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9 October 2022

Mr Allen Wicomb
Committee Secretary
Standing Committee on Finance
3rd Floor
90 Plein Street
Cape Town
8000

Doc Ref: NOMPUMELELOP/#317982_v1

Your ref: General Laws Amendment Bill

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Dear Mr Wicomb

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

1. The above matter refers.
2. The Banking Association South Africa (**BASA**) and our members appreciate the opportunity afforded to us to submit comments and recommendations General Laws (Anti-Money Laundering And Combating Terrorism Financing) Amendment Bill (the Bill).
3. 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).
4. We have identified three key matters which we have discussed and explained under our general comments. In summary, these relate to:
   a) Ultimate beneficial ownership (definitions, access to UBO register, alternative mechanisms for listed companies),
   b) Information sharing, and
   c) Transitional provisions.
5. Referencing BASA's comments and recommendations on ultimate beneficial ownership, **Annexure A** to the submission encapsulates our proposal for consideration that the cross-reference to the definition of beneficial owner in the Financial Intelligence Centre Act 38 of 2001, 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.

6. Relating to BASA's comments on information sharing, **Annexure B** hereto is BASA's submission on the proposed amendments to the FIC Act relating to information sharing, which clauses were not included in the Bill, but are attached herewith to support our comments on the importance of information sharing between accountable institutions where the purpose of such sharing is in alignment with the purpose and objectives of the FIC Act.
7. Our comments on the remaining clauses follow after the general comments.
8. BASA and members remain committed to assisting National Treasury in remediating the deficiencies identified in the Mutual Evaluation Report.
9. We trust that our submission will assist in shaping the content of the Bill and are available to discuss the contents hereof if required.

Best regards

Bongi Kunene
Managing Director

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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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	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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LINE-ITEM NO	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
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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LINE-ITEM NO	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
	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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LINE-ITEM NO	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
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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LINE-ITEM NO	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
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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LINE-ITEM NO	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
	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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	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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	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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	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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	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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	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.	

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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) 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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	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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	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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	(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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	(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).	

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ANNEXURE A

Proposed amendments to the definition of beneficial ownership in the Trust Property Control Act 57 of 1988, the Companies Act 71 of 2008 and the Financial Sector Regulation Act 9 of 2017

1. The Trust Property Control Act 57 of 1988

The following amendments are proposed to clause 1 which inserts the definition of beneficial owner into section 1 of the Trust Property Control Act 9 of 2017:

(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.~~

(a) means a natural person(s) who directly or indirectly—

(i) ultimately owns or exercises effective control of—

(aa) a ~~client of an accountable institution~~ trust; 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~~ a trust; ~~or~~ and

(ii) exercises control of ~~a client of an accountable institution~~ a trust on whose behalf a transaction is being conducted; and

(b) in respect of (a), includes—

(i) in respect of legal persons, each natural person(s) who independently or together with another person, has a controlling ownership interest in the legal person.

(aa) 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, 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 ~~contemplated in section 21B(2)(a);~~

(bb) if a natural person is not identified as contemplated in subparagraph (aa), each natural person who exercises control over the management of the legal person, including in his or her capacity as executive officer, non-executive director, independent non-executive director, director or manager;

(ii) in respect of a partnership~~–~~

~~- each natural person contemplated in section 21B(3)(b)~~

(aa) every partner, including every member of a partnership *en commandite*, an anonymous partnership or any similar partnership;

(bb) 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;

(cc) the natural person(s) who exercises executive control over the partnership; ~~and~~

(dd) each natural person who purports to be authorised to enter into a single transaction or establish a business relationship with any other entity on behalf of the partnership; or

~~(iii) in respect of a trust, a beneficial owner as contemplated in the Trust Property Control Act, 1988contemplated in section 21B(4)(c), (d) and *(e;*'' ~~

(iii) a natural person(s) who directly or indirectly ultimately owns the relevant trust property or exercises effective control of the administration of the trust, including–

(a) each founder of the trust and shall include 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 natural person(s) who directly or indirectly ultimately owns or exercises effective control of that legal person, partnership or trust;

(b) each of the trustees of the trust and shall include –

(i) if a trustee is a legal person or a person acting on behalf of a partnership, the natural person(s) who directly or indirectly ultimately owns or exercises effective control of that legal person or partnership;

(ii) each natural person who purports to be authorised to enter into a single transaction or establish a business relationship with any other person on behalf of the trust, whether such a person is appointed as a trustee of the trust or not; and

(c) the beneficiaries of the trust, which shall mean -

(i) each beneficiary referred to by name in the trust deed or other founding instrument in terms of which the trust is created;

