interpreted very broadly allowing for sharing of data outside of the necessary	1) BASA proposes that section 28(1)(a) be amended as follows: "(1) No action, whether criminal or civil, lies against an accountable institution, reporting institution, supervisory body,

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	17. Section 38 of the Financial Intelligence Centre Act, 2001, is hereby amended— "**Protection of persons [making reports] complying with provisions of the Act**"; *(b)* by the substitution for subsection (1) of the following subsection: "(1) No action, whether criminal or civil, lies against an accountable institution, reporting institution, supervisory body, the South African Revenue Service or any other person **[complying in good faith with a provision of this Part, Part 4 and Chapter 4, including any director, employee or other person acting on behalf of such accountable institution, reporting institution, supervisory body, the South African Revenue Service or such other person]**, including any director, employee or other person acting on behalf of such accountable institution, reporting institution, supervisory body, the South African Revenue Service or such other person, in respect of any action that such an accountable institution, reporting institution, supervisory body,	teams. BASA proposes that more restrictive wording is inserted to ensure that such information is only shared with relevant persons e.g. as part of a FIC project team, or Tactical Operations Group in terms of the South African Ant-Money Laundering Integrated Taskforce. 2) It would be appreciated if the Centre issues guidance on the types of information which may be shared and the process to be followed in sharing that information. 3) BASA proposes that reference be made to section 30 as the South African Revenue Service is a key stakeholder in the collection and processing of cash conveyance reporting information.	the South African Revenue Service or any other person **[complying in good faith with a provision of this Part, Part 4 and Chapter 4, including any director, employee or other person acting on behalf of such accountable institution, reporting institution, supervisory body, the South African Revenue Service or such other person]**, including any director, employee or other person acting on behalf of such accountable institution, reporting institution, supervisory body, the South African Revenue Service or such other person, in respect of any action that such an accountable institution, reporting institution, supervisory body, the South African Revenue Service or other person takes in good faith to— *(a)* make, initiate or contribute to a report in terms of section 28, 28A, 29, ***30*** or 31; *(b)* share information with another person ***acting on behalf of an accountable institution*** to facilitate the making, initiating or contributing to a report in terms of section 28, 28A, 29, ***30*** or 31;

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	the South African Revenue Service or other person takes in good faith to— *(a)* make, initiate or contribute to a report in terms of section 28, 28A, 29 or 31; *(b)* share information with another person to facilitate the making, initiating or contributing to a report in terms of section 28, 28A, 29 or 31; *(c)* provide information to the Centre in terms of section 27, 32, 35 or 36; *(d)* comply with Part 4, and *(e)* comply with Chapter 4.".		*(c)* provide information to the Centre in terms of section 27, 32, 35 or 36;

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15.	**Clause 19** **Amendment of section 41A of Act 38 of 2001, as inserted by section 26 of Act 1 of 2017 and as amended by section 38 of Act 22 of 2022** **19.** Section 41A of the Financial Intelligence Centre Act, 2001, is hereby amended by the substitution for subsection (3) of the following subsection: "(3) The Minister may prescribe requirements for the protection of personal information to facilitate the sharing of information between accountable institutions when the sharing of information is necessary for the purposes of carrying out the provisions of section 27, 28, 28A, 29, 31, 32, 35 or 36 in accordance with **[to ensure that adequate safeguards are in place as required by section 6(1)*(c)* of]** the Protection of Personal Information Act, 2013.	1) BASA supports the widening of this provision to include various provisions of the FIC Act, as opposed to only section 29. 2) In BASA's view, South Africa requires comprehensive legislative reform to enable effective private-to-private information sharing while maintaining appropriate privacy protections. Such enabling legislation will align with developments globally as it relates to information sharing and assist South Africa in our next mutual evaluation. 3) To better enable information sharing for financial crime purposes, consideration should be given to enabling sharing of information for these purposes and specifically sharing information peer-to-peer in support of these purposes through empowering legislation. In this regard, it is suggested that National Treasury consider the information sharing provisions in the United Kingdom (UK) and the United States of America (USA), with the relevant domestic amendments. 4) Similar to accountable institutions in South Africa, regulated institutions in the UK were previously unable to speedily share information with each other about economic crime concerns and were concerned that doing so would result in liability for confidentiality breaches. The Economic Crime and Corporate Transparency Act 2023 (ECCTA) (sections 188 and 189), which	1) BASA proposes that section 41A(3) be amended as follows: "The Minister may , ***after consultation with the Information Regulator,*** prescribe requirements for the protection of personal information to facilitate the sharing of information between accountable institutions when the sharing of information is necessary for the purposes of carrying out the provisions of section 27, 28, 28A, 29, 31, 32, 35 or 36 in accordance with **[to ensure that adequate safeguards are in place as required by section 6(1)*(c)* of]** the Protection of Personal Information Act, 2013." 2) BASA proposes that a specific provision be drafted by National Treasury to enable private to private information sharing.

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		came into force on 15 January 2024 encourages quicker and easier sharing of customer information relating to economic crime concerns between anti-money laundering regulated firms in the UK financial sector. The provisions in the ECCTA put in place measures to provide greater clarity and comfort to AML regulated firms to share relevant customer information for the purposes of preventing, detecting or investigating economic crime, either (i) directly between each other; or (ii) indirectly through a third-party intermediary. The UK government published accompanying guidance to support the firms utilising the new information sharing provisions. It is suggested that National Treasury look at this piece of legislation and the guidance as South African law substantially resembles UK law; and the General Data Protection Regulation is replicated in POPIA. The provisions of the ECCTA and the guidance can be accessed at https://www.legislation.gov.uk/ukpga/2023/56/contents and https://www.gov.uk/government/publications/information-sharing-measures-in-the-economic-crime-and-corporate-transparency-act/guidance-on-the-information-sharing-measures-in-the-economic-crime-and-corporate-transparency-act-2023.	

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		5) Section 314(b) of the US Patriots Act which enables information sharing between the government and financial institutions to combat money laundering and terrorist activities, and between financial institutions themselves may also be used as a basis of an enabling provision. National Treasury is respectfully referred to BASA's 2022 submission on the GLAB where BASA proposed a provision similar thereto and BASA's submission to National Treasury on 6 July 2022, annexed as Annexures A and B, respectively. 6) BASA notes the intention to delete the reference to publishing adequate safeguards. For accountable institutions to rely on the exemption created in section 6 of POPIA, adequate safeguards must have been established. The Centre is requested to confirm that same will be published in terms of the regulations. 7) BASA proposes the insertion "after consultation with the Information Regulator" as this strengthens legitimacy and reduces later interpretive friction. 8) National Treasury and the FIC are respectfully referred to BASA's submissions on the draft information sharing regulations which were published for comment in 2022 and are not yet in effect (attached as Annexures C and D). In	

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		addition to the commentary therein, BASA proposes that the regulations include: a) A necessity and proportionality criteria to comply with the principle of minimality; b) adequate safeguards be established to enable accountable institutions to rely on the POPIA exemption when they process information for the purposes of prevention, detection and assistance in the identification of the proceeds of unlawful activities and the combating of money laundering activities; c) mechanisms for the sharing of data be established, including the time frame for the sharing of information and the prescribed format; and d) reconciling POPIA notice duties with the FIC Act's tipping-off prohibitions (i.e. to permit that POPIA notices be deferred, redacted or omitted where it may prejudice investigations).	

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16.	**Clause 26** **Amendment of section 82 of Act 71 of 2008, as amended by section 51 of Act 3 of 2011** **26. Section 82 of the Companies Act, 2008, is hereby amended—** … *(b)* by the insertion after paragraph *(a)* of subsection (3) of the following paragraph: ''*(a*A*)* on demand by the Commission, the company has failed to submit a securities register or register of beneficial interest, in the prescribed manner and form in terms of section 33 for two years or more in succession; or".	1) BASA proposes that the section 82(3)(aA) be reworded as reflected in the next column for better reading. 2) Sufficient time needs to be given for operationalisation, especially for existing client base – i.e. where banks hold relationships with entities found to be non-compliant with the requirement post the establishment of a business relationship. 3) Additionally need to consider operational costs/efficiencies and integration for banks to ensure that banks are able to monitor the compliance of these entities on an ongoing basis.	1) BASA proposes that the section 82(aA) be amended as follows: ''(aA) ***the company has failed for two years or more in succession to submit a securities register or register of beneficial interest, in the prescribed manner and form in terms of section 33; or***"
17.	**Clause 27** **Amendment of section 171 of Act 71 of 2008, as amended by section 108 of Act 3 of 2011** **27.** Section 171 of the Companies Act, 2008, is hereby amended by the addition of the following subsection: "(8) If a person to whom a compliance notice has been issued for failure to submit the securities register or the register of beneficial interest, fails to comply with the notice, the	1) BASA proposes that for completeness, the proposed section 171(8) reference section 83(3)(aA) and when deregistration will be applied.	1) BASA proposes that section 171(8) be amended as follows: "If a person to whom a compliance notice has been issued for failure to submit the securities register or the register of beneficial interest, fails to comply with the notice, the Commission may impose an administrative fine in terms of section 175(1A). ***Should the non-compliance not be remediated within two***

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	Commission may impose an administrative fine in terms of section 175(1A).".		***submission cycles, section 83(3)(aA) will apply.***"
18.	**Insertion of section 175A in Act 71 of 2008** **29.** The following section is hereby inserted after section 175 of the Companies Act, 2008: "**Review of administrative fine** **175A.** (1) Any person on whom an administrative fine has been imposed, as contemplated in section 175(1A), may apply to the Companies Tribunal to review the administrative fine imposed within— *(a)* 15 business days after receiving notice of the administrative fine; or *(b)* such longer period as may be allowed by the Companies Tribunal on good cause shown. (2) After considering any representations by the applicant and any other relevant information, the Companies Tribunal may confirm, modify or set aside the administrative fine. (3) If the Companies Tribunal confirms or modifies all or part of the administrative fine, the applicant must	1) The introduction of a review mechanism in section 175A is an important procedural safeguard, however the provision raises concerns due to the absence of clarity regarding the suspensive effect of a review application and the criteria governing enforcement pending the review. 2) Given the potentially significant scale of administrative fines, uncertainty as to whether payment or enforcement is required before the determination of a review may result in financial and operational consequences for companies. 3) It is therefore recommended that section 175A be amended to expressly provide that the lodging of a review application suspends enforcement of the administrative fine, unless the Companies Tribunal determines otherwise on demonstrated grounds of material risk or prejudice. 4) BASA suggests that "modify" or "modifies" be replaced with "vary" or "varies" for consistency with appellate terminology used in legislation.	1) BASA proposes that section 175A be amended as follows: (1) Any person on whom an administrative fine has been imposed, as contemplated in section 175(1A), may apply to the Companies Tribunal to review the administrative fine imposed within— *(a)* 15 business days after receiving notice of the administrative fine; or *(b)* such longer period as may be allowed by the Companies Tribunal on good cause shown. (2) After considering any representations by the applicant and any other relevant information, the Companies Tribunal may confirm, ***vary*** ~~**modify**~~ or set aside the administrative fine. (3) If the Companies Tribunal confirms or ***varies*** ~~**modifies**~~ all or part of the administrative fine, the applicant must pay that administrative fine as confirmed or modified, within the time period specified in it, subject to subsection (4).

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	pay that administrative fine as confirmed or modified, within the time period specified in it, subject to subsection (4). (4) A decision by the Companies Tribunal in terms of this section is binding, subject to any right of review by, or appeal to, a court.".		(4) A decision by the Companies Tribunal in terms of this section is binding, subject to any right of review by, or appeal to, a court.~~".~~ ***(5) The lodging of an application for review in terms of this section suspends the enforcement and payment of the administrative fine pending the final determination of the review, unless the Companies Tribunal orders otherwise on the basis of demonstrable material risk, prejudice to the public interest, or the risk of dissipation of assets.****".*
19.	**Clause 32** Amendment of section 3 of Act 9 of 2017 **32.** Section 3 of the Financial Sector Regulation Act, 2017, is hereby amended by the substitution for subparagraph (i) of paragraph *(a)* of subsection (3) of the following subparagraph: "(i) a financial product, a foreign financial product, a financial instrument **[or]**, a foreign financial instrument, or an arrangement that is similar in nature to, or has similar	1) The term "arrangement" is not defined in the Financial Sector Regulation Act, and it is not clear what these "arrangements" would entail. To prevent legal uncertainty and ambiguity, we are of the view that the term "arrangement" should be defined.	1) BASA proposes that the term "arrangement" be defined.

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	outcomes to, a financial product, a foreign financial product, a financial instrument, a foreign financial instrument, irrespective of the technology used to provide the product or instrument;".		
20.	**Clause 34** Section 113 of the Financial Sector Regulation Act, 2017, is hereby amended by the insertion after subsection (1) of the following subsection: **34.** "(1A) The responsible authority may, in a standard, require a financial institution to be licensed in terms of this Act to provide a financial product or financial service, despite a requirement to be licensed in terms of the Acts referred to in section 111(1)(a), if the Authority deems it necessary to license the category of financial institutions in order to achieve its objective.".	1) It is not clear how this proposed amendment would consider and align to already existing standards and already existing registration and licensing requirements in various financial sector laws and the impact on existing licensing requirements. Further, the purpose of the Conduct of Financial Institutions Bill is to amend and repeal existing financial sector laws and align primary legislation for the purposes of consistent issuing of licenses and registration. 2) The proposal to introduce standards to augment and amend existing financial sector law requirements for registration and licencing which is contained in principal legislation could be considered a circumvention of the parliamentary legislative process, could undermine legal certainty and could also further add to a complex legal interpretational environment. This could also create various conflicts which may have to be resolved via the courts. 3) We are of the view that the proposed amendment is broader than the purposes of the	1) BASA proposes that that the proposed section 113(1A) be deleted.

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		GLAB especially considering that it is important that in certain circumstances, responsible authorities are enabled to license financial institutions despite these institutions being licensed in terms of other legislation to ensure that the responsible authority may execute its mandate appropriately and that a 'competent authority' as envisaged in Recommendation 15 is able to impose AML requirements. 4) BASA proposes that the proposed amendment be deleted.	
21.	**Clause 35** **Amendment of section 131 of Act 9 of 2017** **35.** Section 131 of the Financial Sector Regulation Act, 2017, is hereby amended by the substitution for paragraph *(b)* of subsection (1) of the following paragraph: *"(b)* A supervised entity, significant owner or beneficial owner that has been given a notice in terms of paragraph *(a)* must comply with the requirements in the notice.".	1) BASA supports the expanded enforcement and supervisory powers, however, duplication of supervisory requests between regulators and the Centre may increase the compliance burden and operational risk. 2) BASA recommends that the regulators consider mechanisms for coordinated supervisory engagement to avoid duplicative information requests and overlapping inspections.	

