

REPUBLIC OF SOUTH AFRICA

DRAFT

**GENERAL LAWS (ANTI-MONEY LAUNDERING AND COMBATING TERRORISM
FINANCING) AMENDMENT BILL**

*(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill and
prior notice of its introduction published in Government Gazette...)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from the existing enactments.
- _____ Words underlined with solid line indicate insertions in existing enactments.
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BILL

To amend—

- the Nonprofit Organisations Act, 1997, so as to provide for maximum penalties for offences;
- the Financial Intelligence Centre Act, 2001, so as to amend and insert a certain definition; to require the Director to give notice pursuant to an order in terms of section 23 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004; to expand the circumstances under which a person or entity referred to in section 26A may be permitted provision of financial services to include providing for extraordinary expenses; to provide for the accrual of 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; to require the person authorised by the Minister to receive a report relating to the conveyance of cash to or from the Republic to send a copy of the report to the Centre within a prescribed period; to require accountable institutions to take into account the risk of new delivery mechanisms and the use of new or developing technologies which may involve or facilitate money laundering activities, the financing of terrorist and related activities or proliferation financing activities;
- the Companies Act, 2008, so as to empower the Commission to deregister a company that fails to submit a securities register within a certain period; to empower the Commission to impose administrative penalties; to empower the Companies Tribunal to review a decision of the Commission to impose an administrative fine;
- the Financial Sector Regulation Act, 2017, so as to provide for the circumstances under which new services are expanded to include arrangements that are similar in nature or have similar outcomes as financial products and services; to ensure that the responsible authority may license financial institutions that are providing financial products and financial services, including new services despite existing licensing requirements in other legislation; to empower financial sector regulators to obtain information from significant owners or beneficial owners; to empower financial sector regulators to institute an investigation under certain circumstances; to exclude transactions concluded under a ‘master agreement’ as defined in the Insolvency Act, 1936, from the application of a certain section, and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 30 of Act 71 of 1997

1. The following section is hereby substituted for section 30 of the Nonprofit Organisations Act, 1997:

“Penalties

30. A person convicted of an offence in terms of this Act is liable to a fine not exceeding R1 million or to imprisonment not exceeding five years or to both a fine and imprisonment.”.

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

2. Section 1 of the Financial Intelligence Centre Act, 2001, is hereby amended—
- (a) by the substitution in subsection (1) in the definition of “authorised officer” for paragraphs (i) and (j) of the following paragraphs:
- “(i) an investigative division in a national department authorised by the head of that national department to act under this Act; **[or]**
 - (j) an investigative division of the Auditor-General authorised by the Auditor-General to act under this Act; or”;
- (b) by the addition in subsection (1) in the definition of “authorised officer” of the following paragraph:
- “(k) the Public Procurement Office authorised by the Head of the Public Procurement Office to act under this Act;” and
- (c) by the insertion in subsection (1) after the definition of “property” of the following definition:
- “**“Public Procurement Office’** means the Public Procurement Office established by section 4 of the Public Procurement Act, 2024 (Act No. 28 of 2024) and having the function in terms of section 54 of that Act to investigate any alleged non-compliance with that Act;”.

Amendment of section 3 of Act 38 of 2001, as substituted by section 27 of Act 33 of 2004, section 3 of Act 11 of 2008, section 2 of Act 1 of 2017 and by section 19 of Act 22 of 2022

3. Section 3 of the Financial Intelligence Centre Act, 2001, is hereby amended by the substitution in paragraph (a) of subsection (2) for subparagraphs (x) and (xi) of the following subparagraphs:

- “(x) a supervisory body; **[or]**
- (xi) the investigative division of the Auditor-General~~[,];~~
- (xii) the Public Procurement Office.”

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

4. Section 4 of the Financial Intelligence Centre Act, 2001, is hereby amended—
(a) by the substitution for subparagraphs (x) and (xi) of paragraph (b) of the following subparagraphs:

- “(x) a supervisory body; **[or]**
- (xi) the investigative division of the Auditor-General; or”; and

(b) by the addition in paragraph (b) of the following subparagraph:

- “(xii) the Public Procurement Office.”

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

5. Section 26A of the Financial Intelligence Centre Act, 2001, is hereby amended—
(a) by the substitution for the heading of the following heading:

“Notification of persons and entities identified [by] pursuant to resolutions of Security Council of [the] United Nations”;

(b) by the substitution for paragraph (b) of subsection (3) of the following paragraph:

- “(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) by the substitution for paragraph (c) of subsection (3) of the following paragraph:

- “(c) a decision of the Security Council of the United Nations to no longer apply a resolution contemplated in subsection (1A)[.]; and”;
- (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.”.