(ii) 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(s) who directly or indirectly ultimately owns or exercises effective control of that legal person, partnership or trust; and

(iii) 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,

and for purposes hereof -

(i) a "**controlling ownership interest**" or "**control**" shall mean that a person alone or with any other person is directly or indirectly able to exercise or control the exercise of the votes of the trustees, or to appoint the trustees, or to appoint or change the beneficiaries of the trust, provided that the Minister may prescribe thresholds percentages in respect of the voting rights, ability to appoint trustees or change the beneficiaries, after agreement with the Minister of Finance and the Financial Intelligence Centre;

(ii) "**Financial Intelligence Centre**" shall mean the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001; and

(iii) "**legal person**" means a person incorporated as a company, close corporation, foreign company or any other form of corporate arrangement or association, but excludes a trust, partnership or sole proprietor."

Proposed amendments to section 11A of the Trust Property Control Act by inserting new sub-sections (2) – (5) as follows:

"**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 adequate, accurate and ~~kept~~ up to date.

(2) The Master must keep a register in the prescribed form containing prescribed information about the beneficial ownership of trusts.

(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 accountable institutions and any other person as prescribed.

(4) The prescribed requirements referred to in this section must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).

(5) Each beneficial owner, or person reasonably considered by a trust to be a beneficial owner of the trust ("**deemed beneficial owner**"), must upon receipt of a notice by the trust, provide all information requested by the trust in order to ensure compliance with this section 11A.

(6)

(a) The Master may issue to a beneficial owner or a deemed beneficial owner a prescribed Notice requiring the beneficial owner or deemed beneficial owner to take action specified in the Notice if the beneficial owner or deemed beneficial owner fails to provide the relevant information to the trust.

(b) A beneficial owner or deemed beneficial owner must comply with the prescribed Notice issued in terms of subsection (a) within the period prescribed in the Notice.

(c) A failure to comply with the prescribed Notice issued by the Master as contemplated in subsection (5) constitutes an offence."

2. Companies Act 71 of 2008

[Delete and amend clause 52 by replacing it with a new (and amended) clause 56A as follows:]

~~**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;'' .~~

"*56A **Beneficial owner of securities and beneficial ownership register***

(1) In this section, "**beneficial owner**"–

(a) means a natural person(s) who directly or indirectly—

(i) ultimately owns or exercises effective control of—

(aa) a ~~client of an accountable institution~~ company; 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~~ a company; ~~or~~ and

(ii) exercises control of ~~a client of an accountable~~ ~~institution~~ **a company** on whose behalf a transaction is being conducted; and

(b) in respect of (a) includes —

(i) in respect of legal person, each natural person(s) who independently or together with another person, has a controlling ownership interest in the legal person.

(aa) 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, each natural person(s) 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 ~~contemplated in section 21B(2)(a)~~;

(bb) if a natural person is not identified as contemplated in subparagraph (aa), each natural person(s) who exercises control over the management of the legal person, including in his or her capacity as executive officer, non-executive director, independent non-executive director, director or manager;

(ii) in respect of a partnership - ~~each natural person contemplated in section 21B(3)(b)~~

(aa) every partner, including every member of a partnership *en commandite*, an anonymous partnership or any similar partnership; and

(bb) 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; and

(cc) the natural person(s) who exercises executive control over the partnership; or

(iii) in respect of a trust, a beneficial owner as contemplated in the Trust Property Control Act, 1988.~~contemplated in section 21B(4)(c), (d) and *(e;''*~~

(2) For purposes of this section 56A unless the context indicates otherwise –

(a) "**controlling ownership interest**" means in respect of an interest in a –

(i) company, that a person alone or with any related inter-related person is directly or indirectly able to exercise or control the exercise of the voting rights associated with securities of that company, whether pursuant to a shareholder agreement or otherwise;

(ii) close corporation, that a person alone or with any related inter-related person is directly or indirectly able to exercise or control the exercise of the voting rights associated with membership interest of that close corporation, whether pursuant to a membership agreement or otherwise; and

(iii) partnership, body of persons corporate or unincorporated, including a non-profit organisation, that a person alone or with any other person is directly or indirectly able to through the ability to control the partnership or its business,

provided that the Minister may prescribe thresholds percentages in respect of the voting rights, after agreement with the Minister of Finance and the Financial Intelligence Centre;

(b) "**Financial Intelligence Centre**" means the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001;

(c) "**legal person**" means a person incorporated as a company, close corporation, foreign company or any other form of corporate arrangement or association, but excludes a trust, partnership or sole proprietor; and

(d) "**record of beneficial owners**" means the record reflecting information regarding the natural persons who are beneficial owners of the company as contemplated in section 56A(3).