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NAME OF PERSON COMPILING SUBMISSION: MARGUERITE JACOBS and SADIYAA AMOD

ORGANISATION: BANKING ASSOCIATION SOUTH AFRICA

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

LINE-ITEM NO	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
GENERAL		
BASA is supportive in principle of the General Laws Amendment Bill (the Bill) and understands the importance and urgency of the enactment thereof as part of the remedial steps to prevent the grey listing of South Africa by the Financial Action Task Force (FATF). Whilst comments have been sought in respect of the detailed amendments to the respective legislation which we have elaborated upon below, we believe it is important that the below aspects be highlighted as they are applicable across the various pieces of legislation and integral to the success of the initiatives and amendments proposed. Considering the far-reaching proposals (which are welcomed in principle), specific exemptions and transitional provisions to provide for a transitional period for legal entities to become familiar with and source the necessary information to update their records and securities registers to avoid entities being in breach of the relevant provisions from day one (as mentioned in this submission) will be appropriate. BASA looks forward to receiving the relevant regulations as they relate to the ultimate beneficial ownership and will provide comments thereon where appropriate at the relevant time. The three key matters which we would like to bring to highlight hereunder are: 1) Ultimate Beneficial Ownership (UBO) (definitions, access to UBO registers, alternative mechanisms for listed companies); 2) Information Sharing; and 3) Transitional Provisions. **<u>Ultimate Beneficial Ownership</u>** *<u>Definitions</u>* 1) BASA is supportive of the amendment to the definition of “beneficial owner” in the Financial Intelligence Centre Act 38 of 2001 (the FIC Act) to align with the FATF definition and the inclusion of similar definitions of "beneficial owner" in the Trust Property Control Act 57 of 1988 (Trust Property Control Act), the Companies Act 71 of 2008 (Companies Act) and the Financial Sector Regulation Act 9 of 2017 (FSR Act). 2) After carefully considering the draft definitions of “beneficial owner” proposed to be inserted into the various pieces of legislation contemplated under the General Laws Amendment Bill, BASA believes that the cross-referencing of the definitions of beneficial ownership in the Trust Property Control Act, Companies Act and FSR Act to the definition of the term in section 1(1) of the FIC Act (with additional provisions adapted to each legislation), may create confusion and legal uncertainty. In this regard:		

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LINE-ITEM NO	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
	1) A lay person who may not be familiar with the FIC Act and the interpretation thereof (and in particular the definition and terms, e.g., regarding beneficial ownership interests, control and management), may have material difficulty in applying the definition and inadvertently undermine the important aim of the Bill and reporting on beneficial ownership. 2) It may appear that the definition and obligations regarding beneficial owners and reporting thereof only apply to accountable institutions as contemplated in the FIC Act, which is not the intention, the intention being that all companies, trusts and/or non-profit organisations should identity their beneficial owners and report thereon. 3) The incorporation of the definition in the FICA Act without any amendments to deal with the required nuances, may be interpreted that the FIC Act obligations relating to identification and verification of the beneficial owners of clients are being imposed on companies, trusts and/or non-profit organisations, which are not accountable institutions. 4) BASA therefore recommends for consideration that the cross-reference to the definition of beneficial owner in the FIC Act, in the other pieces of legislation in the Bill, be (i) deleted; (ii) a more appropriate definition of; and (iii) a nuanced approach (taking into account the relevant context of the specific piece of legislation) to determine beneficial ownership be introduced across the various pieces of legislation, which we believe achieves a level of consistency and legal certainty. In line with this proposal, **Annexure A** annexed hereto contains BASA's proposed definitions of ultimate beneficial ownership for consideration, which in summary, encapsulates: i. Self-standing definitions of "beneficial owner" (fully in line with the definition in the FIC Act as applicable to trusts, companies, and financial institutions but without reference to the client of the relevant entity), with explanations as to how the relevant provisions should be interpreted, by introducing further additional definitions and providing that the Minister of Finance may in Regulations prescribe thresholds regarding beneficial ownership after agreement with the Financial Intelligence Centre. ii. Relating to the proposed definition of "beneficial owner" in the *Trust Property Control Act*: • For trustees of a trust to be able to comply with their obligations under the proposed new provisions, to establish and record the beneficial ownership of the trust and to lodge a register with the relevant information with the Master of the High Court's Office, the founders, beneficiaries, and other trustees of trusts should also be obliged to provide the remaining trustees with all reasonable information to enable the trustees to fulfil their obligations. Given the far-reaching consequences of a failure by trustees to record and report the relevant trust's beneficial owners (both consequences for the trustees and for the accountable institution), it is imperative that the obligation also be placed on founders and beneficiaries to in fact provide the information to the trustees. To assist in enforcing compliance with this obligation, provisions have been proposed for the Master by prescribed Notice to require the beneficial owner/s of trusts to take specified action if the beneficial owner/s fail to provide the relevant information to the trust. In this regard, please refer our comments under **line-item numbers 4 and 5**. iii. Relating to the proposed definition of "beneficial owner" in the *Companies Act*:	

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- The definition takes into consideration other definitions used in the Companies Act, e.g., regarding "control" and "securities" to ensure that the net is cast as wide as possible in respect of beneficial ownership and reporting thereof.
- To enable companies to comply with their obligations to include beneficial ownership in their securities registers and/or to file a record (and changes) regarding beneficial ownership with the Companies Commission, the holders of securities in a company should also be obliged to provide the company with all reasonable information to enable the company to fulfil its obligations as regards its beneficial owners and to provide their own registers and records of beneficial ownership to any company in which they hold securities. This is provided for in the present Companies Act as regards beneficial interests, but not as regards the new concept of beneficial ownership. BASA submits that the intent of the Bill, to ensure full disclosure and recordal of beneficial ownership, will be best served by, in addition to the obligation placed on companies to know and record their beneficial owners, placing a further obligation on shareholders to provide the company with all reasonable information to enable the company to fulfil its obligations as regards its beneficial owners. Reason being that companies will have huge challenges complying with their obligations to record their beneficial owners, in the absence of shareholders also being placed under such an obligation. To assist in enforcing compliance with this obligation, provisions have been proposed for the Commission to issue a directive requiring the beneficial owner/s of a company to take specified action if the beneficial owner/s fail to provide the relevant information to the company.
- To avoid companies inadvertently confusing the concepts in the Companies Act regarding 'beneficial interests" with the new concept of "beneficial ownership" – two distinct concepts and definitions, with different obligations and applications in the Companies Act and the Bill, BASA proposes that the definition and provisions regarding beneficial ownership be dealt with in a self-standing section in the Companies Act, separate from the provisions regarding beneficial interests, to ensure clarity and full compliance.
- To align with BASA's recommendation to exempt publicly listed companies from the ultimate beneficial ownership reporting requirements for a reasonable period, the proposed definition also provides that the Minister of Trade, Industry and Competition may in the Regulations exempt companies from complying with certain obligations in the provisions of the Companies Act.

iv. Relating to the proposed definition of "beneficial owner" in the *FSR Act*:

- For legal certainty and consistency, BASA proposed the cross-reference in respect of legal persons, to each natural person contemplated in section 56A(1) of the Companies Act 71 of 2008, in respect of a partnership, each natural person contemplated in section 56A(1) of the Companies Act, and in respect of a trust, each natural person contemplated in section 1 of the Trust Property Control Act.

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3) BASA notes that there is no definition in the in the NPO Act resembling ultimate beneficial ownership principles. We recommend that for legal certainty and consistency that a definition be included. Please see our proposed definition at **line-item numbers 7 and 8**.

Proposed exemption for publicly listed companies

1) Globally, many countries have implemented a publicly accessible beneficial owner registry and reporting requirements applicable to all registered/licensed companies but provided exemptions from reporting to the beneficial owner registry for publicly listed companies, where other mechanisms provide adequate transparency of beneficial ownership information (e.g., EU, UK). The FATF guidance on transparency also offer the option of other adequate mechanisms being implemented.
2) Whilst the need for a register of beneficial ownership is required and supported, an exemption, or alternate mechanism is suggested as regard companies listed on a recognised securities exchange in South Africa, to maintain and disclose beneficial ownership information of their shareholders. There is no evidence of international listing authorities imposing requirements on listed companies to maintain and disclose beneficial ownership information of their shareholders particularly where there exists a comprehensive legal framework containing disclosure requirements that oblige a shareholder (natural or legal person) to notify an issuer (whose shares are admitted to trading on a regulated market) of an acquisition or disposal of shares of that issuer when the proportion of voting rights of the issuer held by the shareholder reaches, exceeds or falls below certain thresholds. Similar disclosure requirements are provided for in section 122 of the Companies Act.
3) Considering the disclosure requirements already contained in the Companies Act, it is respectfully submitted that an exemption for a reasonable period be provided for listed companies, alternatively that an alternate mechanism to the registration on an ultimate beneficial ownership register be applied. In this regard, it is suggested that a register containing prescribed information either be held at the exchange where the entity is listed or alternatively be published by the respective listed entity on its website.

Accessibility of the ultimate beneficial owner register to accountable institutions

1) The FATF guidance on transparency and beneficial ownership has established standards on transparency, to deter and prevent the misuse of corporate vehicles. Globally, many jurisdictions have begun creating specific beneficial ownership registries, whether for legal persons, for trusts, or for both. On 20 May 2015, the EU approved the Fourth Anti-Money Laundering Directive, which requires member states to ensure that the beneficial ownership of legal persons and some trusts (or similar entities) be known and registered with an authority. The 5th Anti money laundering directive expands further now requiring these registers to be accessible and available to the public.
2) Transparency is a powerful deterrent and identifying the beneficial owners of South Africa-incorporated companies and trusts in a publicly accessible “UBO Register” would not only secure everyday commercial transactions but would provide an extra layer of scrutiny over those doing business with the state through lucrative public contracts. In the South African context, a publicly accessible UBO Register would be an especially effective tool for combatting corruption and bribery, undeclared conflict of interests and even broad based Black Economic Empowerment fronting

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practices. It will lead to increased oversight and more accurate and authentic due diligence and risk evaluation by banks and other accountable institutions.

3) Whilst the proposed amendments throughout the different pieces of legislation speaks to the accessibility of beneficial ownership information to "prescribed persons" it is submitted that the list of prescribed persons must include all accountable institutions as defined under the FIC Act to ensure accessibility and availability of the required information to enable transparency of the clients of the accountable institution and to assist accountable institutions to fulfil their obligations under the FIC Act insofar as identifying and or verifying beneficial owner information. In this regard, please see BASA's comments under **line-item numbers 6, 9 and 33**.

Information sharing between accountable institutions

1) Banks are dependent on having information to identify and report financial crimes. It is therefore important to have a constructive exchange of information between accountable institutions, as this is key to having an effective financial crime framework and barriers to information sharing can negatively impact the effectiveness of AML/ CFT/ CPF efforts and inadvertently facilitate criminal operations.
2) Therefore, we propose that an enabling provision be included in the FIC Act to share information between accountable institutions, under a safe-harbour that offers protection from liability, where the underlying purpose of such sharing is in alignment with the purpose and objectives of the FIC Act. The draft provisions in the Bill do not offer sufficient clarity to confirm the ability of accountable institutions to share information on an ad hoc basis and not through a defined or designated conduit to enable faster and more effective financial crime fighting efforts. In this regard, please refer to BASA's comments under **line-item number 26**.
3) Kindly also refer to BASA's submission on the proposed amendments to the FIC Act relating to information sharing, a copy of which is annexed hereto as **Annexure B**.

Transitional provisions

1) BASA submits that it will be important that a reasonable transitional period be provided for when the provisions amending the various pieces of legislation comes into operation as it is pertinent that impacted state entities, accountable institutions and other entities are afforded reasonable opportunity for change management implementation (systems, people, operations and the like) to ensure that all parties have adequate time to implement the relevant amendments and to ensure compliance with the obligations imposed on them.
2) We kindly request that timeframes for the implementation of the various amendments be clearly communicated so that both the public and private sectors have a common understanding of what is required and the timeframes applicable. We will also appreciate it if the relevant Regulators provide guidance and engage in appropriate awareness sessions to ensure that all industries are aligned with the expectations of the Regulators.

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AMENDMENTS TO THE TRUST PROPERTY CONTROL ACT 57 OF 1988		
Clause 1 Amendment of section 1 of Act 57 of 1988		
1.	(b) by the insertion after the definition of ''banking institution'' of the following definition: '' 'beneficial owner'— (a) has the meaning defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); and (b) for the purposes of this Act, in respect of a trust, includes, but is not limited to, a natural person who directly or indirectly ultimately owns the relevant trust property or exercises effective control of the administration of the trust, including— (i) each founder of the trust; (ii) if a founder of the trust is a legal person or a person acting on behalf of a partnership, the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person or partnership; (iii) each trustee of the trust; (iv) if a trustee of the trust is a legal person or a person acting on behalf of a partnership, the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person or partnership; (v) each beneficiary referred to by name in the trust deed or other founding instrument in terms of which the trust is created; (vi) if a beneficiary referred to by name in the trust deed is a legal person or a person acting on behalf of a partnership or in pursuance of the provisions of a trust agreement, the natural person who directly or indirectly ultimately owns or exercises effective control of that legal person, partnership or trust; and (vii) a person who, through the ability to control the votes of the trustees or to appoint the trustees, or to appoint or change the beneficiaries of the trust, exercises effective control of the trust.''.	
	1) Please **refer the General Comments and Annexure A**, which sets out BASA's proposed definition relating to "beneficial owner" of a trust. 2) In the alternative, should the legislature not be amenable to accepting BASA's proposed definition of beneficial owner per Annexure A: a) The term "natural person" is used which denotes a single natural person whereas FATF defines ultimate beneficial owner	1) BASA proposes that the proposed definition of "beneficial owner" as reflected in **Annexure A** be adopted. 2) Alternatively, if the definition is not adopted, BASA proposes that: a) Wherever the term "natural person" appears, same be amended to state "natural persons**(s)**" to make it clear that it can be more than one natural person.