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

6. 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:
- “(aA) provide for extraordinary expenses;”;
- (b) by the substitution for paragraph (d) of subsection (2) of the following paragraph:
- “(d) 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”.

Substitution of section 28A of Act 38 of 2001, as inserted by section 27 of Act 33 of 2004 and amended by section 20 of Act 1 of 2017, section 32 of Act 22 of 2022 and section 24 read with Schedule to Act 23 of 2022

7. 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

28A. (1) An accountable institution must upon notice being given by the Director under section 26A(3), 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 notice by the Director.

(2) An accountable institution which has in its possession or under its control property owned or controlled by or on behalf of, or at the direction of a person or an entity identified in a notice given by the Director under section 26A(3), must within the prescribed period, report that fact and the prescribed particulars to the Centre.

(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—

(a) a person or entity identified in a notice given by the Director under section 26A(3);
or

(b) property owned or controlled by or on behalf of, or at the direction of such a person or an entity.

(4) The Director may direct an accountable institution which has made a report under subsection (2) to report—

(a) at such intervals as may be determined in the direction, that it is still in possession or control of the property in respect of which the report under subsection (2) had been made; and

(b) any change in the circumstances concerning the accountable institution's possession or control of that property.”.

Amendment of section 30 of Act 38 of 2001, as substituted by section 8 of Act 11 of 2008

8. Section 30 of the Financial Intelligence Centre Act, 2001, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A person authorised in terms of subsection (1) must **[without delay]** send a copy of the report within the prescribed period to the Centre.”.

Amendment of section 40 of Act 38 of 2001, as amended by section 27 of Act 33 of 2004, section 13 of Act 11 of 2008, section 25 of Act 1 of 2017 and section 37 of Act 22 of 2022

9. Section 40 of the Financial Intelligence Centre Act, 2001, is hereby amended—
- (a) by the substitution for paragraph (aH) of subsection (1) of the following paragraph:
“(aH) the South African Revenue Service; **[or]**”;
 - (b) by the substitution for paragraph (aI) of subsection (1) of the following paragraph:
“(aI) the investigative division of the Auditor-General; or”;
 - (c) by the insertion after paragraph (aI) of subsection (1) of the following paragraph:
“(aJ) the Public Procurement Office;” and
 - (d) by the substitution in subsection (1A) for the words preceding paragraph (a) of the following words:
“(1A) Information contemplated in subsection (1) may only be made available to an entity referred to in subsection (1)(a), (aa), (aB), (aC), (aD), (aE), (aF), (aG), (aH), **[or]** (aI) or (aJ)—”.

Amendment of section 42 of Act 38 of 2001, as amended by section 27 of Act 1 of 2017 and section 39 of Act 22 of 2022

10. Section 42 of the Financial Intelligence Centre Act, 2001, is hereby amended—
- (a) by the substitution for paragraph (a) of subsection (2) of the following paragraph:
“(a) enable the accountable institution to—
 - (i) identify;
 - (ii) assess;
 - (iii) monitor;
 - (iv) mitigate; and
 - (v) manage,the risk that the provision by the accountable institution of **[new and existing]** products or services to its clients may involve or facilitate money laundering activities, the financing of terrorist and related activities or proliferation financing activities;”;
 - (b) by the insertion after paragraph (a) of subsection (2) of the following paragraph:
“(aA) enable the accountable institution, prior to making a new product or service available to its clients, to—
 - (i) (aa) identify, and
 - (bb) assess,the risk that the provision by the accountable institution of that new product or service, including a new delivery mechanism and the use of new or

developing technology, to its clients, may involve or facilitate money laundering activities, the financing of terrorist and related activities or proliferation financing activities, and

(ii) based on the identification and assessment of the risks contemplated in sub-paragraph (i), take appropriate measures to—

(aa) manage, and

(bb) mitigate,

the risks contemplated in sub-paragraph (i);”; and

(c) by the substitution for subparagraph (iv) of paragraph (q) of subsection (2) of the following subparagraph:

“(iv) taking into consideration the level of risk of the host country, 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 will inform the Centre and the supervisory body concerned of the additional measures applied;”.

