

ORGANISATION: THE BANKING ASSOCIATION SOUTH AFRICA

SUBMISSION DESCRIPTION: PREVENTION AND COMBATING OF CORRUPT ACTIVITIES AMENDMENT BILL

Additions are bolded and underlined in orange **xxx**, and deletions are struck through ~~xxx~~.

NO	REFERENCE IN ACT/BILL/DOCUMENT	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
1.	<p>Amendment of section 26 of Act 12 of 2004, as amended by section 35 of Act 66 of 2008</p> <p>1. Section 26 of the Prevention and Combating of Corrupt Activities Act, 2004 (hereinafter referred to as the “principal Act”), is hereby amended—</p> <p>(a) by the substitution in subsection (1) for paragraph (a) of the of the following paragraph: “(a) Part 1, 2, 3 or 4, or section 18 of Chapter 2, <u>is, subject so subsection (1A), liable in the case of a sentence to be imposed by—</u></p>	<p>1) Please refer to our comments in line items 2 to 4 and 6 below for the reasons for the proposed amendment to delete reference to subsection (1A) as reflected in the next column.</p>	<p>1) BASA proposes the below amendment to section 26(1): “(a) Part 1, 2, 3 or 4, or section 18 of Chapter 2, <u>is, subject so subsection (1A), liable in the case of a sentence to be imposed by—</u>”</p>
2.	<p>(i) [in the case of a sentence to be imposed by] a High Court, to a fine or to imprisonment [up to a] <u>for a minimum period [for] of 18 years’ imprisonment, up to imprisonment for life, or to both such fine and imprisonment;</u></p>	<p>1) The Prevention and Combating of Corrupt Activities Act, 2004 (PRECCA) currently prescribes maximum sentences for imprisonment, for the High Court, regional court and district magistrates’ court. The intent of PRECCA is to create offences and prescribe penalties, however it cannot expand on the jurisdictional powers</p>	<p>1) BASA proposes that section 26(1)(a)(i) be amended as follows: “[in the case of a sentence to be imposed by] a High Court, <u>subject to subsection (1A),</u> to a fine or to imprisonment [up to a] <u>for a minimum period [for] of 18 years’ imprisonment, up to imprisonment for life, or to both such fine and imprisonment;</u>”</p>

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		<p>(monetary and years of imprisonment) of the regional and district courts under the Magistrates' Court Act. Accordingly, the regional and district magistrates' courts jurisdictional limits being –</p> <ul style="list-style-type: none"> a) Regional courts: monetary value R600 000 (currently) and 15 years imprisonment (unless broader powers have been conferred on the regional courts as contemplated in the Criminal Procedure Amendment Act 105 of 1997); and b) District courts: monetary value of R120 000 (currently) and 3 years imprisonment. <p>would apply.</p> <p>2) The proposed minimum imprisonment thresholds in PRECCA for regional and district magistrates' courts will either –</p> <ul style="list-style-type: none"> a) have to concede to the aforementioned jurisdictional limits; or b) if it becomes apparent to the lower court cannot impose an appropriate sentence, the Criminal Procedure Act allows for the transfer to a competent higher court (prior to conviction or after conviction for sentencing). As such, the allocation of a criminal matter to an appropriate court is determined by the prosecution (based on the merits). 	

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		3) The proposed minimum imprisonment periods for regional and district magistrate courts will not by default require all matters to be referred to the high court. 4) Refer to our commentary in line item 6 below.	
3.	(ii) [in the case of a sentence to be imposed by] a regional court, to a fine or to imprisonment for a <u>minimum period of 15 years and not exceeding 18 years, or to both such fine and imprisonment;</u> or;	1) Please refer to our commentary in line item 3 above. 2) The reference to minimum period of imprisonment to be deleted, as indicated. 3) The notable decrease in the threshold of R100 000 to R30 000, does not align with the proposed minimum sentences, hence the jurisdictional limits of the regional and district magistrate's courts, within their discretion, is appropriate.	1) BASA proposes that section 26(1)(a)(ii) be amended as follows: "[in the case of a sentence to be imposed by] a regional court, to a fine or to imprisonment for a minimum period of 15 years and not exceeding 18 years, <u>or to both such fine and imprisonment;</u> "
4.	(iii) [in the case of a sentence to be imposed by] a magistrate's court, to a fine or to imprisonment for a <u>minimum period of five years and not exceeding [five] 10 years, or to both such fine and imprisonment;</u> ";	1) Please refer to commentary in line item 3 above. 2) The reference to minimum period of imprisonment to be deleted, as indicated. 3) The notable decrease in the threshold of R100 000, to R30 000, does not align with the proposed minimum sentences and hence the jurisdictional limits of the regional and magistrate's courts, within their discretion, is appropriate.	1) BASA proposes that section 26(1)(a)(iii) be amended as follows: "[in the case of a sentence to be imposed by] a magistrate's court, to a fine or to imprisonment for a minimum period of five years and not exceeding [five] 10 5 years, <u>or to both such fine and imprisonment;</u> ";
5.	(b) by the substitution in subsection (1) for paragraph (c) of the following paragraph:	1) Please refer to our commentary in line item 3 above, in particular that the prosecution determines the referral of the matter to an applicable court, accordingly the	