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	as "the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted." This may be commonly misinterpreted that a beneficial owner is a single natural person and cannot be more than one natural person. It is therefore suggested that the term "natural person" be amended to state "natural persons(s)" to make it clear that the beneficial owner can be more than one natural person. b) The words in section 21B(4)(iii) of the FIC Act, "*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*" are not replicated in the proposed amendments to the Trust Property Control Act. It is proposed for consistency that the wording be included into the definition of beneficial ownership in the Trust Property Control Act. 3) Relating to the proposed sub-section (b)(vii), the following wording is proposed to be inserted *"a person who, through the ability to control the votes of the trustees or to appoint the trustees, or to appoint or change the beneficiaries of the trust, exercises effective control of the trust."* BASA would appreciate understanding the rationale why the amendments relating to sub-section (b)(vii) have only been included relating to the amendments to the Trust Property Control Act and not the FIC Act amendments for trust beneficial owners in section 21B.	b) The wording "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" as stipulated in section 21B(4)(iii) of the FIC Act be included into the definition of beneficial ownership in the Trust Property Control Act. c) The wording in sub-section (b)(vii) be replicated in proposed amendments to section 21B of the FIC Act.
Clause 2 Amendment of section 6 of Act 57 of 1988 **Section 6 of the Trust Property Control Act, 1988, is hereby amended by the insertion after subsection (1) of the following subsection:**		

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2.	''(1A) A person is disqualified from being authorized as a trustee if the person— (a) is an unrehabilitated insolvent; (b) 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); (c) is prohibited in terms of any law to be a director of a company; (d) has been removed from an office of trust, on the grounds of misconduct involving dishonesty; (e) 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— (i) involving fraud, misrepresentation or dishonesty, money laundering, terrorist financing or proliferation financing activities as defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); (ii) 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 (iii) 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), 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); or (f) is an unemancipated minor, or is under a similar legal disability.	
	1) Section 1A(e)- The insertion of the paragraph "...*fined more than the prescribed amount*" implies that the body imposing the fine is acting beyond the scope of the law as the body must be guided by and act within the prescripts of the law. 2) There is a duplication/overlap between (e) and (e)(i) – "*fraud*" is repeated and is similar to misrepresentation or dishonesty (unless this relates to a specifically prescribed offence); and "fraud, misrepresentation or dishonesty" etc are not defined in section 1(1) of the FIC Act – there should be a separation between the offences listed in (e)(i).	1) BASA proposes that section 1A(e) be amended as follows: "(e)"has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined ~~more than~~ the prescribed amount **in accordance with the applicable legislation,** for theft, fraud, forgery, perjury or an offence— (ii) involving ~~fraud, misrepresentation or dishonesty,~~ money laundering, terrorist financing or proliferation financing activities as defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);"

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3.	(1D) A court may exempt a person from the application of any provision of subsection (1A) (a), (c), (d) or (e).	
1)	BASA understands that that the grounds for exemption will be dealt with in the regulations and would appreciate confirmation of this understanding.	
	Clause 3 Amendment of section 10 of Act 57 of 1988	
4.	3. Section 10 of the Trust Property Control Act, 1988, is hereby amended by the addition of the following subsection, the existing provision becoming subsection (1): ''(2) A trustee must disclose their position as trustee to any accountable institution with which the trustee engages in that capacity, and must make it known to the accountable institution that the relevant transaction or business relationship relates to trust property.''.	
1)	It is proposed that the trustee also discloses the beneficial ownership details and provide that trustees provide an organisation structure as per prescribed regulations.	1) It is proposed that section 10(2) be reworded as follows: ''A trustee must disclose their position as trustee, **together with any beneficial ownership details of the trust,** to any accountable institution with which the trustee engages in that capacity and must make it known to the accountable institution that the relevant transaction or business relationship relates to trust property.''
	Clause 5 Insertion of section 11A in Act 57 of 1988	
5.	5. The following section is hereby inserted after section 11 of the Trust Property Control Act, 1988: ''**Beneficial ownership** **11A.** (1) A trustee must— (a) establish and record the beneficial ownership of the trust; (b) keep a record of the prescribed information relating to the beneficial owners of the trust; (c) lodge a register of the prescribed information on the beneficial 45 owners of the trust with the Master's Office; and (d) ensure that the prescribed information referred to in paragraphs (a) to (c) is kept up to date.	
1)	Please **refer the General Comments and Annexure A**, which sets out BASA's proposed definition relating to "beneficial owner" of a trust. BASA has in the annexure proposed amendments to section 11A for consideration, which in summary provides for obligations on each person who is not a natural person who are founders/	1) BASA proposes that its amendments to section 11A as reflected in **Annexure A** be adopted. 2) Alternatively, if the proposals are not adopted, BASA proposes that section 11A(1)(d) be amended as follows:

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	trustees/ named beneficiaries of a trust to disclose to the trustee the identity of each such person's beneficial ownership and for the Master to issue a prescribed Notice to the beneficial owner/s of trusts to take action specified in the Notice if the beneficial owner or deemed beneficial owner fails to provide the relevant information to the trust. 2) In the alternative, should the legislature not be amenable to accepting BASA's proposed amendments to section 11A as set out in **Annexure A**, in accordance with FATF Recommendations 24 and 25, which require countries to ensure that competent authorities have access to adequate, accurate, and timely information on the beneficial ownership and control of legal persons (Recommendation 24) and express trusts (Recommendation 25), BASA proposes that section 11A(1)(d) be amended to include the words "adequate" and "accurate". 3) As legislation is generally not retrospective nature in nature, clarity is requested in respect of how this requirement will be applied to trusts established prior to the promulgation of this amendment?	"ensure that the prescribed information referred to in paragraphs (a) to (c) is **adequate, accurate and** ~~kept~~ up to date."
6.	(3) 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.	
	1) Kindly **refer to the General Comments and Annexure A**. 2) Should the legislature not be amenable to accepting BASA's proposed amendments to section 11A as set out in **Annexure A,** BASA proposes that amendments be made to the draft section to ensure accessibility of the registers to accountable institutions as	1) BASA proposes that its amendments to section 11A as reflected in **Annexure A** be adopted. 2) Alternatively, if the proposals are not adopted, BASA proposes that that section 11A(3) be amended as follows:

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	defined under the FIC Act as the information will assist accountable institutions in complying with their FIC Act obligations.	"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 **accountable institutions and** any **other** person as prescribed." 3) Alternatively, it is proposed that accountable institutions be included as prescribed persons in the Regulations.
AMENDMENTS TO THE NONPROFIT ORGANISATIONS ACT 71 OF 1997		
Clause 8 Amendment of section 2 of Act 71 of 1997		
7.	8. Section 2 of the Nonprofit Organisations Act, 1997, is hereby amended by the substitution for paragraphs *(b)* and *(c)* of the following paragraphs: ''*(b)* establishing an administrative and regulatory framework within which nonprofit organisations **[can]** must conduct their affairs; *(c)* **[encouraging]** requiring nonprofit organisations to maintain adequate standards of governance, transparency and accountability and to improve those standards.''.	
	1) Though not specific to clause 8, there is no definition in the NPO Act for a definition that resembles "UBO" principles. We recommend that a definition be incorporated.	1) It is suggested that the following definition of who are considered "beneficial owners" of a NPO: "natural person(s) that act in the capacity of office-bearers, persons with control or persons who ultimately manages the nonprofit organisation."
Clause 11 Amendment of section 18 of Act 71 of 1997		
8.	11. Section 18 of the Nonprofit Organisations Act, 1997, is hereby amended— a. by the insertion in subsection (1) after paragraph *(b)* of the followingparagraph: ''*(b*A*)* prescribed information about the office-bearers, control structure, governance, management, administration and operations of nonprofit organisations;''; and b. by the insertion after subsection (1) of the following subsection:	

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	''(1A) The prescribed requirements referred to in paragraph *(bA)* of subsection (1) must be prescribed after having consulted 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).''.	
	1) There is no obligation to keep *"prescribed information about the office-bearers, control structure, governance, management, administration, and operations of non-profit organisations"* up to date as provided for in Trust Property Control Act. It is proposed that such an obligation to regularly update the prescribed information be included. 2) As per BASA's suggestion in **line-item number 5** above, it is suggested that the words "adequate" and "accurate" be incorporated into the provisions of section 18(bA).	1) It is proposed that section 18(bA) be amended as follows: "prescribed information about the office-bearers, control structure, governance, management, administration and operations of nonprofit organisations **and ensure that the prescribed information is adequate, accurate and up to date**."
Clause 12 Amendment of section 24 of Act 71 of 1997, as amended by section 3 of Act 17 of 2000		
9.	12. Section 24 of the Nonprofit Organisations Act, 1997, is hereby amended— (a) by the deletion in paragraph (b) of subsection (1) of ''and''; (b) by the substitution in paragraph (c) of subsection (1) for the full stop of ''; and''; (c) by the addition to subsection (1) of the following paragraph: ''(d) prescribed information about the office-bearers, control structure, governance, management, administration and operations of non-profit organisations;''; and (d) by the addition of the following subsections: ''(4) A nonprofit organisation must make the information referred to in section 18(1)(bA), and the director must provide access to the information in the register referred to in subsection (1)(d), available to any person as prescribed. (5) The prescribed requirements referred to in subsections (1)(d) and (4) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).''.	
	1) Kindly **refer to the General Comments** above.	1) It is proposed that section 24(4) be amended as follows:

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	2) It is recommended that the information be made available to all accountable institutions for purposes of compliance with the FIC Act.	''A nonprofit organisation must make the information referred to in section 18(1)(bA), and the director must provide access to the information in the register referred to in subsection (1)(d), available to **accountable institutions as defined in the Financial Intelligence Centre Act 38 of 2001 and** any **other** person as prescribed." 3) Alternatively, it is proposed that accountable institutions be included as prescribed persons in the Regulations.
	Clause 13 Insertion of Chapter 3A in Act 71 of 1997	
10.	The Nonprofit Organisations Act, 1977, is hereby amended by the insertion after Chapter 3 of the following Chapter: "**CHAPTER 3A** **OFFICE BEARERS OF NONPROFIT ORGANISATIONS** **Disqualification and removal of office-bearers** 25A. (1) A person is disqualified from being an office-bearer of a nonprofit organisation if the person— (a) is an unrehabilitated insolvent; (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 Act, 2008 (Act No. 72 of 2008), or section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984); (c) is prohibited in terms of any law to be a director of a company; (d) has been removed from an office of trust, on the grounds of misconduct involving dishonesty; (e) 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— (i) involving fraud, misrepresentation or dishonesty, money laundering, terrorist financing or proliferation financing activities as defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); (ii) 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 (iii) under this Act, the Companies Act, 2008, the Insolvency Act, 1936 (Act No. 24 of 1936), the Close Corporations Act, 1984, the	

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	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), 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); or (f) is an unemancipated minor, or is under a similar legal disability.	
	1) Section 25A(1)(e)- The insertion of the paragraph "...fined more than the prescribed amount" implies that the body imposing the fine is acting beyond the scope of the law as the body must be guided by and act within the prescripts of the law.	1) The following wording for section 25A(1)(e) is proposed: "has been convicted, in the Republic or elsewhere, and imprisoned without the option of a fine, or fined ~~more than the prescribed amount~~ **in accordance with the applicable legislation**, for theft, fraud, forgery, perjury or an offence—"
11.	(5) A court may exempt a person from the application of any provision of subsection (1)(a), (c) or (e).	
	1) It is understood that the grounds for exemption will be dealt with in the regulations. BASA would appreciate confirmation of this understanding.	
12.	(6) The Registrar of the Court must, upon– (a) the issue of a sequestration order; (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 (c) a conviction for an offence referred to in subsection (1)(e), send a copy of the relevant order or particulars of the conviction, as the case may be, to the Directorate.	
	1) It is understood that the further details will be dealt with in the regulations. BASA would appreciate confirmation of this understanding.	
	Clause 14 Amendment of section 29 of Act 71 of 1997	
13.	14. Section 29 of the Nonprofit Organisations Act, 1997, is hereby amended in subsection (2)— a. by the deletion in paragraph *(b)* of ''or''; b. by the substitution in paragraph *(c)* for the full stop of ''; or''; and	

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	c. by the insertion of the following paragraph after paragraph *(c)*: ''*(d)* to fail to perform any duty imposed or requirement in terms of section 12 or 18(1)*(b*A*);*''	
	1) The blanket criminalisation of obligations often has unintended consequences. It is suggested that consideration in future be given to whether the contraventions can be penalised via administrative sanctions as dissuasive sanctions would assist in enforcing compliance with the provisions of section 29. 2) It is not clear from the proposed clause, read with section 30 of the NPO Act, what the possible fine or imprisonment would be and whether these would be dissuasive enough to encourage compliance, especially with the new reporting requirements around beneficial ownership (office bearers, etc). Clarity is therefore requested as to the potential fines and/or imprisonment.	
AMENDMENTS TO THE FIC ACT 38 OF 2001		
General: It may be prudent to consider defining a public private partnership in section 1 of the FIC Act as this is a new concept to the FIC Act. **Consequential amendments to the FIC Act due to the inclusion of proliferation financing** 1) BASA proposes that the legislature consider amending the FIC Act and the Regulations thereto to provide for a duty to report known or suspected proliferation financing in alignment with the amendments proposed by this Bill. In this regard, it is proposed that: a) section 29 of the FIC Act be amended to create the reporting obligation; and b) the Regulations to the FIC Act be updated to detail the reporting requirements for reporting proliferation financing	1) BASA suggests the following definition, which is a combination of National Treasury's definition included in its 2017 budget review (albeit in the context of project-related PPPs), the Royal United Services Institute (RUSI) and a definition from HM Treasury (albeit dated 2010 and in the context of construction). "A public private partnership is defined as partnership that brings together both public-sector and private-sector institutions, for mutual benefit where the private party(ies) performs a function that is usually provided by the public-sector."	

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	transactions and activities, such as already exist for suspicious and unusual transaction reports ("STRs"), suspicious activity reports ("SARs"), terrorist financing transaction reports ("TFTRs") and terrorist financing activity reports ("TFARs").	
Clause 15 Amendment of section 1 of Act 38 of 2001, as amended by section 27 of Act 33 of 2004, section 1 of Act 11 of 2008, section 53 of Act 11 of 2013 and section 1 of Act 1 of 2017		
14.	(d) by the substitution for the definition of ''beneficial owner'' of the following definition: "**beneficial owner**"- (a) means a natural person who directly or indirectly — (i) ultimately owns or exercises effective control of— (aa) a client of an accountable institution; or (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 (ii) exercises control of a client of an accountable institution on whose behalf a transaction is being conducted; and (b) includes— (i) in respect of legal persons, each natural person contemplated in section 21B(2)(a); (ii) in respect of a partnership, each natural 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);'';	
1) Please refer the comments in **line-item numbers 17 and 18**.		
15.	(i) by the insertion after the definition of ''proceeds of unlawful activities'' of the following definitions: '' '**proliferation financing'** or '**proliferation financing activity'** means an activity which has or is likely to have the effect of providing property, a financial or other service or economic support to a non-State actor that may be used to finance the manufacture, acquisition, possessing, development, transport, transfer or use of nuclear, chemical or biological weapons and their means of delivery, and includes any activity which constitutes an offence in terms of section 49A; **'prominent influential person'** means a person referred to in Schedule 53C;''.	