Amendment of section 46 of Act 38 of 2001, as substituted by section 35 of Act 1 of 2017

11. Section 46 of the Financial Intelligence Centre Act, 2001, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) An accountable institution that performs any act to give effect to a business relationship or single transaction in contravention of section 20A or 21(1) [or (1A)] is non-compliant and is subject to an administrative sanction.”.

Substitution of section 51A of Act 38 of 2001, as inserted by section 17 of Act 11 of 2008 and substituted by section 42 of Act 1 of 2017

12. The following section is hereby substituted for section 51A of the Financial Intelligence Centre Act, 2001:

“Failure to report property associated with terrorist and related activities and financial sanctions pursuant to Resolutions of United Nations Security Council

51A. (1) An accountable institution that has in its possession or under its control property owned or controlled by or on behalf of, or at the direction of an entity contemplated in section **[28A(1)] 28A(2)**, and that fails, within the prescribed period, to report that fact and the prescribed information in respect of such property to the Centre in accordance with that section, is guilty of an offence.

(2) An accountable institution that fails to comply with a direction by the Director in accordance with section **[28A(2)] 28A(4)**, is guilty of an offence.

(3) An accountable institution that fails to scrutinise the information as contemplated in section **[28A(3)] 28A(1)**, is guilty of an offence.

(3A) An accountable institution that fails to report an attempt to conduct a transaction or enquiries at conducting a transaction as contemplated in section 28A(3), within the prescribed period, the prescribed information in respect of such person or entity or such property to the Centre in accordance with that section, is guilty of an offence.

(4) An accountable institution that fails to—

(a) report to the Centre in accordance with section **[28A(1)] 28A(2)**, within the prescribed period, the prescribed information in respect of its possession or control of property owned or controlled by or on behalf of, or at the direction of an entity contemplated in that section;

(b) comply with a direction by the Director in accordance with section **[28A(2)] 28A(4)**;
[or]

(c) scrutinise the information as contemplated in section **[28A(3),] 28A(1)**; or

(d) report an attempt to conduct a transaction or enquiries at conducting a transaction as contemplated in section 28A(3), within the prescribed period, the prescribed information in respect of such person or entity or such property to the Centre in accordance with that section.

is non-compliant and is subject to an administrative sanction.”.

Amendment of Arrangement of Sections of Act 38 of 2001

13. The Arrangement of Sections of the Financial intelligence Centre Act, 2001, is hereby amended—

(a) by the substitution for item 26A of the following item:

“26A. Notification of persons and entities identified **[by] pursuant to resolutions of** Security Council of **[the] United Nations**”; and

(b) by the insertion after item 79B of the following item:

“79C. Amendment of the list of prominent influential persons”.

Amendment of section 82 of Act 71 of 2008, as amended by section 51 of Act 3 of 2011

14. Section 82 of the Companies Act, 2008, is hereby amended—

(a) by the deletion of the word “or” after item (bb) of subparagraph (ii) of paragraph (a) of subsection (3); and

(b) by the insertion after paragraph (a) of subsection (3) of the following paragraph:

“(aA) 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 one year or more in succession; or”.

Amendment of section 171 of Act 71 of 2008, as amended by section 108 of Act 3 of 2011

15. 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 Commission may impose an administrative fine in terms of section 175(1A).”.

Amendment of section 175 of Act 71 of 2008, as amended by section 110 of Act 3 of 2011

16. Section 175 of the Companies Act, 2008, is hereby amended—

(a) by the insertion after subsection (1) of the following subsection:

“(1A) The Commission may impose an administrative fine—

(a) only for failure to comply with a compliance notice issued for failure to submit the securities register or the register of beneficial interest, as contemplated in section 171(8); and

(b) not exceeding the greater of—

(i) 10% of the company’s turnover for the period during which the company failed to comply with the compliance notice; and

(ii) the maximum prescribed in terms of subsection (5).”; and

(b) by the substitution for subsection (5) of the following subsection:

“(5) The Minister may make a regulation prescribing the maximum amount of an administrative fine, which amount must be not less than **[R1 000 000]** R10 000 000.”.

Insertion of section 175A in Act 71 of 2008

17. 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 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 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.”.

Amendment of Arrangement of Sections

18. The Arrangement of Sections of the Companies Act, 2008, is hereby amended by the addition of item 175A after item 175:

“175A. Review of administrative fine”.