(3) …

[Replaces the proposed amendments to clause 54 and clause 55 – similar wording but incorporated into the new proposed 56A.]

~~**Amendment of section 50 of Act 71 of 2008, as amended by section 34 of Act 3 of 2011**~~

~~**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, in the prescribed form, and must ensure that this information is updated within the prescribed period after any changes in beneficial ownership have occurred.~~

~~*(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).~~

~~**Amendment of section 56 of Act 71 of 2008, as amended by section 36 of Act 3 of**~~

~~**2011**~~

~~**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).".~~

(a) Unless exempted in terms of the regulations, a company must record in its securities register and in its record of beneficial owners the prescribed information in each instance regarding the natural persons who are the beneficial owners of the company, in the prescribed form and must –

(i) ensure that its securities register and record of beneficial owners are adequate, accurate and updated within the prescribed period after any changes in beneficial ownership have occurred; and

(ii) file the record of beneficial owners with the Commission 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.

(b) The Minister may in the regulations exempt any company from complying with the provisions of paragraph (a) for any period as prescribed.

(c) The prescribed form and period referred to in paragraph (a) must in each instance be prescribed in the regulations by the Minister after agreement with the Minister of Finance and the Financial Intelligence Centre.

(4) Each person who is not a natural person, who has registered in its name security in a company must disclose to the company the identity of each such person's beneficial owners in respect of each security held.

(5) Each beneficial owner, or person reasonably considered by the company to be a beneficial owner of the company ("**deemed beneficial owner**"), must upon receipt of a notice by the company, provide all information requested by the company in order to ensure compliance with this section 56A.

(6) The information required in terms of subsections (4) and (5) must—

(a) be disclosed in writing to the company –

(i) by no later than the date prescribed by the Minister after consultation with the Minister of Finance and the Financial Intelligence Centre;

(ii) within five business days after the end of every month during which a change has occurred in the information contemplated in subsection (4), or more promptly or frequently to the extent so provided by the requirements of the Financial Intelligence Centre; and

(b) otherwise be provided on payment of a prescribed fee charged by the registered holder of securities.

"(7)

(a) The Commission may issue to a beneficial owner or a deemed beneficial owner a written directive requiring the beneficial owner or deemed beneficial owner to take action specified in the directive if the beneficial owner or deemed beneficial owner fails to provide the relevant information to the company.

(b) A beneficial owner or deemed beneficial owner must comply with a directive issued in terms of subsection (a) within the period prescribed in the directive.

(c) A failure to comply with the written directive of the Commission as contemplated in subsection (5) or this subsection (7) constitutes an offence."

3. Financial Sector Regulation Act 9 of 2017

BASA proposes the deletion of the definition of "beneficial owners" as set out in clause 159A and suggests replacing it with a new (and amended) definition of "beneficial owner" as follows:]

"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~~

~~(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.~~

(a) a natural person(s) who directly or indirectly—

(i) ultimately owns or exercises effective control of—

(aa) a ~~client of an accountable institution~~ financial 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~~ a financial institution; and

(ii) exercises control of ~~a client of an accountable institution~~ a financial institution on whose behalf a transaction is being conducted; and

(b) in respect of (a) includes—

(i) in respect of legal persons, each natural person contemplated in section 56A(1) of the Companies Act, 2008 (Act No. 71 of 2008)

(ii) in respect of a partnership, each natural person contemplated in section 56A(1) of the Companies Act, 2008 (Act No, 71 of 2008); and

(iii) in respect of a trust, each natural person contemplated in section 1 of the Trust Property Control Act, 1988 (Act No. 57 of 1988);

(c) for the purposes of this Act, a natural person who directly or indirectly ultimately owns or it able to exercise control of a –

(i) a financial institution; or

(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) For purposes of this section 159A unless the context indicates otherwise –

(a) "**legal person**" means a person incorporated as a company, close corporation, foreign company or any other form of corporate arrangement or association, but excludes a trust, partnership or sole proprietor."

By the insertion of a new section 159C (and the renumbering of the current section 159C as the new section 159D

159C Duty of beneficial owners to provide information

(1) Each beneficial owner, or person reasonably considered by the financial institution to be a beneficial owner of the financial institution ("**deemed beneficial owner**"), must upon receipt of a notice by the financial institution, provide all information requested by the financial

institution in order to ensure compliance with this section 159B and/or any standards issued in terms of section 159B**.**

(2) A beneficial owner or deemed beneficial owner must comply with a request from a financial institution within the period prescribed by the financial institution."

Amend section 159C (renumbered 159D) by including a new subsection 3 as follows:

(3) A failure to comply with the written directive of the financial sector regulator constitutes an offence.

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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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		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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	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.