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	1) The draft definition of proliferation financing currently partly aligns to that provided by FATF as is, it does not include export, transhipment, brokering, stockpiling. Additionally, the FATF definition acknowledges that the provision of property, financial, service or economic support can occur in whole or in part, but this has not been included. It is suggested that the FIC Act definition aligns with the FATF definition.	1) It is proposed that the wording be aligned to the FATF definition: "(i) '**proliferation financing'** or '**proliferation financing activity**' means an activity which has or is likely to have the effect of providing property, a financial or other service or economic support**, in whole or in part** to a non-State actor, that may be used to finance the manufacture, acquisition, possessing, development, **export, transhipment, brokering,** transport, transfer**, stockpiling** or use of nuclear, chemical or biological weapons and their means of delivery, and includes any activity which constitutes an offence in terms of section 49A;".
	Clause 18 Amendment of section 5 of Act 38 of 2001	
16.	18. Section 5 of the Financial Intelligence Centre Act, 2001, is hereby amended— *(a)* by the insertion in subsection (1) after paragraph *(h)* of the following paragraph: ''*(h*A*)* enter into public private partnerships for the purposes of achieving any of the objectives of the Centre in section 3;''; and *(b)* by the insertion after subsection (1) of the following subsection: (2) The Centre may, for the purposes of this Act and to perform its functions effectively— *(a)* request information from any organ of state; *(b)* request access to any database held by any organ of state; or *(c)* have access to information contained in a register that is kept by an organ of state in the execution of a statutory function of that organ of state.''.	
	1) Reference is made throughout the section to "organ of state" whereas the definition section has been amended to remove reference to "organ of state" and substitute same with "a national department listed in Schedule 1 to the Public Service Act, 1994 (Act No. 103 of 1994), having a function by law to investigate unlawful activity within [the organ of state] that national department". It is	1) BASA proposes that "organ of state' be amended to "a national department listed in Schedule 1 to the Public Service Act, 1994 (Act No. 103 of 1994)".

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	suggested that a similar amendment should be included in section 5 to create consistency.	
	Clause 19 Amendment of section 21B of Act 38 of 2001, as inserted by section 10 of Act 1 of 2017	
17.	19. Section 21B of the Financial Intelligence Centre Act, 2001, is hereby amended— *(a)* by the substitution in paragraph *(a)* of subsection (2) for subparagraph (ii) ofthe following subparagraph: ''(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, determiningthe identity of each natural person who exercises control of that legal person through other means, including through his or her ownership or control of other legal persons, partnerships or trusts; or''; and *(b)* by the substitution for subsections (3) and (4) of the following subsections: ''(3) If a **[natural]** person, in entering into a single transaction or establishing a business relationship as contemplated in section 21, is acting on behalf of a partnership **[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— *(a)* establish the identifying name of the partnership, if applicable; *(b)* establish the identity of— (i) every partner, including every member of a partnership en commandite, an anonymous partnership or any similar partnership; (ii) if a partner in the partnership is a legal person or a natural person acting on behalf of a partnership or in pursuance of the provisions of a trust agreement, the beneficial owner ofthat legal person, partnership or trust; **[*(c)*]** (iii) **[establish the identity of]** the natural person who exercises executive control over the partnership; and **[*(d)*]** (iv) **[establish the identity of]** each natural person who purportsto be authorised to enter into a single transaction or establisha business relationship with the accountable institution on behalf of the partnership; and **[*(e)*]** *(c)* take reasonable steps to verify— (i) the particulars obtained in paragraph *(a)*; and **[*(f)*]**(ii) **[take reasonable steps to verify]** the identities of the natural persons referred to in **[paragraphs]** paragraph *(b)* **[to *(d)*]** so that the accountable institution is satisfied that it knows the identities of the natural persons concerned.	
	1) Section 21B(2)(a)(ii)- The wording is too broad and not specific to the legal person prospective client/client and we recommend that the sub-section be reworded to create clarity.	1) The following rewording to section 21B is proposed: 2) ''(2)(a)(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

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	2) Section 21B(2)(b)(ii)- Per our comments above, we suggest that the wording be amended to indicate "beneficial owner(s)" to create clarity that there can be more than one beneficial owner.	person, determining the identity of each natural person who exercises control of that legal person through other means, including through his or her ownership or control of other legal persons, partnerships or trusts **associated to that legal person** or''; and". 3) It is suggested that section 2(b)(ii) be reworded as follows: "if a partner in the partnership is a legal person, or a natural person acting on behalf of a partnership or in pursuance of the provisions of a trust agreement, the beneficial owner**(s)** of that legal person, partnership or trust;
18.		(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— *(a)* establish the identifying name and number of the trust, if applicable; *(b)* establish the address of the Master of the High Court where the trustis registered, if applicable; *(c)* in respect of the founders of the trust, establish the identity of— (i) **[the]** each founder; and (ii) if a 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; *(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 a 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 a person is appointed as a trustee of the trust or not; *(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; **[or]** and

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	(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; *(f)* take reasonable steps to verify the particulars obtained in para- graphs (a), (b) and (e)(ii); and *(g)* take reasonable steps to verify the identities of the natural persons referred to in paragraphs (c), (d) **[and],** (e)(i) and (iA) so that the 55 accountable institution is satisfied that it knows the identities of the natural persons concerned.''.	
	1) Section 21B(c)(ii)- Whilst BASA understands the intention of the amendment, it is suggested that the wording be amended to indicate "beneficial owner(s)" to create clarity that there can be more than one beneficial owner. Furthermore, the word "trust" has been omitted from the end of the sentence and should be included for completeness. 2) Relating to section 21B(d)(iA): a) Whilst BASA understands the intention of the amendment, it is suggested that the wording be amended to indicate "beneficial owner(s)" to create clarity that there can be more than one beneficial owner. b) The sub-section does not provide for a "trust" as "trustee" – different from "founder". For completeness purposes, it is suggested that the wording align with the provision in section 21B(e)(iA).	1) BASA suggests the following amendments: a) Section 21B(c)(ii) be amended as follows for clarity and completeness: "if a 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**(s)** of that legal person ~~or~~ partnership **or trust**;" b) Section 21B(d((i)iA) be amended as follows: "if a 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 **or trust**".
	Clause 20 Amendment of section 21C of Act 38 of 2001, as inserted by section 10 of Act 1 of 2017	
19.	20. Section 21C of the Financial Intelligence Centre Act, 2001, is hereby amended by the addition of the following subsection, the existing provision becoming subsection (1): ''(2) If an accountable institution suspects that a transaction or activity is suspicious or unusual as contemplated in section 29, and the institution	

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	reasonably believes that performing the customer due diligence requirements in terms of this section will disclose to the client that a report will be made in terms of section 29, it may discontinue the customer due diligence process and consider making a report under section 29.''.	
	1) This comment must be read with the below comments in **line-item 20** below. 2) The proposed section 21C(2) enables the accountable institution to abandon its on-going due diligence efforts if such due diligence will "tip off" the client if the due diligence was initiated off the back of a section 29 report. Whilst the proposed section 21D(b) as per clause 21 requires that an accountable institution repeat its customer due diligence requirements when it has made a section 29 report to the FIC. This provision does not consider that accountable institutions may have no doubt over the veracity of its information when it files a section 29 report. 3) An institution could report a section 29 report based on unusual transaction/activity yet the information it has relating to its customer is relevant. It is therefore proposed that the amendment be deleted. 4) There is therefore an incongruency between the two sections– in one instance you may forfeit the refresh, but in another similar situation the refresh is enforced.	1) BASA proposes that the proposed section 21C(c)(2) be deleted in its entirety.
Clause 21 Amendment of section 21D of Act 38 of 2001, as inserted by section 10 of Act 1 of 2017		
20.	21. The following section is hereby substituted for section 21D of the Financial Intelligence Centre Act, 2001: ''**Doubts about veracity of previously obtained information <u>and when reporting suspicious and unusual transactions</u>** **21D.** When an accountable institution, subsequent to entering into a single transaction or establishing a business relationship**[,]** <u>—</u> (a) doubts the veracity or adequacy of previously obtained information which the institution is required to verify as contemplated in sections 21 and 21B; <u>or</u>	

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	(b) makes a suspicious or unusual transaction report in terms of section 29, the institution must repeat the steps contemplated in sections 21 and 21B in accordance with its Risk Management and Compliance Programme and to the extent that is necessary to confirm the information **[in question]** previously obtained.''.	
	1) Please read this in conjunction with the comments in **line-item 19** above. 2) Noting the insertion of the word 'or' and the content of 21D(b), the resultant effect is that each time an accountable institution submits a suspicious or unusual transaction report in terms of section 29, the steps contemplated in sections 21 and 21B, are to be performed. In the absence of the provision contemplating a STR/ SAR being filed based on adequacy/ veracity of the information, the obligation is too onerous and unnecessary. 3) Furthermore, there may be practical implications when legislating this requirement as accountable institutions may have no doubt about the veracity of its information when filing a section 29 report, which report would have been filed with the information at the accountable institution's disposal. The need to re- evaluate or confirm the correctness of the information already submitted offers no practical value and may also result in tipping off as a result of gathering information from customer.	1) BASA proposes that the provision, prior to this suggested amendment, should be retained. The obligation on the accountable institution to ensure the veracity of the information remains as contemplated under the current section 21D.
Clause 24 Amendment of section 21H of Act 38 of 2001, as inserted by section 10 of Act 1 of 2017		
21.	24. Section 21H of the Financial Intelligence Centre Act, 2001, is hereby amended bythe substitution for subsection (1) of the following subsection: ''(1) Sections 21F and 21G apply to immediate family members and known close associates of **[a person in]** a foreign or domestic **[prominent position]** politically exposed person or a prominent influential person, as the case may be.''.	

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1)	BASA's concerns are not related to the proposed amendments to this section, but to what is not amended. Section 21H provides some explanation of who is an immediate family member, but it does not elaborate who are known close associates. We would welcome it if the legislature could in these amendments to the FIC Act provide greater clarity on known close associates to assist accountable institutions.	
Clause 25 Substitution of section 26A of Act 38 of 2001, as inserted by section 17 of Act 1 of 2017		
22.	25. The following section is hereby substituted for section 26A of the Financial Intelligence Centre Act, 2001: ''**Notification of persons and entities identified by Security Council of the United Nations** **26A.** (1) **[Upon the adoption of a**] 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, **[the Minister must announce the adoption of the resolution by notice in the Gazette and other appropriate means of publication]** has immediate effect for the purposes of this Act upon its adoption by the Security Council of the United Nations. (1A) A resolution contemplated in subsection (1) ceases to be in effect upon a decision of the Security Council of the United Nations to no longer apply that resolution. (2) This section does not apply to resolutions of the Security Council of the United Nations contemplated in section 25 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004). (3) **[Following a notice contemplated in subsection (1) the]** The Director must, [from time to time and] by appropriate means of publication, give notice of— (Aa) the adoption of a resolution by the Security Council of the United Nations contemplated in subsection (1); (a) persons and entities being identified from time to time by the Security Council of the United Nations pursuant to a resolution contemplated in subsection (1); **[and]** (b) a decision of the Security Council of the United Nations to no longer apply a resolution contemplated in subsection (1A) to previously identified persons or entities; and (c) a decision of the Security Council of the United Nations to no longer apply a resolution contemplated in subsection (1A).	

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	[(4) The Minister may revoke a notice contemplated in subsection (1) if the Minister is satisfied that the notice is no longer necessary to give effect to financial sanctions in terms of a resolution contemplated in subsection (1).]''.	
	1) In terms of the Protection of Constitutional Democracy against Terrorist and Related Activities Act 33 of 2004 Amendment Bill, section 25 will be repealed and is replaced by a reference to section 26 of the FIC Act. It is therefore proposed that the repeal be pre-empted in this Bill and that section 26A(2) be deleted. 2) Section 26A(3)- considering the proposed amendments to section 26A (1) and 26B(1), it is BASA's view that the notice referred to will become superfluous. We therefore suggest that section 26A(3) be deleted.	1) BASA proposes the deletion of sections 26A(2) and 26A(3) of the FIC Act.
	Clause 26 Amendment of section 26B of Act 38 of 2001, as inserted by section 17 of Act 1 of 2017	
23.	26. Section 26B of the Financial Intelligence Centre Act, 2001, is hereby amended— *(a)* by the substitution for the words following paragraph *(e)* of the following words: ''intending that the property, financial or other service or economic support, as the case may be, be used, or while the person knows or ought reasonably to have known or suspected that the property, service or support concerned will be used, directly or indirectly, in whole or in part,for the benefit of, or on behalf of, or at the direction of, or under the control of a person or an entity identified pursuant to a resolution of theSecurity Council of the United Nations contemplated in **[a notice referred to in]** section 26A(1).''; *(b)* by the substitution for subsection (2) of the following subsection: ''(2) No person may, directly or indirectly, in whole or in part, and byany means or method deal with, enter into or facilitate any transaction orperform any other act in connection with property which such person knows or ought reasonably to have known or suspected to have been acquired, collected, used, possessed, owned or provided for the benefit of, or on behalf of, or at the direction of, or under the control of a personor an entity—	

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	(a) identified pursuant to a resolution of the Security Council of the United Nations contemplated in **[a notice referred to in]** section 26A(1); or)(b) acting on behalf of or at the direction of a person or entity contemplated in paragraph (a).”; and (c) by the substitution in subsection (3) for paragraph *(a)* of the following paragraph: ‘‘*(a)* making it possible for a person or an entity identified pursuant to aresolution of the Security Council of the United Nations contemplated in **[a notice referred to in]** section 26A(1) to retain or control the property.’’.	
	1) BASA would appreciate it if guidance could be provided to accountable institutions to clarity on how the FIC expects practical compliance with the provision, so that they can understand what is required and can comply therewith.	
	Clause 29 Amendment of section 28A of Act 38 of 2001, as amended by section 20(c) of Act 1 of 2017	
24.	29. Section 28A of the Financial Intelligence Centre Act, 2001, is hereby amended by the substitution in subsection (1) for paragraph *(c)* of the following paragraph: ‘‘*(c)* a person or an entity identified pursuant to a resolution of the Security Councilof the United Nations contemplated in **[a notice referred to in]** section 26A(1).’’.	
	1) The concern is not with the amendment but with the rest of the section. Given the amendments to section 26A of the FIC Act and the proposed amendments to the Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004 (POCDATARA) repealing section 25 thereof, it is recommended that consideration be given in future to amending section 28A(3) of the FIC Act.	1) Should section 28A(3) be amended, the following wording is proposed: “An accountable institution must **upon adoption by the Security Council of the United Nations of a resolution as defined in section 26A(1)**~~–~~ ~~(a) publication of a proclamation by the President under section 25 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004; or~~ ~~(b) notice being given by the Director under section 26A(3),~~