Amendment of section 2 of Act 9 of 2017

19. Section 2 of the Financial Sector Regulation Act, 2017, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) For the purposes of subsection (2)(b)(ii), a person makes a financial investment **[when the person (the "investor")]**—

- (a) when the person (the "investor") gives a contribution of economic value[, in money or money's worth,] to another person or arrangement and any of the following apply:
- (i) The **[other person uses the]** contribution is used to generate a financial return for the investor;
 - (ii) the investor intends that **[the other person will use]** the contribution will be used to generate a financial return for the investor, even if no return, or a loss, is in fact generated; or
 - (iii) the other person or arrangement **[intends]** represents or implies in any manner that the contribution be used to generate a financial return for the investor, even if no return, or a loss, is in fact generated; and
- (b) **[has no]** irrespective of whether the investor has day-to-day control over the use of the contribution.".

Amendment of section 3 of Act 9 of 2017

20. 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 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;".

Amendment of section 111 of Act 9 of 2017

21. Section 111 of the Financial Sector Regulation Act, 2017, is hereby amended—

- (a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

- "(b) if no specific financial sector law provides for such a licence, in accordance with a licence in terms of this Act~~[.]~~; and"; and

(b) by the insertion after paragraph (b) of subsection (1) of the following paragraph:

“(c) if so required in terms of section 113, in accordance with a licence in terms of this Act and a licence in terms of the Acts referred to in paragraph (a).”

Amendment of section 113 of Act 9 of 2017

22. Section 113 of the Financial Sector Regulation Act, 2017, is hereby amended by the insertion after subsection (1) of the following subsection:

“(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).”

Amendment of section 131 of Act 9 of 2017

23. 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.”

Amendment of section 135 of Act 9 of 2017

24. Section 135 of the Financial Sector Regulation Act, 2017, is hereby amended—
(a) by the substitution for subsection (1) for the words preceding paragraph (a) of the following words :

“(1) A financial sector regulator may instruct an investigator appointed by it to conduct an investigation in terms of this Part **[in respect of any person]**, if the financial sector regulator—”; and

(b) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) reasonably suspects that **[a person may have contravened, may be contravening or may be about to contravene,]** a financial sector law for which the financial sector regulator is the responsible authority, has been

contravened, may be in the process of being contravened or may be about to be contravened; or”.

Amendment of section 166S of Act 9 of 2017, as inserted by section 51 of Act 23 of 2021

25. Section 166S of Financial Sector Regulation Act, 2017, is hereby amended by the substitution for paragraph (b) of subsection (9) of the following paragraph:

“(b) transactions concluded under a “master agreement” as defined in section 35B(2) of the Insolvency Act;”.

Short title and commencement

26. This Act is called the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act, 2024 and takes effect on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON OBJECTS OF GENERAL LAWS (ANTI-MONEY LAUNDERING AND COMBATING TERRORISM FINANCING) AMENDMENT BILL, 2024

1. INTRODUCTION

1.1 Subsequent to the country being greylisted by the Financial Action Task Force (FATF), the Republic is required to report to the FATF on a regular basis on the steps taken to improve the Republic's system to combat money laundering, terrorism financing and proliferation financing (AML/CTF). In order to enhance the AML/CTF system, the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Bill, 2024 ('the Bill') proposes amendments to the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997 – 'the NPO Act'), the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001 – 'the FIC Act'), the Companies Act, 2008 (Act No. 71 of 2008 – 'the Companies Act') and the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017 – 'the FSR Act').

1.2 The Bill proposes amendments to—

- the NPO Act to provide for maximum penalties for offences;
- the FIC Act to amend and insert a certain definition; to require the Director to give notice pursuant to an order in terms of section 23 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004); to expand the circumstances under which a person or entity referred to in section 26A may be permitted provision of financial services to include providing for extraordinary expenses; to provide for the accrual of 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; to require the person authorised by the Minister to receive a report relating to the conveyance of cash to or from the Republic to send a copy of the report to the Centre within a prescribed period; to require accountable institutions to take into account the risk of new delivery mechanisms and the use of new or developing technologies which may involve or facilitate money laundering activities, the financing of terrorist and related activities or proliferation financing activities;
- the Companies Act to empower the Commission to deregister a company that fails to submit a securities register within a certain period; to empower the Commission to impose administrative penalties; to empower the Companies Tribunal to review a decision of the Commission to impose an administrative fine; and

- the FSR Act to provide for the circumstances under which new services are expanded to include arrangements that are similar in nature or have similar outcomes as financial products and services; to ensure that the responsible authority may license financial institutions that are providing financial products and financial services, including new services despite existing licensing requirements in other legislation; to empower financial sector regulators to obtain information from significant owners or beneficial owners; to empower financial sector regulators to institute an investigation under certain circumstances; to exclude transactions concluded under a ‘master agreement’ as defined in section 35B(2) of the Insolvency Act, 1936 from the application of a certain section.