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	<p>“(c) section 28(6)(b), is liable to a fine of [R250 000] R500 000 or to imprisonment for a period not exceeding [three] five years, or to both such fine and imprisonment.”;</p>	<p>consequential effect thereof would be similar, i.e. if it becomes apparent the lower court cannot impose an appropriate sentence (in this instance from a monetary perspective as the proposed threshold exceeds the jurisdiction of the magistrates’ court), the Criminal Procedure Act allows for the transfer to a competent higher court (prior to conviction or after conviction for sentencing).</p> <p>2) However, the contemplated period of imprisonment aligns with the jurisdictional limits of the magistrates’ court.</p>	
6.	<p>(c) by the insertion of subsection (1A) of the following subsection: <u>“(1A) If any court referred to in subsection (1)(a) is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the minimum sentence prescribed in that subsection, it shall enter those circumstances on the record of the proceedings and must thereupon impose such lesser sentence.”.</u></p>	<p>1) Based on our commentary in line item 2 and noting the deletion of the proposed minimum sentences for regional and district magistrates’ courts in line items 3 and 4 respectively, the requirement for those provisions to be subject to the proposed section 26(1A) is not required. This is due to the court’s discretion within the contemplated maximum imprisonment period, remains.</p> <p>2) The same discretion referred to above would apply to the High Court within the confines of a maximum imprisonment period. However, noting the proposed minimum imprisonment period for the High Court (which does not have jurisdictional limits), should the proposed amendment be</p>	

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		<p>adopted, the content of proposed section 26(1A) is required. Accordingly, the proposed section 26(1A) is to be limited to the application of the High Court. See proposed wording in line items 1 and 2 above.</p>	
7.	<p>Amendment of section 34 of Act 12 of 2004, as amended by section 21 of Act 10 of 2012</p> <p>2. Section 34 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph: “(b) the offence of theft, fraud, extortion, forgery or uttering a forged document, involving an amount of [R100 000] <u>R30 000</u> or more, must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to the police official in the Directorate for Priority Crime Investigation referred to in section 17C of the South African Police Service Act, 1995, (Act No. 68 of 1995).”.</p>	<ol style="list-style-type: none"> 1) The proposed reduction of the reporting threshold substantially expands the statutory scope of section 34 by removing the former and more appropriate, materiality threshold of R100 000. 2) This will materially increase investigations within the banking sector, with little or no consequential effect based on the below. 3) A key consideration is whether there is a need to reduce the threshold, especially considering: <ol style="list-style-type: none"> a) concerns regarding the degree to which the Directorate for Priority Crime Investigation (DPCI) has responded to cases reported under the current R100 000 threshold. This issue has been raised to determine if lowering the threshold would lead to more effective action by the DPCI and address gaps in the reporting and processing of cases at this level. b) questions remain as to whether the present data on cases meeting the R100 000 threshold have been 	<ol style="list-style-type: none"> 1) BASA proposes that current threshold of R100 000 is maintained.

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		<p>sufficiently acted upon, and whether further reduction in the threshold could enhance operational responses and improve investigative outcomes.</p> <p>4) In addition, reducing the threshold would:</p> <ul style="list-style-type: none"> a) substantially increased the DPCI's workload, potentially constraining its capacity to prioritise and investigate cases involving higher-value or more complex matters; and b) place considerable operational and cost pressures on financial services entities, potentially affecting the overall effectiveness and efficiency of compliance processes. <p>5) It may therefore be more impactful for available resources to be directed towards identifying and addressing higher-value corruption and financial crime cases, where the risk and societal harm are most significant.</p>	