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		scrutinise its information concerning clients with whom the accountable institution has business relationships in order to determine whether any such client is a person or entity **mentioned in the Resolution**.
Clause 30 Amendment of section 34 of Act 38 of 2001, as amended by section 27(1) of Act 33 of 2004, section 9 of Act 11 of 2008 and section 23 of Act 1 of 2017		
25.	30. Section 34 of the Financial Intelligence Centre Act, 2001, is hereby amended— (a) by the substitution in paragraph (a) of subsection (1) for subparagraph (ii) of the following subparagraph: ''(ii) property owned or controlled by or on behalf of, or at the direction of a person or entity identified pursuant to a resolution of the Security Council of the United Nations contemplated in **[a notice referred to in]** section 26A(1); or''; and (b) by the insertion after subsection (1) of the following subsection: ''(1A) The Centre may renew the period of the direction to an accountable institution not to proceed with a transaction referred to in subsection (1) for a further period not longer than 10 days, if exceptional circumstances exist that warrant a renewal.''.	
1) BASA proposes the rewording of section 34(1A) as the word "extend" is more appropriate in the circumstances.		1) It is proposed that section 34(1A) be reworded as follows: ''The Centre may ~~renew~~ **extend** the period of the direction to an accountable institution not to proceed with a transaction referred to in subsection (1) for a further period not longer than 10 days, if exceptional circumstances exist that warrant **such extension** ~~a renewal.~~''.
Clause 35 Amendment of section 41A of Act 38 of 2001, as inserted by section 26 of Act 1 of 10 2017		
26.	35. Section 41A of the Financial Intelligence Centre Act, 2001, is hereby amended bythe insertion after subsection (2) of the following subsection: ''(3) The Minister may prescribe requirements for the protection of personal information to facilitate the sharing of information between accountable institutions when acting on behalf of the Centre, and when the sharing is necessary to achieve the purposes of this Act, to ensure that adequate safeguards are in place as required by section 6(1)(c) of the Protection of Personal Information Act,	

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	2013.''.	
	1) Please **refer to the General Comments** above. 2) This proposed provision merely reiterates the position as articulated in section 6 of the POPI Act regarding the processing of personal information being excluded if the private body is acting as the agent and per the instruction of the public body. This would therefore require the FIC to instruct an accountable institution (a private body) as its agent to process specific personal information to be able to apply the exclusion from POPI Act and based on our understanding will not enable information sharing among accountable institutions to detect, prevent and report financial crime and money laundering activity. BASA will appreciate it if this understanding can be confirmed. 3) Considering the aforementioned, clarity is requested in respect of the following: a) In which instances will accountable institutions be "acting on behalf of the Centre" and what does it mean to act on behalf of the Centre? b) Will this only apply to information sharing within the SAMLIT structures or the Fusion centre? c) The words "and when the sharing is necessary". 2) Banks are very dependent on having information to identify and report financial crimes. It is therefore critical to have a constructive exchange of information, as this is key to having an effective financial crime framework and barriers to information sharing can	1) BASA proposes that the following wording section replace the proposed) section 41A(3): "Upon Notice provided to the Centre as prescribed, two or more financial institutions and any association of financial institutions may share information with one another regarding individuals, entities, organisations, and countries suspected of possible money laundering, terrorist or proliferation financing activities. A financial institution or association that transmits, receives, or shares such information for the purposes of identifying and reporting activities that may involve money laundering, terrorist or proliferation financing activities or shall not be liable to any person under any law or regulation of South Africa, any Constitution, law, or regulation of any State or political subdivision thereof, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure, or any other person identified in the disclosure, except where such transmission, receipt, or sharing violates this section or regulations promulgated pursuant to this section." 2) Alternately should the above not be deemed appropriate, BASA proposes that section 41A(3) be reworded as follows to allow the sharing of information between accountable institutions: "The Minister may prescribe requirements for the protection of personal information to facilitate the sharing of information between accountable institutions: a) when acting on behalf of the Centre, and;

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	negatively impact the effectiveness of AML/ CFT/ CPF efforts and inadvertently facilitate criminal operations. 3) BASA proposes that the legislature provide an enabling provision in the FIC Act similar to section 314(b) of the USA Patriot Act be enacted to section 314(b) of the USA PATRIOT Act providing provides financial institutions with the ability to share information with one another, under a safe harbor that offers protections from liability, to better identify and report activities that may involve money laundering, or terrorist activities. Participation in information sharing pursuant to section 314(b) is voluntary, and the US Treasury's Financial Crimes Enforcement Network strongly encourages financial institutions to participate.	b) when the sharing of information between accountable institutions is necessary to achieve the purposes of this Act, to ensure that adequate safeguards are in place as required by section 6(1)(c) of the Protection of Personal Information Act, 2013.''.
Clause 36 Amendment of section 42 of Act 38 of 2001, as inserted by section 27 of Act 1 of 2017		
27.	36. Section 42 of the Financial Intelligence Centre Act, 2001, is hereby amended— (a) by the substitution for subsection (1) of the following subsection: ''(1) An accountable institution must develop, document, maintain and implement a programme for anti-money laundering, **[and]** counter-terrorist financing and proliferation financing risk management and compliance.''; (b) by the substitution in paragraph (a) of subsection (2) for the words following subparagraph (v) of the following words: ''the risk that the provision by the accountable institution of new and existing products or services may involve or facilitate money laundering activities [**or**], the financing of terrorist and related activities or proliferation financing activities;''; (c) by the substitution in subsection (2) for paragraph (i) of the following paragraph: ''(i) provide for the manner in which and the process by which the institution will confirm information relating to a client when the institution has doubts about the veracity of previously obtained information and when reporting suspicious and unusual transactions in accordance with section 21D;''; (d) by the substitution in subsection (2) for paragraph (l) of the following paragraph:	

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	''(l) provide for the manner in which and the processes by which the accountable institution determines whether a prospective client or an existing client is a foreign **[prominent public official]** or a domestic politically exposed person or a prominent influential person;''; (e) by the substitution in subsection (2) for paragraph (m) of the following paragraph: ''(m) provide for the manner in which and the processes by which the accountable institution conducts enhanced due diligence **[is conducted]** for higher-risk single transactions and business relation- ships and when simplified customer due diligence might be permitted in the institution;''; (f) by the substitution in subsection (2) for paragraph (q) of the following paragraph: ''(q) provide for the manner in which— (i) the Risk Management and Compliance Programme is implemented in branches, subsidiaries or other operations of the institution in foreign countries so as to enable the institution to comply with its obligations under this Act; (ii) the institution will determine if the host country of a foreign branch, **[or]** subsidiary or other operation permits the implementation of measures required under this Act; **[and]** (iii) the institution will inform the Centre and supervisory body concerned if the host country contemplated in subparagraph (ii) does not permit the implementation of measures required under this Act; and (iv) taking into consideration the level of risk of the host country, 10 the institution will apply appropriate additional measures to manage the risks if the host country does not permit the implementation of measures required under this Act;''; and (g) by the insertion in subsection (2) of the following paragraph after paragraph (q): '(qA) provide for the manner in which and the processes by which group-wide programmes of an accountable institution for all its branches and majority-owned subsidiaries situated in the Republic is implemented so as to enable the institution to— (i) comply with its obligations under this Act; (ii) exchange information with its branches or subsidiaries relating to the customer due diligence requirements in terms of this Act; (iii) exchange information with its branches or subsidiaries relating to the analysis of transactions or activities which the institution suspects to be suspicious or unusual as contemplated in section 29; and (iv) have adequate safeguards to protect the confidentiality of information exchanged in accordance with this paragraph and this Act.''.	
1)	For the reasons set out in relation to clauses 21 and 22 (section 21D) above, BASA disagrees with the amendment to 42(1)(c) and suggests that the original wording of section 42(1)(c) be retained.	1) BASA proposes that the original wording of section 42(1)(c) be retained. 2) BASA proposes that section 42(2)(i) be retained.

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	2) Section 42(2)(i)- please see comments above regarding potential tipping off violations and the impracticality of proposed amendment. It is therefore suggested that the proposed amendments not be included, and the original wording of the sub-section be retained. 3) Section 42(2)(q)(iv)- The section does not contemplate the absence of risk and we suggest an amendment to reflect this. 4) Regarding section 42(2)(qA)- The section lacks clarity as to its purpose and does not contemplate instances where clients are shared across the group which are not in the Republic. If it only contemplates the Republic, then it is not group wide. 5) Section 42(2)(qA)- in respect of the term "*majority-owned subsidiaries*". Based on the definition of a subsidiary, which means "a company that is owned by 50% or more by another person", BASA is of the view that it is unnecessary to include the term "majority owned" and suggests the deletion thereof. The use of the term "subsidiary" is furthermore consistent with the terminology in the other sub-sections in section 42(2).	3) We propose that section 42(2)(q)(iv) should be amended as follows to cater for the absence of risk: "taking into consideration the level of risk of the host country, the institution will apply appropriate additional measures to manage the risks **(if any)** if the host country does not permit the implementation of measures required under this Act;'' 4) To create certainty and reflect the purpose of the amendment as per the memorandum of objects for the Bill, BASA suggests that section 42(2)(gA) be amended as follows: "provide for the manner in which and the processes by which an **accountable institution's** group-wide **anti money laundering, counter terrorist financing and proliferation financing and sanctions** programmes ~~of an accountable institution~~ for all its branches, and ~~majority-owned~~ subsidiaries or **other operations** ~~situated in the Republic~~ **are** ~~is~~ implemented so as to enable the institution to— (i) comply with its obligations under this Act; (ii) exchange information ~~with its branches or subsidiaries~~ relating to the customer due diligence requirements in terms of this Act; (iii) exchange information ~~with its branches or subsidiaries~~ relating to the analysis of transactions or activities which the institution suspects to be suspicious or unusual as contemplated in section 29; and".

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LINE-ITEM NO	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
	Clause 42 Amendment of section 64 of Act 38 of 2001	
28.	42. Section 64 of the Financial Intelligence Centre Act, 2001, is hereby amended bythe addition of the following subsection, the existing provision becoming subsection (1): "(2) An accountable institution, reporting institution or any other person that conducts, or causes to be conducted, two or more transactions with the purpose, in whole or in part, of avoiding giving rise to a reporting duty under this Act is non-compliant and is subject to an administrative sanction.''.	
	1) BASA proposes that section 64(2) be reworded to align with the current section 64.	1) It is proposed that section 64(2) be reworded as follows: "~~An accountable institution, reporting institution or~~ **[A]**ny ~~other~~ person ~~that~~ **[who]** conducts, or causes to be conducted, two or more transactions with the purpose, in whole or in part, of avoiding giving rise to a reporting duty under this Act is non-compliant and is subject to an administrative sanction.
	Clause 48 Amendment of Schedule 3A to Act 38 of 2001, as inserted by section 59 of Act 1 of 2017	
29.	48. Schedule 3A to the Financial Intelligence Centre Act, 2001, is hereby amended]— (a) by the substitution for the heading of the following heading: ''**DOMESTIC [PROMINENT INFLUENTIAL] POLITICALLY EXPOSED PERSON''**; and (b) by the substitution for the words preceding paragraph (a) of the following words: ''A domestic [**prominent influential**] politically exposed person is an individual who [**holds, including in an acting position for a period exceeding six months, or has held at any time in the preceding 12 months, in the Republic**]—''; (c) by the substitution in paragraph (a) for the words preceding subparagraph (i) of the following words: ''holds, including in an acting position for a period exceeding six months, or has held a prominent public function in the Republic, including that of—''; (d) by the substitution in paragraph (a) for subparagraph (xiv) of the following subparagraph: ''(xiv) an officer of the South African National Defence Force above the rank of major-general; or''; (e) by the deletion of paragraph (b); and (f) by the substitution for paragraph (c) of the following paragraph: ''(c) holds, including in an acting position for a period exceeding six months, or has held the position of head, or other executive directly	

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LINE-ITEM NO	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
	accountable to that head, of an international organisation **[based in the Republic**].''.	
	1) BASA notes that the introduction of the concept "once a PEP always a PEP" as a result of the proposed amendments and wishes to reconfirm that accountable institutions retain the ability to determine in accordance with their Risk Management and Compliance Programmes the identification and treatment of the parties as stipulated in section 21G of the FIC Act. 2) The confirmation of this obligation in terms of the FIC Act for an accountable institution to determine its own approach to dealing with these parties (save for risk categorisation upon which guidance has already been issued per the FIC Act (PCC 51 read with Guidance Note 7) is integral to ensure that accountable institutions will adjust their AML/CFT/CPF response to reflect the identification of risk presented by individual PEP customers, applying more scrutiny where appropriate and diverting required enhanced due diligence resources as warranted. 3) It is submitted that guidance reflecting the South African context and more particularly the wide-ranging nature of the definition of PEPs is warranted to ensure that those high or very high-risk PEPs retain their "once a PEP, always a PEP" status on a permanent (or at least indefinite) basis after they leave office, whilst others may be re-evaluated based on a holistic consideration of different factors which will be elaborated upon in individual accountable institution's RMCPs. 4) It is respectfully requested that further confirmation be published in guidance issued under the auspices of the FIC Act providing clarity on how accountable institutions should apply the definitions of a PEP taking into consideration the ambit of the definition of PEPs	1) BASA proposes that the content of item number (a)(xiii) be moved to Schedule 3B.

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LINE-ITEM NO	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
	where section 21H of the FIC Act provides that the measures for prominent persons also apply to their immediate family members and known close associates.	
	Clause 49 Amendment of Schedule 3B to Act 38 of 2001, as inserted by section 59 of Act 1 of 2017	
30.	49. Schedule 3B to the Financial Intelligence Centre Act, 2001, is hereby amended— (a)by the substitution for the heading of the following heading: ''**FOREIGN [PROMINENT PUBLIC OFFICIAL] POLITICALLY EXPOSED PERSON''**; and (b) by the substitution for the words preceding paragraph (a) of the following words: ''A **foreign [prominent public official]** politically exposed person is an individual who holds, or has held **[at any time in the preceding 12 months]**, in any foreign country a prominent public function including that of a—''.	
	1) Please refer to the comments in **line-item number 29** above. 2) BASA notes that the introduction of the concept "once a PEP always a PEP" because of the proposed amendments and wishes to reconfirm that accountable institutions retain the ability to determine in accordance with its Risk Management and Compliance Programme the identification of these parties as stipulated in section 21F of the FIC Act. 3) The confirmation of the obligation in section 21F on an accountable institution to "determine in accordance with its RMCP", the approach to these parties (save for risk categorisation upon which guidance has already been issued per the FIC Act (PCC 51 read with Guidance Note 7) is integral to ensure that accountable institutions will adjust their AML/CFT/CPF response to reflect the identification of risk presented by individual PEP customers, applying more scrutiny where more appropriate and diverting required enhanced due diligence resources as warranted.	