2. SUMMARY OF BILL

2.1 *Clause 1* of the Bill proposes an amendment to section 30 of the NPO Act so as to provide for the maximum penalty of R1 000 000 or maximum imprisonment of five years for offences committed in terms of the NPO Act or both a fine and an imprisonment.

2.2 *Clause 2* of the Bill proposes to include the Public Procurement Office established by section 4 of the Public Procurement Act, 2024 (Act No. 28 of 2024) in the definition of “authorised officer” in section 1 of the FIC Act. Furthermore, clause 2 defines the Public Procurement Office so as to allow for the Financial Intelligence Centre (FIC) to share information with the Public Procurement Office.

2.3 *Clauses 3 and 4* of the Bill propose amendments to the FIC Act so as to allow the FIC to share information with the Public Procurement Office.

2.4 *Clause 5* of the Bill proposes an amendment to section 26A of the FIC Act which deals with the implementation of resolutions adopted by the Security Council of the United Nations, so as to expand the requirement for the Director of the FIC to give notice by appropriate means of publication of an entity in respect of which a High Court has made an order pursuant to section 23 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 as published by the National Director of Public Prosecutions in accordance with section 23(5) of that Act as well as a variation, rescission or setting aside of an order pursuant to section 23 of that Act.

2.5 *Clause 6* of the Bill proposes an amendment to section 26C of the FIC Act which provides for the Minister to permit a person to conduct financial services or deal with property under certain circumstances, so as to expand the circumstances to include providing for extraordinary expenses. In addition, to empower the Minister to permit the accrual of interest or other earnings due on accounts holding property affected by a prohibition under section 26B of the FIC Act that arose before the date on which the person or entity was identified by the Security Council of the United Nations.

2.6 *Clause 7* of the Bill provides for the substitution for section 28A of the FIC Act so as to provides for certain reporting obligations for accountable institutions that have in their possession or under its control property owned or controlled by or on behalf, or at the direction of a person or entity identified pursuant to a resolution of the Security Council of the United Nations.

2.7 *Clause 8* of the Bill proposes an amendment to section 30 of the FIC Act to specify the requirement for the person authorised by the Minister to receive the report relating to the conveyance of cash to or from the Republic to send a copy of the report to the Centre within a prescribed period.

2.8 *Clause 9* of the Bill allows the FIC to share information with the Public Procurement Office.

2.9 *Clause 10* of the Bill proposes an amendment to section 42 of the FIC Act so as to require accountable institutions to take into account the risk that new delivery mechanisms and the use of new or developing technologies, may involve or facilitate money laundering activities, the financing of terrorist and related activities or proliferation financing activities. In addition, to require accountable institutions to inform the FIC and the relevant supervisory body of the additional measures applied.

2.10 *Clause 11* of the Bill proposes an amendment to section 46 of the FIC Act so as to provide that an accountable institution that performs any act to give effect to a business relationship or single transaction in contravention of section 20A is non-compliant and is subject to administrative sanctions.

2.11 *Clause 12* of the Bill proposes an amendment to section 51A of the FIC Act which deals with the offence or act of non-compliance relating to the reporting obligations in section 28A. The

amendments in clause 12 provide for the consequential amendments following the amendments to section 28A in clause 7.

2.12 *Clause 13* of the Bill proposes to amend the arrangement of sections in the FIC Act.

2.13 *Clause 14* of the Bill proposes an amendment to section 82 of the Companies Act to require the Companies and Intellectual Property Commission (CIPC) to deregister a company (or close corporation) if such a company has failed to submit a securities register or beneficial interest register, in the prescribed manner and form, in terms of section 33 of the Act, annually.

2.14 *Clause 15* of the Bill proposes an amendment to section 171 of the Companies Act to provide that the CIPC may impose an administrative fine in instances where it has issued a compliance notice for failure to submit the securities register or the register of beneficial interest.