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LINE-ITEM NO	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
	Clause 51 Substitution of Index of Act 38 of 2001	
31.	1) Relating to the heading of Chapter 3, BASA suggests that for completeness, "proliferation financing activities" be included.	1) It is proposed that Chapter 3 should be amended to read: "CHAPTER 3 CONTROL MEASURES FOR MONEY LAUNDERING, FINANCING OF TERRORIST AND RELATED ACTIVITIES **[, PROLIFERATION FINANCING ACTIVITIES]** AND FINANCIAL SANCTIONS CONTROL MEASURES"
	AMENDMENTS TO THE COMPANIES ACT 71 OF 2008	
	Clause 52 Amendment of section 1 of Act 71 of 2008, as amended by section 1(1) of Act 3 of 2011 and section 111 of Act 19 of 2012	
32.	52. Section 1 of the Companies Act, 2008, is hereby amended by the insertion after the definition of ''beneficial interest'' of the following definition:'''**beneficial owner'**— (a) has the meaning defined in section 1(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); and (b) for the purposes of this Act, in respect of a company, includes, but is not limited to, a natural person who, directly or indirectly, ultimately owns or exercises control of a company, including through— (i) ownership of the securities of the company; (ii) the exercise or control of the exercise of the voting rights associated with securities of that company; (iii) the exercise or control of the exercise of the right to appoint or remove members of the board of directors; (iv) ownership, or the exercise of control of— (aa) a holding company of that company; (bb) a juristic person other than a holding company of that company; (cc) a body of persons corporate or unincorporate; (dd) a partnership; or (ee) any other category or type of entity that may be specified in regulations for this purpose, that owns or is able to exercise control of, as the case may be, that company, including through a chain or network of ownership; or (v) the ability to otherwise materially influence the decision-making or policy of the company;''.	

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LINE-ITEM NO	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
	1) Please **refer the General Comments and Annexure A**, which sets out BASA's proposed definition relating to "beneficial owner" of a company. 2) In the alternative, should the legislature not be amenable to accepting BASA's proposed definition of beneficial owner per Annexure A: a) The term "natural person" is used which denotes a single natural person whereas FATF defines ultimate beneficial owner as "the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted." This may be commonly misinterpreted that a beneficial owner is a single natural person and cannot be more than one natural person. It is therefore suggested that the term "natural person" be amended to state "natural persons(s)" to make it clear that the beneficial owner can be more than one natural person.	1) BASA proposes that the proposed definition of "beneficial owner" as reflected in **Annexure A** be adopted. 2) Alternatively, BASA proposes that wherever the term "natural person" appears, same be amended to state "natural persons**(s)**" to make it clear that it can be more than one natural person.
Clause 53 Amendment of section 33 of Act 71 of 2008, as amended by section 23 of Act 3 of 2011		
33.	53. Section 33 of the Companies Act, 2008, is hereby amended— (a) by the deletion in paragraph (a) of subsection (1) of ''and''; (b) by the insertion after paragraph (a) of subsection (1) of the following paragraphs: ''(aA)a copy of the company's securities register as required in terms of section 50; (aB) a copy of the register of the disclosure of beneficial interest as required in terms of section 56; and''; and (c) by the insertion after subsection (1) of the following subsection: ''(1A) (a) The Commission must make the annual return contemplated in subsection (1) available electronically to any person as prescribed.	

LINE-ITEM NO	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
	(b) The prescribed requirements referred to in paragraph (a) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).''.	
	1) Considering the comments above relating to the exemption of listed entities, BASA suggests that section 33(a) be amended to reflect the proposed exemption. 2) The proposed amendments to the Companies Act provide for the filing of annual returns as well as a company's security register and a copy of the register of beneficial interests. Section 33(1A) should similarly provide for the availability of the annual return, securities register and register of beneficial interest and not be curtailed to the availability of only the annual return. Alternately, the availability of the securities register is paramount as it will contain the prescribed information regarding beneficial owners as contemplated under section 50 (3A). 3) For the reasons set out above relating to the availability and accessibility of information, BASA proposes that amendments be made to the draft section to ensure accessibility of the registers to include all accountable institutions as defined under the FIC Act.	1) BASA proposes the insertion of a new (a) above by the insertion of the following at the beginning of subsection (1): **"Unless exempted in the Regulations from any of the requirements below, every company must file … ",** 2) Should BASA's proposal be accepted, sections (a), b) and (c) will be required to be renumbered (b), (c) and (d) respectively 3) It is proposed that section 33(1A) (a) be amended to read: 4) "The Commission must make ~~a~~ copy**ies** of the company's securities register as required in terms of section 50, register of the disclosure of beneficial interest as required in terms of section 56A, **and** annual return contemplated in subsection (1) available electronically to **accountable institutions as defined in the FIC Act and** any **other** person as prescribed." 5) Alternatively, it is proposed that accountable institutions be included as prescribed persons in the Regulations.
	Clause 54 Amendment of section 50 of Act 71 of 2008, as amended by section 34 of Act 3 of 2011	
34.	54. Section 50 of the Companies Act, 2008, is hereby amended by the insertion after subsection (3) of the following subsection: ''(3A) (a) A company must record in its securities register prescribed information regarding the natural persons who are the beneficial owners of the company within the prescribed period after any changes in beneficial ownership have occurred.	

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	(b) The prescribed requirements referred to in paragraph (a) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).''.	
	1) Please refer **Annexure A** hereto, wherein BASA proposed amendments to the definition of "beneficial owner" and suggested that this clause be deleted and incorporated into the proposed section 56A. 2) Should the legislature not be amenable to accepting BASA's proposal relating to the deletion of this section and its incorporation into section 56A, the following is noted: a) In view of this proposed amendment, for completeness, it is proposed that the heading of section 50 be amended to include "beneficial ownership". b) The securities register under section 50 speaks to the "names and addresses of the persons to whom the securities were issued". The ultimate beneficial ownership definition being inserted via clause 52 from (b)(i) to (b)(iv) speaks to ownership derived through shareholding, which may not be the "*natural person"* that owns the security. Practically, for listed companies in particular, this may be difficult to include in the securities register due to the speed at which transactions happen shareholding changes daily. In BASA's view, section (3A)(a) will be impractical, if not impossible, to implement on a continuous basis). Based on this and the reasons relating to the exclusion of listed entities, it is therefore suggested that section 50(3A)(a) be amended as reflected in the next column. c) In an "or" statement under "v", refers to *control* of a company that is not through shareholding. It is very possible that an	1) BASA proposes that the heading of section 50 be amended as follows: "Securities **and beneficial ownership register** and securities numbering." 2) BASA proposes that section 50(3A)(a) be amended to read as follows: "**Unless exempted in the Regulations from complying with this requirement,** a company, must record in its securities register prescribed information regarding the natural persons who are the beneficial owners of the company within the prescribed period within the prescribed period after any changes in beneficial ownership have occurred."

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LINE-ITEM NO	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
	individual that controls a company is not a shareholder, and their inclusion in the section 50 securities register may be misrepresenting the shareholding of the company.	
Clause 55 Amendment of section 56 of Act 71 of 2008, as amended by section 36 of Act 3 of 2011		
35.	55. Section 56 of the Companies Act, 2008, is hereby amended— (a) by the substitution for the heading of the section of the following heading: ''**Beneficial interest in securities and beneficial ownership of company**''; and (b) by the addition of the following subsections: ''(12) A company must file a record with the Commission, in the prescribed form and containing the prescribed information, regarding the natural persons who are the beneficial owners of the company, and must ensure that this information is updated by filing Notices with the Commission within the prescribed period after any changes in beneficial ownership have occurred. (13) The prescribed requirements referred to in subsection (12) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).''.	
	1) Please refer **Annexure A** hereto, wherein BASA proposed amendments to the definition of "beneficial owner" and suggested that this clause be deleted and incorporated into the proposed section 56A. 2) In the alternative, should the legislature not be amenable to accepting BASA's proposal relating to the deletion of this section and its incorporation into section 56A: a) For the reasons stipulated in our general comments, BASA suggests that section 56(12) be amended to provide for an exemption of certain companies in the Regulations.	1) It is proposed that section 56(12) be reworded as follows: ''**Unless exempted in the Regulations from the provisions of sub-section (12)**, a company must file a record with the Commission, in the prescribed form and containing the prescribed information, regarding the natural persons who are the beneficial owners of the company, and must ensure that this information is **adequate, accurate and up to date** ~~updated~~ by filing Notices with the Commission within the prescribed period after any changes in beneficial ownership have occurred.

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LINE-ITEM NO	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
	b) For the reasons set out in **line-item number above**, we suggest that the words "adequate and accurate" be incorporated into section 56(12). c) Please also refer to the additional provisions proposed in Annexure A under the new proposed section 56A. Should the legislature not be amenable to accept the new proposed section 56A, we propose that all those additional provisions also be included in section 56 following section 56(12). 3) Whilst BASA supports the creation of a central register, we would like to seek clarity on how the parallel reporting requirements that may be created will be managed. For example, the proposed changes to the JSE Listing Requirements, the PA's Directive 6/2022 and clause 59 of the Bill relating to entities that are registered under the FSR Act.	
AMENDMENTS TO THE FINANCIAL SECTOR REGULATION ACT 9 of 2017		
Clause 59 Insertion of Chapter 11A and sections 159A to 159C in Act 9 of 2017		
36.	The Financial Sector Regulation Act, 2017, is hereby amended by the insertion after Chapter 11 of the following Chapter: "**CHAPTER 11A** **BENEFICIAL OWNERS** **Beneficial owners** 159A. (1) For the purposes of this Chapter, '**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, includes, but is not limited to, a natural person who directly or indirectly ultimately owns or is able to exercise control of a— (i) financial institution; or	

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LINE-ITEM NO	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
	(ii) natural person, legal person, partnership or trust that owns or is able to exercise control of, as the case may be, a financial institution. (2) The Minister, the Reserve Bank and a financial sector regulator are not, in those capacities, beneficial owners of a financial institution.	
	1) Please **refer the General Comments and Annexure A** reflecting BASA's proposed amendment to the definition of "beneficial owner". 2) In the alternative, should the legislature not be amenable to accepting BASA's proposed definition of beneficial owner per Annexure A: b) The term "natural person" is used which denotes a single natural person whereas FATF defines ultimate beneficial owner as "the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted." This may be commonly misinterpreted that a beneficial owner is a single natural person and cannot be more than one natural person. It is therefore suggested that the term "natural person" be amended to state "natural persons(s)" to make it clear that it can be more than one natural person.	1) BASA proposes that the proposed definition of "beneficial owner" as reflected in Annexure A be adopted. 2) Alternatively, BASA proposes that wherever the term "natural person" appears, same be amended to state "natural persons**(s)**" to make it clear that it can be more than one natural person.
37.	**Standards in relation to beneficial owners** **159B.** (1) In addition to the powers in Part 2 of Chapter 7 to make standards, a financial sector regulator may make standards applicable to— (a) beneficial owners with respect to— (i) fit and proper requirements, in particular honesty and integrity; and (ii) reporting of relevant information regarding the beneficial owner to the financial sector regulator; and (b) financial institutions with respect to the— (i) identification and verification of beneficial owners; and (ii) reporting relevant information in respect of beneficial owners to the financial sector regulator.	

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LINE-ITEM NO	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
	(2) Standards referred to in subsection (1) may— (a) prescribe what would or would not constitute direct or indirect ultimate ownership or control, or the ability to exercise such control, as contemplated in the definition of beneficial owner for purposes of section 159A; (b) exclude specified persons from the definition of beneficial owner as contemplated in section 159A; and (c) distinguish between different types and categories of beneficial owners.	
1)	Clarity is sought on what fit and proper requirements would constitute in respect of beneficial ownership. Whilst section 69 of the Companies Act at provides for the ineligibility and disqualification of persons to be director or prescribed officer, there is no law that dictates the ineligibility of persons entitled to purchase shares or hold ownership interests in a company. It is unclear on what basis the standard is being sought in absence of legislation relating to the criterion for a person to hold an ownership interest(s).	
	Clause 62 Short title and commencement	
38.	62. (1) This Act is called the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act, 2022, and takes effect on a date determined by the President by proclamation in the *Gazette*. (2) Different dates may be determined by the President in respect of the taking effect of different provisions of this Act.	
1)	BASA is supportive of transitional provisions being included in the Bill to ensure that all state organs, accountable institutions and parties responsible for keeping registers have time to implement the amendments and all accountable institutions, entities (trusts, NPOs and companies) have time for change management implementation (systems, people, operations and the like).	

THE BANKING ASSOCIATION SOUTH AFRICA

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ANNEXURE B

NAME OF PERSON COMPILING SUBMISSION: MARGUERITE JACOBS
ORGANISATION: BANKING ASSOCIATION SOUTH AFRICA
SUBMISSION DESCRIPTION: PROPOSED AMENDMENTS TO THE FIC ACT RE INFORMATION SHARING (STRs)
DATE: 6 July 2022

Nr	GENERAL COMMENTS
1.	1. Due to the lack of industry consultation time and members' operational requirements, only preliminary comments have been provided in respect of the amendments relating to the information sharing. 2. Considering the curtailed period for review and submission thereof, the full impact of the proposed amendments has not been comprehensively unpacked by BASA members and the practical application of the proposed amendments and potential unintended consequences have not been fully ventilated. 3. This submission should be read together with the submission on public-private partnerships as they impact each other. 4. We note the heading Information-sharing **including information** in terms of section 29 of this Act and understand this to mean that the information sharing which is contemplated will not be limited to information sharing under section 29 but will be broader and to limit such sharing would be detrimental and would not serve the purpose meant to be achieved, which is to enable broader and quicker investigations and deeper analysis. 5. There should be no limitations on the sharing of personal information (similar to the Us Patriot Act) either post or pre-suspicion, both within and outside of any PPP.

Nr	REFERENCE	COMMENT (Why is it a problem?)	PROPOSED RECOMMENDATION/WORDING/CHANGE
2.	**Information-sharing including information in terms of section 29 of this Act** – a. No duty of secrecy or confidentiality or any other restriction on the disclosure of information, whether imposed by	1. Clause a- "No duty of …confidentiality" – does this also cover sections 29(3) & (4)?	1. We suggest the following amendment to clause a(i): "The disclosure of information which may contain **[personal]** ~~personally identifiable~~

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Nr	REFERENCE	COMMENT (Why is it a problem?)	PROPOSED RECOMMENDATION/WORDING/CHANGE
	legislation or arising from the common law or agreement, shall prohibit or affect: i. The disclosure of information which may contain personally identifiable information of natural or juristic persons between the members of a Recognised Public Private Partnership, provided that such disclosure shall be limited to information necessary to achieve the financial crime purpose, adequate, relevant and not excessive and provided that those reports are made jointly with the Centre, pursuant to the procedures and protocols taking into account the principles for processing personal information as provided for in section 3 of such a partnership for a financial crime purpose are adhered; and/or ii. Any disclosure of information to the Centre by any member of a Recognised Public Private Partnership, if the disclosure is made for the purposes of the exercise of any function of the Centre.	2. We note reference here is made to the 'disclosure' as opposed to the 'exchange' of information. Consideration to be had to the potential distinction and if one or both words to be used in the context of and aligned in all the proposed provisions contemplated. 3. We would advocate for consistency of language between the sections, noting that members are referenced here, however in the other provisions, a 'sub-set of members is contemplated. ➢ Clause (a)(i)- ***reports are made jointly with the Centre***" – ➢ What reports are being contemplated here, it cannot be section 29 STRS as these are not made jointly but are made by an AI to the FIC. ➢ Does this create a new reporting requirement? It is our understanding	information of natural or juristic persons between the members of a Recognised Public Private Partnership, provided that such disclosure shall be limited to information necessary to achieve the financial crime purpose, **[be]** adequate **[and],** relevant ~~and not excessive~~ and provided that ~~those~~ reports **[containing such information]** are made ~~jointly with the Centre,~~ pursuant to the procedures and protocols taking into account the principles for processing personal information as provided for in ~~section 3 of~~ such **[Recognised Public Private Partnership]** ~~a partnership~~ for a financial crime purpose~~ are adhered~~;" 2. To avoid legal uncertainty, the amendments proposed above are to be read in conjunction with the amendments to the definition of financial crime purpose. 3. BASA suggests that "personal information" and "Personal Information" be defined to have the same meaning as set out in the POPI Act to ensure legal certainty and consistent interpretation. 4. Clause (a)(ii)- Being cognisant of the existing reporting requirements under

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Nr	REFERENCE	COMMENT (Why is it a problem?)	PROPOSED RECOMMENDATION/WORDING/CHANGE
		that within the auspices of a voluntary PPP, a new or parallel reporting requirement for the Centre or AIs is not created. AIs will, based on the information shared and analysed through the PPP report section 29 reports to the FIC. And the FIC will, as per their normal process, convert such reports into intelligence for law enforcement to investigate and prosecute. ➢ The concept of a 'joint report' is not fully ventilated or clarified. In the absence of a "joint report" or 'reporting jointly' all members would fall foul of the provision which allows for the	FICA (for the FIC to exercise a functions), and which we believe is not required to be addressed under this section, it is suggested that the clause be amended as follows: "Any disclosure of information to the Centre by any member of a Recognised Public Private Partnership, if the disclosure is made for **[a financial crime purpose]** ~~the purposes of the exercise of any function of the Centre~~." 5. Clause (a)(ii)- Clarify whether the same level of protection would be afforded to members of the PPP, as is afforded with the current filing of an STR under section 38 of the FIC Act to protect the AIs from civil or criminal liability arising from disclosures. 6. It is recommended that if a joint report is retained in the provisions, the prescribed period for submitting a report to the Centre based on information received as part of the recognised PPP to be defined as part of the regulations referred to in clause c as the types of disclosures or investigations will typically relate to complex matters.

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Nr	REFERENCE	COMMENT (Why is it a problem?)	PROPOSED RECOMMENDATION/WORDING/CHANGE
		disclosure of such information. ➢ We believe the intention of the bolded wording is not being articulated correctly. If the intention is, taking into consideration the content of provision set out in item 4 (sharing between accountable institutions), that no such sharing between members under a PPP can take place in the absence of the Centre being present then the wording is to be amended to clearly articulate such intention. 4. Members of a voluntary PPP may oblige the FI/AI to file a STR on the basis of the additional information received. If applicable the FI should have the opportunity to file a new	

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Nr	REFERENCE	COMMENT (Why is it a problem?)	PROPOSED RECOMMENDATION/WORDING/CHANGE
		STR or additional STR. Given the anticipated complexity of disclosures made under a recognised PPP the prescribed period for making a report to the FIC should be revisited.	
3.	b. Subsection a does not apply to the common law right to legal professional privilege as between an attorney and the attorney's client in respect of communications made in confidence between— i. the attorney and the attorney's client for the purposes of legal advice or litigation which is pending or contemplated or which has commenced; or ii. a third party and an attorney for the purposes of litigation which is pending or contemplated or has commenced.		1. BASA questions the need to insert this provision as legal privilege and any matter subject to litigation is not over-ridden by legislation and recommends that the section be deleted

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4.	c. The Minister, after consulting the Centre, may make, repeal and amend regulations concerning the circumstances in which certain accountable institutions specified by the Minister may disclose information to another accountable institution [for a financial crime purpose, including but not limited to the purpose of determining any matter in connection with a suspicion that a person is engaged in money laundering and/or that a report to the Centre should be made pursuant to section 28, 28A, 29, 30(1) or 31 of this Act.	1. By introducing (c), (e) and (f), a duplication with section 77 is created that is unnecessary. It is recommended that the clause be reworded to refer to the power bestowed in section 77. 2. The words ***"concerning the circumstances"*** are understood to mean how the information may be shared for a financial crime purpose and not prescribe the types of information to be shared as this will be subject to each institution's internal processes, procedures and governance frameworks, and election. 3. The following wording: "The Minister, after consulting the Centre, may make, repeal and amend regulations concerning the circumstances in which ***certain*** **accountable institutions** ***specified*** by the Minister may disclose information to another accountable institution [for	1. The following amendment is proposed: "The Minister, after consulting the Centre, may make, repeal and amend regulations **[in terms of section 77]** concerning the circumstances in which ~~certain~~ accountable institutions ~~specified by the Minister~~ may disclose information to another accountable institution **for** a financial crime purpose, ~~including but not limited to the purpose of determining any matter in connection with a suspicion that a person is engaged in money laundering and/or that a report to the Centre should be made pursuant to section 28, 28A, 29, 30(1) or 31 of this Act~~. ". 4. If the decision is taken not to delete the above wording after financial crime purpose, it is proposed that reference to "financing of terrorism" and "proliferation financing" be included in the sentence.

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		a financial crime purpose" may indicate that sharing of information between accountable institution can ***only*** happen between certain accountable institutions that has been specified by the Minister. 4. The sharing of information between accountable institutions should be enabled not only between certain accountable institutions. This should be within the construct of the regulatory framework. Acknowledging that accountable institution retains the election (no obligation to disclose) as to whether it is willing to share such information with such other accountable institution, and hence do not see the requirement to retain such wording.	

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5.	c. Regulations made under subsection c above in relation to the disclosure of information may— i. [specify the purposes for which and the circumstances in which such disclosures may be made;] ii. [specify the types of information or categories of information required for specified purposes] iii. [differ for different accountable institutions, or categories of accountable institutions;] iv. [be limited to a particular accountable institution, or categories of accountable institutions;] v. [provide for the Centre to initiate and/or to be a required party to any, or particular categories of, disclosures made pursuant to such regulations, and otherwise make provision for the procedure for such disclosures] vi. [provide for a report made to the Centre under section 29 of this Act by an accountable institution as a result of such a disclosure to be deemed to be made jointly by the institution(s) disclosing and the institution(s) receiving	1.The wording in section (d)(iv) indicates that the sharing of information might be limited to only particular accountable institutions. Acknowledging that accountable institutions retain the election (no obligation to disclose) as to whether it is willing to share such information with such other accountable institution, and hence do not see the requirement to retain such wording. 2. It is proposed that information to be shared should not be limited to post-suspicion but also "pre-suspicion" to cater for open discussions to manage financial crime risks across stakeholders (i.e., Information sharing among stakeholders is critical to identifying, reporting, and preventing crime -similar to the US Patriot Act). Information should include, but not be limited to: • Account numbers of clients, as well as source and	1. BASA proposes that paras (d)(iv), (vi) and (vii) be deleted for the reasons specified in column B.

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Nr	REFERENCE	COMMENT (Why is it a problem?)	PROPOSED RECOMMENDATION/WORDING/CHANGE
	information in specified circumstances]; vii. [provide for the obligations of an accountable institution under section 29 of this Act to be deemed to have been satisfied by the disclosure of information pursuant to such regulations].]	destination information. • Client information – Any client identifiers, i.e., ID numbers, company registration numbers, addresses, contact details, IP-addresses, signatories, directors or members (UBOs) • Transactional information – Contra-entry details, amounts, dates of transactions, turnovers, source of funds, destination of funds. 3. BASA is not opposed to the concept of SARs, however in the absence of the proposed amendments indicating how a super "SAR" is going to be defined and whether a definition will be included in the Act, we recommend the deletion of paras (d), (vi) and (vii). Once the definition of a	

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		SAR or the concept of SARs is clarified, we will then be in a position to comment on the said clauses.	
6.	d. [The Minister must table regulations, repeals and amendments made under this section in Parliament before publication in the Gazette.		1. It is proposed that clauses (e) and (f) be removed to avoid duplication with section 77.
7.	e. [Before making, repealing or amending regulations in terms of this section, the Minister must— i. in the Gazette, give notice where a draft of the regulations will be available and invite submissions; and ii. consider submissions received.]		1. It is proposed that clauses (e) and (f) be removed to avoid duplication with section 77.

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ANNEXURE C

NAME OF PERSON COMPILING SUBMISSION: SADIYAA AMOD

ORGANISATION: BANKING ASSOCIATION SOUTH AFRICA

SUBMISSION DESCRIPTION: DRAFT AMENDMENTS TO THE MONEY LAUNDERING AND TERRORIST FINANCING CONTROL REGULATIONS (INFORMATION SHARING BETWEEN ACCOUNTABLE INSTITUTIONS)

NO	REFERENCE IN ACT/BILL/DOCUMENT	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE

General

1) Financial institutions, in particular banks have legal and ethical obligations as corporate citizens and key role players in the economy to detect and mitigate financial crimes. These are set out across a range of legislation, voluntary and compulsory Codes of conduct etc, the primary being the Banks Act 94 of 1990, Financial Intelligence Centre Act 38 of 2001 (the FIC Act), Prevention of Organised Crime Act 121 of 1998, and the Prevention and Combating of Corrupt Activities Act 12 of 2004. Therefore, to effectively discharge our obligations, we believe that constructive and timely exchange of information between private entities is a key component to fighting financial crime.

2) Information sharing directly between banks will enable them to piece together information and enhance the quality of its intelligence thereby fostering a better understanding of their risks and vulnerabilities which better inform bank decisions and reports to the Financial Intelligence Centre (the Centre). Information sharing would allow for improved quality in monitoring and reporting, can reduce the risk of reporting on legitimate clients or transactions and de-risking, and can increase the speed at which accountable institutions react to possible criminal activity or terrorist groups.

3) The banking industry is concerned that the current construct of section 41A(3) read with section 6(1)(c) of the Protection of Information Act 4 od 2013, section 29 of the FIC Act, and the proposed draft regulations does not adequately empower accountable institutions to share information between themselves or as intended, as articulated in point 2 above. BASA has therefore sought the opinion of senior legal counsel, whose legal opinion would inform certain of our comments on the draft regulations. We have commented on the sub-regulations which would not be impacted by the legal opinion and will supplement our submission by 6 November 2023.

4) BASA would like to obtain clarity from the Centre relating to the platform which would be required for information sharing as indicated in paragraph 3.6 of the explanatory memorandum to the regulations. Are accountable institutions required to develop the platforms on their own, without the Centre's involvement and participation, and would accountable institutions bear all costs related to the platform, development, maintenance, etc. The Centre is referred to the attached reports (**Annexures A and B**) "Towards a new standard in AML/CTF: The case for FinCrime Intelligence sharing- an in-depth look at the AML Bridge Estonia Pilot" and "AML Bridge- building the new standard in

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NO	REFERENCE IN ACT/BILL/DOCUMENT	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
	AML/ CTF: A demonstration in FinCrime intelligence sharing – findings and figures from the AML Bridge Estonia pilot" where the success of the platform was partially attributed to governance- the Regulators (supervisors and data protection authorities) were involved from the beginning of the information sharing initiative.		
	Insertion of regulation 27E The following regulation is hereby inserted in the Regulations after regulation 27D: "**Requirements for protection of personal information in respect of sharing of information between accountable institutions**		
1.	**27E.** (1) For the purposes of carrying out the provisions of section 29 as contemplated in section 41A(3) of the Act, an accountable institution must ensure the integrity and confidentiality of the personal information of the client of the accountable institution by taking appropriate, reasonable and organisational measures when sharing information to another accountable institution to prevent— *(a)* alteration or loss of, damage to or unauthorised destruction of the information; and *(b)* unlawful access to or further processing of the information, other than in accordance with the Act and the Protection of Personal Information Act, 2013 (Act No. 4 of 2013).	1) As per our comments in general above, BASA will supplement our submission with our comments on this sub-regulation once we receive legal opinion from counsel.	

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NO	REFERENCE IN ACT/BILL/DOCUMENT	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
2.	(3) An accountable institution must comply with the requirements relating to disclosure contained in section 29 of the Act when sharing information relating to a client as contemplated in section 41A(3) of the Act.	1) As per our comments in general above, BASA will supplement our submission with our comments on this sub-regulation once we receive legal opinion from counsel.	
3.	(4) The sharing of information of a client may only occur in accordance with a written agreement between the accountable institutions that regulates the exchange of information.	1) As per our comments in general above, BASA will supplement our submission with our comments on this sub-regulation once we receive legal opinion from counsel.	
4.	(5) The accountable institution must notify the Centre of— *(a)* the name of the receiving accountable institution; *(b)* the identifying particulars of the client; and *(c)* the date the information was shared, when it shares information in terms of this regulation.	1) Per the wording of this provision, the obligation is on the disclosing accountable institution to notify the Centre of the information shared, noting our general comments above and the content of line item 5 immediately below, proposing that the receiving accountable institution should notify the Centre when the sharing of the information results in a section 29 report being submitted: a. We would appreciate it if the Centre could articulate its reasoning for requesting that the disclosing accountable institution notify it of every	1) It is proposed that this provision be deleted from the regulations. 2) Alternatively, in the event that the Centre elects to retain the clause, per our comments in the previous column, BASA proposes that regulation 27E(5) be amended to provide as follows: "The accountable institution **that receives the information** must notify the Centre of— (a) the name of the ~~receiving~~ **disclosing** accountable institution;

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		instance when information is shared and the intended purpose for which the Centre requires such information. 2) In the absence of such information being provided, BASA proposes that this sub-regulation be deleted due to the impact of the onerous reporting requirements on an already overly burdened/ strained reporting resources – both at accountable institutions and the Centre level. 3) Should the Centre elect to retain the provisions, to reduce the administrative burden, we suggest that the sub-regulation be amended to provide for notification to the Centre only in the instances when an accountable institution submits a section 29 report based on information received in terms of Regulation 27E. 4) For our understanding, kindly clarify what would constitute "identifying particulars of a client". 5) Consideration may be given to use of secure industry platform, accessible by accountable institutions and the Centre be considered to remove the additional reporting obligation to the Centre by accountable institutions who may not operationally be in a position to attend to the additional obligations and/or requests. This will furthermore reduce the number of possible duplicate	(b) the **information of the** identifying particulars of the client **received (if any)**; and (c) the date the information was shared, when it **submits a section 29 report based on information received** ~~shares information~~ in terms of this regulation."