2.15 *Clause 16* of the Bill proposes an amendment to section 175 of the Companies Act to provide for the CIPC to impose administrative fines for failure to comply with a compliance notice contemplated in section 171(8) of the Companies Act.

2.16 *Clause 17* of the Bill proposes a new section 175A in the Companies Act which empowers any person on whom an administrative fine has been imposed to apply to the Companies Tribunal to review the administrative fine imposed.

2.17 *Clause 18* of the Bill proposes to amend the Arrangement of Sections in the Companies Act to add the proposed new section 175A.

2.18 *Clause 19* of the Bill proposes an amendment to the definition of 'making a financial investment' in section 2(3) of the FSR Act.

2.19 *Clause 20* of the Bill provides for the circumstances under which new services are expanded in section 3(3)(a) of the FSR Act to include arrangements that are similar in nature or have similar outcomes as financial products and services irrespective of the technology used to provide the products or services. This will enable the Minister to identify and assess the ML/TF risks that may arise in relation to the development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies for both new and pre-existing products, and if required to designate new financial products or services to be

regulated to ensure that regulation keeps abreast with the development of new financial products and services, innovation and technology.

2.20 *Clauses 21 and 22* of the Bill proposes amendments to sections 111 and 113 of the FSR Act to ensure that the responsible authority may license financial institutions that are providing financial products and financial services, including new services despite existing licensing requirements in other legislation. Section 111(1) currently stipulates that a person may not provide, as a business or part of a business, a financial product designated in terms of section 2, or a financial service designated in terms of section 3, except in accordance with a licence in terms of Chapter 8 of the FSR Act. 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.

2.21 *Clause 23* of the Bill proposes an amendment to section 131 of the FSR Act so as to empower financial sector regulators to obtain information from significant owners or beneficial owners.

2.22 *Clause 24* of the Bill proposes an amendment to section 135 of the FSR Act so as to empower financial sector regulators to institute an investigation if the regulator suspects that a financial sector law has been contravened, may be in the process of being contravened or may be about to be contravened.

2.23 *Clause 25* of the Bill proposes an amendment to section 166S(9) of the FSR Act so as to exclude transactions concluded under a 'master agreement' as defined in section 35B(2) of the Insolvency Act, 1936 (Act No. 24 of 1936) from the application of section 166S(7) of the FSR Act.

2.24 *Clause 26* of the Bill provides for the short title and commencement of the Act.

3. ORGANISATIONS AND INSTITUTIONS CONSULTED

The following organisations have been consulted:

- (a) Department of Social Development;
- (b) Department of Trade, Industry and Competition;

- (c) Financial Intelligence Centre;
- (d) Financial Sector Conduct Authority;
- (e) South African Reserve Bank; and
- (f) Companies and Intellectual Property Commission.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. PARLIAMENTARY PROCEDURE

5.1 The Constitution of the Republic of South Africa, 1996 ('the Constitution') regulates the manner in which legislation may be enacted by the legislature and thus prescribes the different procedures to be followed for such enactment. The national legislative process is governed by sections 73 to 77 of the Constitution.

5.2 The test for tagging is not concerned with determining the sphere of government that has competence to legislate on a matter, nor the process concerned with preventing interference in the legislative competence of another sphere of government. In *Tongoane v Minister of Agriculture and Land Affairs* 2010 (6) SA 214 (CC), the Constitutional Court ruled on the test to be used when tagging a Bill. The Court held, in paragraph 70, that the "test for determining how a Bill is to be tagged must be broader than that for determining legislative competence". Whether a Bill is a section 76 Bill is determined in two ways. First by the explicit list of legislative matters in section 76(3), and second by whether the provisions of a Bill in substantial measure fall within a concurrent legislative competence (see paragraphs 70-72 of the judgment). The Court held that the tagging test focuses on all provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4, and not on whether any of its provisions are incidental to its substance.

5.3 We have considered all the provisions in the Bill in light of Schedules 4 and 5 to the Constitution and found that the Bill does not provide for the amendment of the Constitution or money matters, as stated in section 77 of the Constitution and therefore we do not regard it necessary to consider sections 74 and 77 of the Constitution.

5.4 The State Law Advisers and the National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or 77 of the Constitution applies.

5.5 The State Law Advisers and the National Treasury are of the opinion that it is not necessary to refer the Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not contain provisions pertaining to traditional or Khoi-San communities or customary law or customs of traditional or Khoi-San communities, nor any matter referred to in section 154(2) of the Constitution.