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		reports being made to the Centre and increase efficiencies in terms of reporting.	
5.	(6) The notification referred to in subregulation (5) must be made as soon as reasonably possible but no later than five days after the date on which the information was shared.	1) Please refer to our comments above. 2) Should the provisions of the sub-regulation above be retained: a. accountable institutions would have to cater for an operational process change that would manage the information/ data received and communicated to and from other accountable institutions via the proposed process/ agreements, this will add additional impact on the onerous reporting requirements on an already overly burdened/ strained reporting resources – both at accountable institutions and the Centre level. b. consideration should be given to a more reasonable timeframe for a report to be submitted to the Centre on information shared, i.e., monthly, due to a significant number of requests that may be processed initially due to a significant number of requests that may be processed initially.	1) BASA recommends that the sub-regulation be deleted. 2) If the above proposal is not accepted, to align with our comments above that the Centre need only be notified when the sharing of the information results in a section 29 report being submitted and to afford the accountable institutions a reasonable timeframe to report, BASA recommends that Regulation 27E(6) be amended as follows: "The notification referred to in subregulation (5) must be made as soon as reasonably possible but no later than ~~five~~ **30** days after the date on which the information was ~~shared~~ **received**." 3) The above proposal relating to the proposed time frame would be equally applicable if the Centre elects to be notified in every instance of information sharing between accountable institutions.
6.	(7) If there are reasonable grounds to believe that the personal information of a client has been accessed or acquired by any	1) As per our comments in general above, BASA will supplement our submission with our	

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	unauthorised person, the receiving accountable institution must notify— *(a)* the Centre; and *(b)* the accountable institution that shared the information.	comments on this sub-regulation once we receive legal opinion from counsel.	
7.	(8) The notification referred to in subregulation (7) must be made as soon as reasonably possible but no later than five days after the discovery of the compromise.	1) As per our comments in general above, BASA will supplement our submission with our comments on this sub-regulation once we receive legal opinion from counsel.	
8.	(9) The notification referred to in subregulations (5) and (7) must be made in accordance with the format specified by the Centre, and sent to the Centre electronically by means of— *(a)* the internet-based reporting portal provided by the Centre for this purpose at the following internet address: http://www.fic.gov.za ; or *(b)* a method developed by the Centre for this purpose and made available to a person who is required to provide the notification in question.	1) Please refer to our comments above. 2) Noting the required information to be provided by notification to the Centre, in the absence of clarity relating to the personal information of clients/ identifying particulars of the client – the contemplated information in the format would be beneficial. BASA would appreciate it if this information could be provided by the Centre? 3) We request confirmation that the means/ method for the submission of the relevant notification to the Centre will be operational when the regulations become effective.	

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NO	REFERENCE IN ACT/BILL/DOCUMENT	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
9.	(10) An accountable institution must keep a record, as the case may be, of— *(a)* the information that the accountable institution shares in accordance with this regulation; *(b)* the information that the accountable receives in accordance with this regulation; and *(c)* the purpose for the request.".	1) The word "institution" is missing from regulation 27 (10)(b).	1) BASA suggests that regulation 27E(10)(b) be corrected as follows: "the information that the accountable **institution** receives in accordance with this regulation; and . . ."
Amendment of regulation 29 **2.** Regulation 29 of the Regulations is hereby amended by the insertion after subregulation (7) of the following subregulation:			
10.	"(7A) Any person or institution who— *(a)* fails to act in accordance with regulation 27E in respect of the sharing of information of a client; or *(b)* fails to notify the Centre as required by regulation 27E, is non-compliant and is subject to an administrative sanction.".	1) The word "accountable" is missing from regulation (7A).	1) BASA proposed that Regulation (7A) be corrected as follows: "Any person or **accountable** institution who—"

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ANNEXURE D

NAME OF PERSON COMPILING SUBMISSION: SADIYAA AMOD

ORGANISATION: BANKING ASSOCIATION SOUTH AFRICA

SUBMISSION DESCRIPTION: SUPPLEMENTARY SUBMISSION- DRAFT AMENDMENTS TO THE MONEY LAUNDERING AND TERRORIST FINANCING CONTROL REGULATIONS (INFORMATION SHARING BETWEEN ACCOUNTABLE INSTITUTIONS)

NO	REFERENCE IN ACT/BILL/DOCUMENT	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE

General

1) In our initial submission, BASA indicated that we would submit a supplementary submission commenting on the sub-regulations which would be impacted by senior counsel's opinion. We have since received the opinion and would appreciate it if National Treasury would consider our comments hereunder.

2) Whilst the banking industry is supportive of information sharing initiatives, and we are cognisant that:

   a) such sharing cannot take place in the absence of adequate safeguards as referred to in section 6(1)(c) of the Protection of Personal Information Act (POPIA), and as contemplated by section 41A(3) with the publication of the draft Regulations; and

   b) the broad scope of section 6(1)(c)(i) and (ii) of POPIA, as read with section 41A(3) and section 29(b) of the Financial Intelligence Centre 38 of 2001 (the FIC Act), a balance needs to be struck between when information is to be shared and the want for information to be shared, which may be achieved by one of the contemplated safeguards, i.e. written agreement between accountable institutions (AIs).

3) BASA is of the view:

   a) per section 6(1) of POPIA, the said Act would not apply to the processing of personal information (including further processing) as the provisions are excluded due to:

      i. the wide meaning of "on behalf of" in the text of section 6(1)(c) read in its context and for its purpose;

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	ii. information sharing in section 29 of the FIC Act and the draft amendments to the regulations falling within the purposes of section 6(1)(c)(i) and (ii) which arise when AIs report in terms of section 29 of the FIC Act or share information in terms of sections 29(3) and (4); and iii. the extent that adequate safeguards have been established in legislation for the protection of such personal information. 4) Accordingly, our commentary below, is based on the premise that the safeguards in the draft regulations (per our proposed amendments) are adequate (at this stage). 5) The administrative burden imposed on AIs by the draft regulations, particularly the requirement for notification per regulations 27E(7) and (8), which provide for notification to the Financial Intelligence Centre (the Centre) of every instance of information sharing, will disincentivise information sharing and may undermine the purposes thereof. 6) To enable oversight and obviate the need for reporting of such information sharing, regulation 27E(10) adequately provides for record keeping by AIs which remains accessible to the Centre. 7) BASA suggests that the Centre consider as notification that AIs on the current section 29 reporting template on goAML indicate in the free text field that the report was, at least in part, the result of shared information. AIs can in the information sharing agreements prescribe wording to be used to indicate this.		
	Insertion of regulation 27E The following regulation is hereby inserted in the Regulations after regulation 27D: "**Requirements for protection of personal information in respect of sharing of information between accountable institutions**		
1.	**27E.** (1) For the purposes of carrying out the provisions of section 29 as contemplated in section 41A(3) of the Act, an accountable institution must ensure the integrity and confidentiality of the personal information of the client of the	1) Once the client information has been shared with another AI, it is highly unlikely for another AI to have control over the unauthorised destruction of the information. It is therefore proposed that:	1) BASA proposes that regulation 27E(1) be amended as follows: "For the purposes of carrying out the provisions of section 29 as contemplated in section 41A(3) of the Act, an accountable institution **that receives information** must ensure the integrity and confidentiality of the personal information of the client of the

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	accountable institution by taking appropriate, reasonable and organisational measures when sharing information to another accountable institution to prevent— *(a)* alteration or loss of, damage to or unauthorised destruction of the information; and *(b)* unlawful access to or further processing of the information, other than in accordance with the Act and the Protection of Personal Information Act, 2013 (Act No. 4 of 2013).	a) The words "when sharing information to another accountable institution" be deleted. b) The words "that receives information" and "that shared the information" be included as indicated in the next column to clarify that the receiving AI has the obligation to ensure the integrity and confidentiality of the disclosing party's client's personal information. c) The words "technical" and "use" as per section 19(1) of the POPIA be included. 2) We further propose that the wording of the sub-regulation 27E(1)(a) be amended to collapse the requirement of (b) noting the content of point 3 in general above, as reflected in the next column.	accountable institution **that shared the information** by taking appropriate, reasonable, **technical** and organisational measures ~~when sharing information to another accountable institution~~ to prevent— *(a)* alteration or loss of, damage to or unauthorised **access, acquisition, and** ~~destruction~~ **use** of the information **or further processing of the information, other than in accordance with the Act.** ~~and~~ ~~*(b)* unlawful access to or further processing of the information, other than in accordance with the Act and the Protection of Personal Information Act, 2013 (Act No. 4 of 2013).~~"
2.	(3) An accountable institution must comply with the requirements relating to disclosure contained in section 29 of the Act when sharing information relating to a client as contemplated in section 41A(3) of the Act.	1) No comments.	
3.	(4) The sharing of information of a client may only occur in accordance with a written	1) To avoid any unnecessary legal risk which may arise as to whether the Centre's authority is required to trigger application of	1) BASA proposes that regulation 27E(4) be amended as follows:

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	agreement between the accountable institutions that regulates the exchange of information.	section 6(1)(c) of POPIA in relation to the information sharing, it is suggested that the agreements between AIs contain *stipulatio alteri* clauses, whereby the Centre can become a party to the agreement should it be necessary (thereby creating the written authority). 2) Our understanding is that if AIs within a group include information sharing rules in their risk management and compliance programmes, such rules will be viewed as sufficient and constitute written agreements for purposes of regulation 27E. If our understanding is incorrect, we request that the Centre kindly advise us.	"The sharing of information of a client may only occur in accordance with a written agreement between the accountable institutions that regulates the exchange of information**, and the agreement must include a provision, available to the benefit of the Centre, that the accountable institutions are acting in the interests of or on behalf of the Centre, when exchanging information.**"
4.	(7) If there are reasonable grounds to believe that the personal information of a client has been accessed or acquired by any unauthorised person, the receiving accountable institution must notify— *(a)* the Centre; and *(b)* the accountable institution that shared the information.	1) Taking note of – a) our commentary under general, b) the proposed amendments to regulation 27E(1); and c) the requirement for there to be a written agreement between AIs, we question the need for the requirement for the receiving institution to notify the sharing information of such unauthorised access to or acquired information, in legislation (even noting the content of section 6(1)(c) of POPIA, regarding the	1) BASA proposes that regulation 27E(7) be deleted in its entirety. 2) Alternatively. that regulation 27E(7) be amended as follows: "If there are reasonable grounds to believe that the personal information of a client has been accessed or acquired by any unauthorised person, the receiving accountable institution must notify— *(a)* the Centre~~; and~~

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		safeguards)? Furthermore, mere notification to the AI that shared the information would be inadequate in order for the latter to take the necessary steps to notify their clients of the breach. Such further information that would be required would be how, when, where, the type of information compromised etc. Once again, we would have a better indication of whether this would indeed be required, depending on the format (and in turn the content) of notification. 2) In the event the draft regulations constitute sufficient safeguards, and in turn POPIA does not apply, what is the contemplated safeguard that the Centre is addressing by including the requirement for it to be notified of the compromise? Is the inclusion of such notification to the Centre, intended to serve the purpose of the Centre standing in the shoes of the Information Regulator (IR)? a) If yes, what would the potential steps by the Centre be on receipt of such notification? b) If no, what purpose does it serve, other than to identify any potential risks, required engagement with the IR (taking	~~*(b) the accountable institution that shared the information*~~.

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NO	REFERENCE IN ACT/BILL/DOCUMENT	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
		note of the FATF paper: Partnering in the fight against financial crime). 3) In the event the draft regulations do not constitute adequate safeguards, in the absence of the clause being deleted or amended as proposed, both the Centre and the IR (potentially) to then be notified, increasing the burden with multiple notifications (including notification to the sharing AI).	
5.	(8) The notification referred to in subregulation (7) must be made as soon as reasonably possible but no later than five days after the discovery of the compromise.	1) Refer to our comments above. 2) If regulation 27E(7) is deleted in its entirety, then there is no requirement for this regulation to remain, and the provision can be deleted. 3) If regulation 27E(7) is amended to delete reference to the sharing AI being notified (as this requirement would exist in the written agreement which is required), we are unclear as to the urgency for the Centre to be notified within the stipulated period of five days. 4) In the absence of having the required context relating to the urgency for such notification by the Centre and noting that often the requirements to report cannot be met until an investigation has been undertaken to sufficiently understand the	1) BASA proposes that regulation 27E(8) be deleted. 2) Alternatively, BASA proposes that regulation 27E(8) be amended as follows: "The notification referred to in subregulation (7) must be made as soon as reasonably possible ~~but no later than five days~~ after the discovery of the compromise **taking into account the legitimate needs of law enforcement or any measures reasonably necessary to determine the scope of the compromise and to restore the integrity of the responsible party's information system**." 3) If the above suggestion is not accepted, we suggest that regulation 27E(8) be amended as follows: The notification referred to in subregulation (7) must be made as soon as reasonably

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		circumstances relating to the breach, we propose that the period should: a) Align with the provisions of section 22(2) of POPIA, which does not impose a time limit and we are of the view that these regulations should not be more onerous than POPIA. If reference to notification to the sharing AI is deleted, notification can be agreed in the written sharing agreement between such AIs. b) Alternatively, the period be increased to 15 days which then aligns and brings some consistency of reporting timelines (as the period for STR reporting under section 29 of the FIC Act is, as soon as possible but no later than 15 days). 5) We furthermore refer to our initial comments submitted in relation to regulations 27E(5) and (9) (the latter being further supplemented in this submission).	possible but no later than ~~five~~ **15** days after the discovery of the compromise.
6.	(9) The notification referred to in subregulations (5) and (7) must be made in accordance with the format specified by the Centre, and sent to the Centre electronically by means of—	1) Refer to our comments above. 2) In the event sub-regulation (7) is deleted as proposed above, reference to sub-regulation (7) to be deleted from this provision. 3) Potentially, the period of submission of such notification (as required) to be	1) If BASA's comments relating to regulation 27E(7) are accepted, reference to sub-regulation (7) must be deleted from regulation 27E(9).

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	(a) the internet-based reporting portal provided by the Centre for this purpose at the following internet address: http://www.fic.gov.za ; or (b) a method developed by the Centre for this purpose and made available to a person who is required to provide the notification in question.	contemplated herein, if any of the proposals regarding the deletion of the preceding sub-regulations is accepted. 4) Regulation 27E(7) deals with the notification by the receiving AI to the (i) Centre and (ii) sharing AI, in instances where there are reasonable grounds to believe that the information of the client has been accessed/ acquired by an unauthorised person. Noting the content of this sub-regulation, we question the need for the receiving AI to notify the sharing AI, of the breach/ compromise, in the format specified by the Centre? This can be agreed in the written agreement between the said AIs. Notification to the Centre, to be submitted by the receiving AI, in the format specified by the Centre, noting that the remaining wording of the sub-regulation only refers to the Centre. 5) As such we propose that the sub-regulation be amended to limit the specified format to be sent to the Centre as set out in the next column.	2) Alternatively, based on our comments in the previous column, BASA proposes that Regulation 27E(9) be amended as follows: "The notification **to the Centre** referred to in subregulations (5) and (7) must be made in accordance with the format specified by the Centre, and sent to the Centre electronically by means of— (a) the internet-based reporting portal provided by the Centre for this purpose at the following internet address: http://www.fic.gov.za; or (b) a method developed by the Centre for this purpose and made available to a person who is required to provide the notification in question."